

By: McClendon

H.B. No. 2564

A BILL TO BE ENTITLED

AN ACT

relating to the analysis of computer data; providing penalties.

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

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, as effective April 1, 2009, 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.

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

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

6 (A) owns or has the right of possession to the
7 computer; or

8 (B) represents the owner as an authorized agent
9 or attorney; or

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

12 (b) This section does not apply to a computer owned by the
13 employer of the computer forensic analyst or computer technician.

14 Sec. 107.003. MAINTENANCE AND INSPECTION OF STATEMENTS.

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

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

23 Sec. 107.004. VIOLATION. (a) A person commits an offense
24 if the person violates Section 107.003. An offense under this
25 subsection is a Class C misdemeanor.

26 (b) A person commits an offense if the person provides a
27 materially false statement in a signed work order statement

1 required by Section 107.002. An offense under this subsection is a
2 Class A misdemeanor.

3 SECTION 2. Section 1702.104, Occupations Code, is amended
4 by amending Subsection (b) and adding Subsections (c) and (d) to
5 read as follows:

6 (b) Except as provided by Subsection (c) or (d), for [~~For~~]
7 purposes of Subsection (a)(1), obtaining or furnishing information
8 includes information obtained or furnished through the review and
9 analysis of, and the investigation into the content of,
10 computer-based data not available to the public.

11 (c) "Obtaining or furnishing information" does not include
12 obtaining or furnishing computer-based data by a computer forensic
13 analyst, as defined by Section 107.001, Business & Commerce Code,
14 which does not constitute an investigation for purposes of this
15 section and does not require licensing under this chapter.

16 (d) The repair or maintenance of a computer does not
17 constitute an investigation for purposes of this section and does
18 not require licensing under this chapter if the person performing
19 the repair or maintenance:

20 (1) is installing or repairing computer equipment or
21 diagnosing a computer or software problem; and

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

24 SECTION 3. This Act takes effect September 1, 2009.