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A BILL TO BE ENTITLED

AN ACT

relating to the sale of certain communications equipment and mobile telephone services; providing criminal and civil penalties.

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

SECTION 1. Subtitle A, Title 10, Business & Commerce Code, is amended by adding Chapter 307 to read as follows:

CHAPTER 307. SALE OF CERTAIN MOBILE TELEPHONES, STORAGE DEVICES, MOBILE TELEPHONE SERVICES, AND OTHER EQUIPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Mobile telephone" includes a cellular telephone or similar wireless communication device that can be used as a telephone.

(3) "SIM card" means a subscriber identity module or functionally equivalent storage device.

Sec. 307.002. APPLICABILITY. (a) With respect to a mobile telephone or wireless communication service, this chapter applies only to:

(1) a mobile telephone for which access to a wireless communication service is provided to a customer without the customer being required to enter into a credit account or other contract, including a month-to-month contract, except as otherwise

1 provided by this chapter; or

2 (2) wireless communication service provided to a  
3 customer without the customer being required to enter into a credit  
4 account or other contract, including a month-to-month contract.

5 (b) This chapter applies only to a SIM card to be purchased  
6 in connection or for use with a mobile telephone.

7 (c) With respect to the sale of a mobile telephone or SIM  
8 card, this chapter does not apply to a sale by:

9 (1) a manufacturer of a mobile telephone or SIM card to  
10 an authorized reseller;

11 (2) a wireless carrier to an authorized reseller; or

12 (3) an authorized reseller to another authorized  
13 reseller.

14 (d) Except as otherwise provided by this section, this  
15 chapter applies to a person who sells a mobile telephone or SIM card  
16 or provides wireless communication service to a customer in this  
17 state, regardless of the person's location.

18 (e) In this section:

19 (1) "Authorized reseller" means a person authorized  
20 by:

21 (A) a manufacturer to sell the manufacturer's  
22 mobile telephones or SIM cards; or

23 (B) a wireless carrier to sell mobile telephones  
24 or SIM cards manufactured by a certain manufacturer.

25 (2) "Wireless carrier" has the meaning assigned by 47  
26 U.S.C. Section 615b.

27 Sec. 307.003. COSTS OF COMPLIANCE WITH CHAPTER. A person

who sells a mobile telephone, SIM card, or Voice over Internet Protocol telephone or adapter to which this chapter applies may charge a customer a reasonable fee in an amount appropriate to offset the costs incurred by the person in complying with this chapter.

[Sections 307.004-307.050 reserved for expansion]

SUBCHAPTER B. INFORMATION RELATED TO SALE OR USE OF CERTAIN COMMUNICATIONS EQUIPMENT

Sec. 307.051. CERTAIN INFORMATION REQUIRED; OFFENSE. (a) Before completing a sale of a mobile telephone or SIM card to which this chapter applies, a mobile telephone for which access to a wireless communication service is provided under a month-to-month contract, or a Voice over Internet Protocol telephone or adapter, the seller shall:

(1) require the purchaser to provide:

(A) the purchaser's full name;

(B) the purchaser's complete address;

(C) the number of the driver's license or other identification issued by a governmental entity to the purchaser; and

(D) the purchaser's date of birth; and

(2) verify the information provided under Subdivision

(1) by:

(A) requiring the purchaser to display the purchaser's driver's license or other government-issued identification containing the purchaser's photograph and information, if the transaction is in person; or

1                   (B) other means, for transactions not conducted  
2 in person.

3           (b) A purchaser who provides false or misleading  
4 information when providing information required under this section  
5 commits an offense. An offense under this subsection is a Class A  
6 misdemeanor unless the defendant has been previously convicted of  
7 an offense under this subsection, in which event the offense is a  
8 state jail felony.

9           (c) For purposes of complying with Subsection (a)(2), the  
10 seller may access electronically readable information on the  
11 purchaser's driver's license or identification card.

12           Sec. 307.052. RECORD OF SALE; TRANSMISSION OF RECORD. (a)  
13 A person who sells a mobile telephone or SIM card to which this  
14 chapter applies shall make a record of the sale that includes:

15                   (1) the information obtained from the purchaser under  
16 Section 307.051;

17                   (2) the make and model of the mobile telephone;

18                   (3) any assigned 10-digit telephone number or other  
19 subscriber or account identifier known at the time of purchase; and

20                   (4) if applicable to the mobile telephone, SIM card,  
21 or service to be accessed by the mobile telephone:

22                           (A) the international mobile equipment  
23 identifier (IMEI) number;

24                           (B) the electronic serial number (ESN);

25                           (C) the mobile equipment identifier (MEID);

26                           (D) the international mobile subscriber  
27 identifier (IMSI);

1                   (E) the machine address code (MAC) address; and  
2                   (F) any other specific equipment or service  
3 account identifier.

4           (b) A person who sells a mobile telephone or SIM card to  
5 which this chapter applies shall promptly electronically transmit  
6 the record made under Subsection (a) to the provider of the wireless  
7 communication service to be accessed by the telephone. If  
8 electronic transmission of the information is not available, the  
9 person may submit the information by other means that promptly and  
10 accurately submit the information.

11           (c) A wireless communication service provider shall provide  
12 a transmission confirmation receipt to each person who sells a  
13 mobile telephone or SIM card to which this chapter applies on the  
14 provider's receipt of a transmission from the person under  
15 Subsection (b).

16           (d) Each person who sells a mobile telephone or SIM card to  
17 which this chapter applies shall promptly dispose of the record on  
18 receipt of a transmission confirmation under Subsection (c). Each  
19 wireless communication service provider to which a record is  
20 transmitted under Subsection (b) and each person who sells a mobile  
21 telephone for which access to a wireless communication service is  
22 provided under a month-to-month contract and who obtains and  
23 records information under Section 301.051 shall maintain the record  
24 until the second anniversary of the date on which the telephone or  
25 SIM card was sold.

26           (e) If a mobile telephone or SIM card to which this chapter  
27 applies is resold in a subsequent retail transaction or in a

1 transaction not made in the ordinary course of the seller's legal  
2 business, the seller in that transaction shall comply with this  
3 section.

4 Sec. 307.053. LIMITATION ON NUMBER OF DEVICES THAT MAY BE  
5 SOLD. A person may not sell to another person in a 24-hour period  
6 more than five of any combination of the following:

7 (1) mobile telephones to which this chapter applies;  
8 and

9 (2) SIM cards to which this chapter applies.

10 Sec. 307.054. COLLECTION AND MAINTENANCE OF INFORMATION  
11 REGARDING CERTAIN DEVICES. A person who sells a Voice over Internet  
12 Protocol telephone or adapter shall record the machine address code  
13 of each device sold and maintain the record until the second  
14 anniversary of the date on which the device was sold.

15 Sec. 307.055. COLLECTION OF CALL INFORMATION. (a) A  
16 wireless communication service provider shall collect, record, and  
17 maintain information relating to all communications, including  
18 telephone calls, text messages, and data transmissions and  
19 receptions, made and received using a mobile telephone to which  
20 this chapter applies and that accesses the provider's wireless  
21 communication service in the same manner as the provider collects,  
22 records, and maintains the information relating to communications  
23 made and received using a mobile telephone accessing the provider's  
24 wireless communication service that is not paid for in advance or is  
25 paid for under a credit account or other contract.

26 (b) A law enforcement agency may access information  
27 collected under this section only by presenting a subpoena

1 compelling disclosure of the information.

2 (c) The fee charged by a wireless communication service  
3 provider for the production of information in compliance with a  
4 subpoena required by Subsection (b) may not exceed \$200.

5 Sec. 307.056. COMMERCIAL USE OF INFORMATION PROHIBITED. A  
6 person may not use information obtained under this subchapter for  
7 commercial purposes unless the person to which the information  
8 pertains consents to that use by signing a document that:

9 (1) clearly states that information pertaining to the  
10 person will be used for commercial purposes; and

11 (2) is separate from any other document given to that  
12 person.

13 Sec. 307.057. DISCLOSURE OF INFORMATION PROHIBITED. (a) A  
14 person may not disclose information obtained under this subchapter  
15 to another person except as provided by this subchapter, court  
16 order, or other law.

17 (b) A person who violates Subsection (a) commits an offense.  
18 An offense under this subsection is a Class A misdemeanor.

19 Sec. 307.058. RESPONSIBILITY FOR ACTIONS OF OTHER PARTIES.  
20 In complying with this subchapter:

21 (1) a person who sells a mobile telephone or SIM card  
22 to which this chapter applies is not responsible for an act or  
23 failure to act by a wireless communication service provider; and

24 (2) a wireless communication service provider is not  
25 responsible for an act or failure to act by a person who sells such a  
26 mobile telephone or SIM card.

27 [Sections 307.059-307.100 reserved for expansion]

1           SUBCHAPTER C. CERTIFICATE OF REGISTRATION

2           Sec. 307.101. REGISTRATION REQUIRED. A person may not sell  
3 a mobile telephone or SIM card to which this chapter applies or  
4 provide wireless communication service to be accessed by such a  
5 mobile telephone unless the person is registered under this  
6 subchapter.

7           Sec. 307.102. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a)  
8 The department shall issue a certificate of registration to an  
9 applicant who:

10               (1) completes an application form;  
11               (2) pays the registration fee; and  
12               (3) presents any relevant evidence relating to the  
13 applicant's qualifications as required by department rule.

14           (b) The department shall prescribe an application form and  
15 may establish qualifications for the holder of a certificate of  
16 registration under this chapter. The application form must require  
17 an applicant to provide the address of the applicant's place of  
18 business.

19           Sec. 307.103. TERM OF CERTIFICATE. (a) A certificate of  
20 registration is valid for two years after the date of issuance.

21           (b) The department shall adopt a system under which  
22 certificates of registration expire and are renewed on various  
23 dates.

24           (c) Not later than the 45th day before the date a person's  
25 certificate of registration is scheduled to expire, the department  
26 shall send written notice of the impending expiration to the person  
27 at the person's last known address according to department records.



1        (d) A person whose certificate of registration has expired  
2 may not sell a mobile telephone or SIM card to which this chapter  
3 applies or provide wireless communication service to be accessed by  
4 such a mobile telephone until the certificate has been renewed.

5        Sec. 307.104. RENEWAL OF CERTIFICATE. (a) To renew a  
6 certificate of registration, a person must submit an application  
7 for renewal in the manner prescribed by the department.

8        (b) A person who is otherwise eligible to renew a  
9 certificate of registration may renew an unexpired certificate by  
10 paying the required renewal fee to the department before the  
11 expiration date of the certificate.

12        (c) A person whose certificate of registration has been  
13 expired for 90 days or less may renew the certificate by paying to  
14 the department a renewal fee that is equal to 1-1/2 times the  
15 normally required renewal fee.

16        (d) A person whose certificate of registration has been  
17 expired for more than 90 days but less than one year may renew the  
18 certificate by paying to the department a renewal fee that is equal  
19 to two times the normally required renewal fee.

20        (e) A person whose certificate of registration has been  
21 expired for one year or more may not renew the certificate. The  
22 person may obtain a new certificate of registration by complying  
23 with the requirements and procedures for an original certificate.

24        Sec. 307.105. FEES. (a) The department shall prescribe  
25 fees for the issuance or renewal of a certificate of registration  
26 under this chapter. The fees may not exceed the amount necessary to  
27 cover the costs of administering this subchapter and complying with

Subchapter D.

(b) A fee collected under this section shall be deposited in a separate account in the general revenue fund and may be appropriated only to the department for the purposes of administering this subchapter and complying with Subchapter D.

[Sections 307.106-307.150 reserved for expansion]

SUBCHAPTER D. DATABASE AND REPORT

Sec. 307.151. ELECTRONIC DATABASE. (a) The department shall create and maintain an electronic database containing the names of each person registered under Subchapter C.

(b) Information contained in the database is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 307.152. REPORT TO LEGISLATURE. The department annually shall submit to both houses of the legislature a report that includes:

(1) the number of persons registered as:

(A) sellers of mobile telephones or SIM cards to which this chapter applies; and

(B) providers of wireless communication services to be accessed by the mobile telephones; and

(2) the number of mobile telephones and SIM cards sold during the year for which the report is made.

[Sections 307.153-307.200 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 307.201. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in an amount not to exceed the greater of:

1           (1) \$1,000 for each violation; or

2           (2) \$20,000.

3           (b) Each day that a violation continues or occurs is a  
4 separate violation for purposes of imposing a penalty under this  
5 section.

6           (c) The attorney general may bring suit to recover a penalty  
7 under this section.

8           Sec. 307.202. OFFENSE OF POSSESSION OF ILLEGALLY OBTAINED  
9 MOBILE TELEPHONE OR INFORMATION STORAGE DEVICE. (a) A person  
10 commits an offense if the person intentionally violates this  
11 chapter in obtaining or possessing a mobile telephone or SIM card to  
12 which this chapter applies.

13           (b) An offense under this section is a Class A misdemeanor.

14           Sec. 307.203. OFFENSE OF CREATING, USING, OR POSSESSING  
15 UNTRACEABLE MOBILE TELEPHONE. (a) A person may not alter a mobile  
16 telephone to render untraceable or unidentifiable the telephone's  
17 telephone number, electronic serial number, or mobile  
18 identification number without the consent of the mobile telephone's  
19 manufacturer.

20           (b) A person commits an offense if the person uses or  
21 possesses a mobile telephone that has been altered in violation of  
22 Subsection (a).

23           (c) An offense under this section is a Class A misdemeanor  
24 unless the defendant has been previously convicted of an offense  
25 under this section, in which event the offense is a state jail  
26 felony.

27           SECTION 2. Subchapter D, Chapter 12, Penal Code, is amended

by adding Section 12.50 to read as follows:

Sec. 12.50. PENALTY IF PREPAID MOBILE TELEPHONE USED TO COMMIT OFFENSE. (a) In this section, "prepaid mobile telephone" means a cellular telephone or similar wireless communication device that can be used as a telephone and for which access to a wireless communication service is paid for in advance or otherwise provided to a customer without the customer being required to enter into a credit account or other contract, including a month-to-month contract.

(b) If it is shown on the trial of an offense, other than an offense punishable as a felony of the first degree or a Class A misdemeanor, that the actor used a prepaid mobile telephone to enable the actor to commit the offense, the punishment for the offense is increased to the punishment prescribed for the next higher category of offense. If the offense is a Class A misdemeanor, the minimum term of confinement is increased to 180 days.

SECTION 3. Section 521.126(d), Transportation Code, is amended to read as follows:

(d) The prohibition provided by Subsection (b) does not apply to a person who accesses, uses, compiles, or maintains a database of the information for a law enforcement or governmental purpose, including:

(1) an officer or employee of the department carrying out law enforcement or government purposes;

(2) a peace officer, as defined by Article 2.12, Code of Criminal Procedure, acting in the officer's official capacity;

1           (3) a license deputy, as defined by Section 12.702,  
2 Parks and Wildlife Code, issuing a license, stamp, tag, permit, or  
3 other similar item through use of a point-of-sale system under  
4 Section 12.703, Parks and Wildlife Code;

5           (4) a person acting as authorized by Section 109.61,  
6 Alcoholic Beverage Code;

7           (5) a person establishing the identity of a voter  
8 under Chapter 63, Election Code;

9           (6) a person acting as authorized by Section 161.0825,  
10 Health and Safety Code; ~~or~~

11           (7) a person screening an individual who will work  
12 with or have access to children if the person is an employee or an  
13 agent of an employee of a public school district or an organization  
14 exempt from federal income tax under Section 501(c)(3), Internal  
15 Revenue Code of 1986, as amended, that sponsors a program for youth;  
16 or

17           (8) a person acting as authorized by Section  
18 307.051(c), Business & Commerce Code.

19       SECTION 4. The change in law made by Section 12.50, Penal  
20 Code, as added by this Act, applies only to an offense committed on  
21 or after the effective date of this Act. An offense committed  
22 before the effective date of this Act is governed by the law in  
23 effect when the offense was committed, and the former law is  
24 continued in effect for that purpose. For purposes of this section,  
25 an offense was committed before the effective date of this Act if  
26 any element of the offense occurred before that date.

27       SECTION 5. This Act takes effect September 1, 2009.