

By: McClendon

H.B. No. 2564

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain professions and practices in connection with computer technology; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. COMPUTER DATA ANALYSIS

SECTION 1.001. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 107 to read as follows:

CHAPTER 107. COMPUTER DATA ANALYSIS

Sec. 107.001. DEFINITIONS. In this chapter:

(1) "Computer data recovery specialist" means a person who offers the service of recovering data, for non-evidentiary purposes, from a digital form of media storage that is not accessible by the person requesting the service.

(2) "Computer forensic analyst" means a person who acquires, reviews, takes images of, or analyzes digital or computer-based information for the purpose of obtaining or furnishing the information for evidentiary purposes in an actual or potential civil or criminal proceeding. The term does not include a person who is an attorney or a person who is working under the direct supervision of an attorney.

(3) "Computer technician" means a person who repairs or services computers, including the repair of software.

Sec. 107.002. STATEMENT OF OWNERSHIP REQUIRED. (a) A computer data recovery specialist, computer forensic analyst, or

1 computer technician may not, in the course and scope of employment  
2 or for a fee, analyze or recover data contained in a computer  
3 unless:

4 (1) the specialist, analyst, or technician, or the  
5 employer of the specialist, analyst, or technician, has obtained a  
6 dated work order that includes a signed statement from the person  
7 requesting the service that states that the facts contained in the  
8 work order form are true and correct and that the person:

9 (A) owns or has the right of possession to the  
10 computer; or

11 (B) represents the owner as an authorized agent  
12 or attorney; or

13 (2) the data analysis is authorized by a court or a law  
14 enforcement agency.

15 (b) This section does not apply to a computer owned by the  
16 employer of the computer data recovery specialist, computer  
17 forensic analyst, or computer technician.

18 Sec. 107.003. MAINTENANCE AND INSPECTION OF STATEMENTS.

19 (a) A computer data recovery specialist, computer forensic  
20 analyst, computer technician, or employer who obtains a statement  
21 required under Section 107.002 shall maintain the statement for a  
22 period of not less than one year.

23 (b) The computer data recovery specialist, computer  
24 forensic analyst, computer technician, or employer shall make the  
25 statement available for inspection on request by a law enforcement  
26 agency under a court-ordered subpoena or search warrant.

27 Sec. 107.004. VIOLATION. (a) A person commits an offense

1 if the person violates Section 107.003. An offense under this  
2 subsection is a Class C misdemeanor.

3 (b) A person commits an offense if the person provides a  
4 materially false statement in a signed work order statement  
5 required by Section 107.002. An offense under this subsection is a  
6 Class A misdemeanor.

7 SECTION 1.002. Subtitle C, Title 5, Business & Commerce  
8 Code, is amended by adding Chapter 108 to read as follows:

9 CHAPTER 108. COMPUTER TECHNICIANS REQUIRED TO REPORT CHILD

10 PORNOGRAPHY

11 Sec. 108.001. DEFINITIONS. In this chapter:

12 (1) "Child pornography" means an image of a child  
13 engaging in sexual conduct or sexual performance.

14 (2) "Computer technician" means an individual who, in  
15 the course and scope of employment or business, installs, repairs,  
16 or otherwise services a computer for a fee.

17 (3) "Sexual conduct" and "sexual performance" have the  
18 meanings assigned by Section 43.25, Penal Code.

19 Sec. 108.002. REPORTING OF IMAGES OF CHILD PORNOGRAPHY.

20 (a) A computer technician who, in the course and scope of  
21 employment or business, views an image on a computer that is or  
22 appears to be child pornography shall immediately report the  
23 discovery of the image to a local or state law enforcement agency or  
24 the Cyber Tipline at the National Center for Missing and Exploited  
25 Children. The report must include the name and address of the owner  
26 or person claiming a right to possession of the computer, if known.

27 (b) A computer technician may not be held liable on account

1 of any action taken in good faith to comply with this section.

2 Sec. 108.003. CRIMINAL PENALTY. (a) A person who violates  
3 this chapter commits an offense. An offense under this subsection  
4 is a Class B misdemeanor.

5 (b) It is a defense to prosecution under this section that  
6 the actor did not report the discovery of an image of child  
7 pornography because the child in the image appeared to be at least  
8 18 years of age.

9 SECTION 1.003. Section 1702.104, Occupations Code, is  
10 amended by amending Subsection (b) and adding Subsections (c), (d),  
11 and (e) to read as follows:

12 (b) Except as provided by Subsection (c) or (d), for [For]  
13 purposes of Subsection (a)(1), obtaining or furnishing information  
14 includes information obtained or furnished through the review and  
15 analysis of, and the investigation into the content of,  
16 computer-based data not available to the public.

17 (c) "Obtaining or furnishing information" does not include  
18 obtaining or furnishing computer-based data by a person acting as a  
19 computer data recovery specialist or computer forensic analyst, as  
20 those terms are defined by Section 107.001, Business & Commerce  
21 Code, which does not constitute an investigation for purposes of  
22 this section and does not require licensing under this chapter.

23 (d) The repair or maintenance of a computer does not  
24 constitute an investigation for purposes of this section and does  
25 not require licensing under this chapter if the person performing  
26 the repair or maintenance:

27 (1) is installing or repairing computer equipment or

1 diagnosing a computer or software problem; and

2 (2) is not furnishing information or securing evidence  
3 described by Subsection (a)(1) or (2).

4 (e) A computer data recovery specialist or computer  
5 forensic analyst, as those terms are defined by Section 107.001,  
6 Business & Commerce Code, who engages in an activity described by  
7 Subsection (a)(2) is not conducting an investigation for purposes  
8 of this section and does not require licensing under this chapter.

9 ARTICLE 2. LICENSING OF CERTAIN COMPUTER DATA ANALYSTS

10 SECTION 2.001. The Occupations Code is amended by adding  
11 Title 16 to read as follows:

12 TITLE 16. OCCUPATIONS RELATED TO COMPUTER TECHNOLOGY

13 CHAPTER 2601. COMPUTER DATA ANALYSIS

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 2601.001. DEFINITIONS. (a) In this chapter:

16 (1) "Commission" means the Texas Commission of  
17 Licensing and Regulation.

18 (2) "Department" means the Texas Department of  
19 Licensing and Regulation.

20 (b) In this chapter, the terms "computer data recovery  
21 specialist" and "computer forensic analyst" have the meanings  
22 assigned by Chapter 107, Business & Commerce Code.

23 Sec. 2601.002. RULEMAKING. The commission shall adopt  
24 rules as necessary to implement this chapter.

25 Sec. 2601.003. FEES. (a) The commission shall adopt  
26 license application fees, license renewal fees, and other fees as  
27 necessary to cover the costs of administering this chapter.

1       (b) The commission shall set fees under this chapter in  
2 amounts reasonable and necessary to cover the costs to implement  
3 this chapter.

4       [Sections 2601.004-2601.050 reserved for expansion]

5                               SUBCHAPTER B. LICENSE

6       Sec. 2601.051. LICENSE REQUIRED. A person may not operate  
7 or engage in business as a computer data recovery specialist or  
8 computer forensic analyst in this state unless the person holds a  
9 license issued under this chapter.

10       Sec. 2601.052. LICENSE APPLICATION. To obtain a license  
11 under this chapter, a license applicant must file an application  
12 with the department, on a form prescribed by the commission,  
13 accompanied by the license application fee.

14       Sec. 2601.053. CRIMINAL BACKGROUND CHECKS. (a) On receipt  
15 of an application for a license under this chapter, the department  
16 shall conduct a criminal background check on the applicant.

17       (b) An applicant is not eligible for a license under this  
18 chapter if the applicant, in the five years preceding the date of  
19 the application, has been finally convicted of a misdemeanor  
20 involving moral turpitude or a felony.

21       Sec. 2601.054. SECURITY REQUIRED. (a) The department may  
22 not issue a license to an applicant unless the applicant files a  
23 surety bond, or posts other security as prescribed by the  
24 commission, in the amount prescribed by the commission under  
25 Subsection (b).

26       (b) The commission shall prescribe the amount of security  
27 required for an applicant in the amount determined sufficient by

1 the commission to protect any party who suffers damages caused by  
2 the failure of the applicant or license holder to fulfill  
3 obligations related to the performance of activities described by  
4 Chapter 107, Business & Commerce Code. The amount may not be less  
5 than \$20,000 or more than \$50,000.

6 (c) If a surety bond is filed under Subsection (a), the bond  
7 must:

8 (1) remain in effect until canceled by the surety  
9 company;

10 (2) be issued by a company authorized to do business in  
11 this state; and

12 (3) conform to the requirements of the Insurance Code.

13 Sec. 2601.055. ISSUANCE OF LICENSE; RENEWAL. (a) The  
14 department shall issue a license under this chapter to an applicant  
15 who complies with the license application requirements and pays the  
16 required fees.

17 (b) A license issued under this section is valid for one  
18 year from the date of issuance or for another period set by the  
19 commission by rule. A license holder may renew the license as  
20 provided by rules adopted by the commission.

21 [Sections 2601.056-2601.100 reserved for expansion]

22 SUBCHAPTER C. ENFORCEMENT

23 Sec. 2601.101. ENFORCEMENT. The department shall enforce  
24 this chapter and may investigate a license holder as necessary to  
25 enforce this chapter.

26 Sec. 2601.102. SANCTIONS. If, after a hearing described by  
27 Section 51.354, the commission or executive director of the

1 department determines that a license holder has violated this  
2 chapter or a rule or order adopted under this chapter, the  
3 commission or executive director may, as appropriate, impose a  
4 sanction authorized by Section 51.353 or an administrative penalty  
5 under Subchapter F, Chapter 51.

6 SECTION 2.002. The Texas Commission of Licensing and  
7 Regulation shall adopt rules as required by Chapter 2601,  
8 Occupations Code, as added by this Act, not later than December 1,  
9 2009.

10 SECTION 2.003. A person is not required to hold a license  
11 under Chapter 2601, Occupations Code, as added by this Act, to  
12 operate or engage in business as a computer data recovery  
13 specialist or computer forensic analyst in this state until March  
14 1, 2010.

15 SECTION 2.004. (a) Except as provided by Subsection (b) of  
16 this section, this article takes effect September 1, 2009.

17 (b) Sections 2601.051 and 2601.101, Occupations Code, as  
18 added by this article, take effect March 1, 2010.

19 ARTICLE 3. EFFECTIVE DATE

20 SECTION 3.001. Except as otherwise provided by this Act,  
21 this Act takes effect September 1, 2009.