

House Bill 73
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 35, Business & Commerce Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CUSTOMER TELEPHONE RECORDS

Sec. 35.151. DEFINITIONS. In this subchapter:

(1) "Caller identification record" means a record that:

(A) is delivered electronically to the recipient of a telephone call simultaneously with the reception of the call; and

(B) indicates the telephone number from which the telephone call was made or other similar information regarding the call.

(2) "Telephone company" means a provider of commercial telephone services, or a provider that bills for those services, regardless of the technology used to provide that service, including landline, radio, wireless, microwave, satellite, Voice over Internet Protocol (VoIP), or other cable, broadband, or digital technology.

(3) "Telephone record" means a written, electronic, or oral record, other than a caller identification record collected and retained by or on behalf of a customer, created by a telephone company about a customer, that includes:

(A) the telephone number:

(i) dialed by a customer; or

(ii) of an incoming call made to a customer;

(B) the time a call was made to or by a customer;

(C) the duration of a call made to or by a customer; or

(D) the location from which a call was initiated or at which a call was received by a customer.

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Sec. 35.152. CONSTRUCTION OF SUBCHAPTER. This subchapter does not apply to expand the obligations or duties of a telephone company under federal or other state law to protect telephone records.

Sec. 35.153. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE, OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense if the person:

(1) obtains, attempts to obtain, or conspires with another to obtain a telephone record of a resident of this state without the authorization of the resident to whom the record pertains by:

(A) making a statement the person knows to be false to an agent of a telephone company;

(B) making a statement the person knows to be false to a telephone company;

(C) fraudulently accessing the record through the telephone company's Internet website; or

(D) providing to a telephone company a document that the person knows:

(i) is fraudulent;

(ii) has been lost or stolen;

(iii) has been obtained by fraud; or

(iv) contains a false, fictitious, or fraudulent statement or representation;

(2) asks another person to obtain a telephone record of a resident of this state knowing that the record will be obtained in a manner prohibited by this section;

(3) sells, transfers, or attempts to sell or transfer a telephone record of a resident of this state without

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authorization of the resident to whom the record pertains;
or
(4) offers to obtain or offers to sell a telephone record that has been or will be obtained without authorization from the resident to whom the record pertains.
(b) An offense under this section is a Class A misdemeanor, except that a fine shall not exceed \$20,000.
(c) In addition to the penalties provided by Subsection (b), a person convicted of an offense under this section may be required to forfeit personal property used or intended to be used in violation of this section.
(d) In addition to the penalties provided by Subsections (b) and (c), a person convicted of an offense under this section shall be ordered to pay to a resident whose telephone record was obtained in a manner prohibited by this section an amount equal to the sum of:
(1) the greater of the resident's financial loss, if proof of the loss is submitted to the satisfaction of the court, or \$1,000; and
(2) the amount of any financial gain received by the person as the direct result of the offense.
(e) An offense under this section may be prosecuted in:
(1) the county in which the customer whose telephone record is the subject of the prosecution resided at the time of the offense; or
(2) any county in which any part of the offense took place regardless of whether the defendant was ever present in the county.
(f) If venue lies in more than one county under

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authorization of the resident to whom the record pertains;
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(4) offers to obtain or offers to sell a telephone record that has been or will be obtained without authorization from the resident to whom the record pertains.
(b) An offense under this section is a Class A misdemeanor, except that a fine shall not exceed \$20,000.
(c) In addition to the penalties provided by Subsection (b), a person convicted of an offense under this section may be required to forfeit personal property used or intended to be used in violation of this section.
(d) In addition to the penalties provided by Subsections (b) and (c), a person convicted of an offense under this section shall be ordered to pay to a resident whose telephone record was obtained in a manner prohibited by this section an amount equal to the sum of:
(1) the greater of the resident's financial loss, if proof of the loss is submitted to the satisfaction of the court, or \$1,000; and
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Subsection (e), a defendant may be prosecuted in only one county for the same conduct.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code or of any other law, including the Penal Code, the actor may be prosecuted under either section or under both sections.

(h) This section does not create a private right of action. Sec. 35.154. EXCEPTIONS. Section 35.153 does not apply to:

(1) a person who acted pursuant to a valid court order, warrant, subpoena, or civil investigative demand; **or**

(2) a telephone company that disclosed a telephone record:

(A) the disclosure of which is otherwise authorized by law;

(B) reasonably believing the disclosure was necessary to:

(i) provide service to a customer;

(ii) protect an individual from fraudulent, abusive, or unlawful use of a telephone record or telephone service;

or

(iii) protect the rights or property of the company;

(C) to the National Center for Missing and Exploited Children in connection with a report submitted under 42 U.S.C. Section 13032;

(D) for purposes of testing the company's security procedures or systems for maintaining the confidentiality of customer information;

(E) to a governmental entity, if the company reasonably

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believed that an emergency involving danger of death or serious physical injury to a person justified disclosure of the information;

(F) in connection with the sale or transfer of all or part of the company's business, the purchase or acquisition of all or part of another company's business, or the migration of a customer from one telephone company to another telephone company;

(G) necessarily incident to the rendition of the service, to initiate, render, bill, and collect the customer's charges, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(H) while acting reasonably and in good faith, notwithstanding a later determination that the action was not authorized.

Sec. 35.155. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A violation of this subchapter is a false, misleading, or deceptive act or practice under Section 17.46 and is subject to action only by the consumer protection division of the attorney general's office as provided by Section 17.46(a).

Sec. 35.156. CONSISTENCY WITH FEDERAL LAW. This subchapter may not be construed in a manner that is inconsistent with 18 U.S.C. Section 1038, 47 U.S.C.

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(G) necessarily incident to the rendition of the service, to initiate, render, bill, and collect the customer's charges, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(H) while acting reasonably and in good faith, notwithstanding a later determination that the action was not authorized; or

(3) a person or a telephone company that acted in connection with the official duties of a 9-1-1 governmental entity or a public agency solely for purposes of delivering or assisting in the delivery of 9-1-1 emergency services and other emergency services.

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Section 222, or any other applicable federal law or rule.
Sec. 35.157. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES. This subchapter does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a state, or a political subdivision of a state or of an intelligence agency of the United States.

SECTION 2. Article 59.01(2), Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety

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Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code;

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code; [øø]

(viii) a Class B misdemeanor under Section 35.60, Business & Commerce Code; or

(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

SECTION 3. This Act takes effect September 1, 2007.

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