

BILL ANALYSIS

C.S.H.B. 2397
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Technology, Economic Development & Workforce
Committee Report (Substituted)

BACKGROUND AND PURPOSE

With the explosion of the Internet in the late 1990s, information has become readily accessible and available to all people. However, increased use of the Internet has led also to increased access to child pornography. Images of children engaging in sexual acts, or being subjected to sexual exploitation, are illegal under both state and federal law, but cases of child exploitation often go unreported or unprosecuted due to the anonymous nature of the Internet and the viewer's computer hard drive.

The U.S. Department of Justice Child Exploitation and Obscenity Section, as well as local, state, and other federal agencies work to combat child pornography through underground sting operations and other aggressive measures. Though these agencies are effective in identifying, apprehending, and prosecuting sexual predators, images of child pornography found by computer service technicians sometimes go unreported. This is due to the fact that current Texas law does not require computer service technicians to report such images.

Several states, including Illinois, South Carolina, and Florida, already have passed laws requiring computer technicians to report child pornography found on personal computers to law enforcement authorities. These measures include child pornography found in the normal course of repair and require a report to be filed immediately with local or state law enforcement agencies.

C.S.H.B. 2397 seeks to establish a similar measure in Texas by requiring computer service technicians to report images of child pornography found on a computer during the scope of employment to law enforcement agencies and by granting certain qualified immunity and establishing penalties if the discovery of child pornography goes unreported by the technician.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2397 amends the Business & Commerce Code to make it a Class B misdemeanor offense for a computer technician who in the course and scope of employment or business views an image on a computer that is or appears to be child pornography to fail to immediately report the discovery of the image to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The bill requires the report to include the name and address of the owner or person claiming a right to possession of the computer, if known. The bill provides a defense to prosecution that the computer technician did not report the discovery of an image of child pornography because the child in the image appeared to be at least 18 years of age. The bill establishes that a computer technician may not be held liable on account of any action taken in good faith to comply with the bill's provisions. The bill defines "computer technician" as an individual who in the course and scope of employment or business

installs, repairs, or otherwise services a computer for a fee. The bill defines "child pornography," "sexual conduct," and "sexual performance."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2397 removes a provision from the original granting immunity from liability to a telecommunications provider, commercial mobile service provider, or information service provider for the failure to report child pornography that is transmitted or stored by a user of the service. The substitute differs from the original by establishing that a computer technician may not be held liable on account of any action taken in good faith to comply with the bill's provisions, whereas the original grants immunity from liability to a computer technician in a criminal or civil action brought against the technician for reporting the discovery of an image of child pornography, except in a case of willful or wanton misconduct. The substitute removes provisions from the original defining "commercial mobile service provider," "information service provider," and "telecommunications provider."