

SENATE AMENDMENTS

2nd Printing

By: Hernandez Luna

H.B. No. 3396

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution of and punishment for the offense of
3 breach of computer security.

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

5 SECTION 1. Section 33.01, Penal Code, is amended by adding
6 Subdivisions (10-a) and (14-a) to read as follows:

7 (10-a) "Critical infrastructure facility" means:

8 (A) a chemical manufacturing facility;

9 (B) a refinery;

10 (C) an electrical power generating facility,
11 substation, switching station, electrical control center, or
12 electrical transmission or distribution facility;

13 (D) a water intake structure, water treatment
14 facility, wastewater treatment plant, or pump station;

15 (E) a natural gas transmission compressor
16 station;

17 (F) a liquid natural gas terminal or storage
18 facility;

19 (G) a telecommunications central switching
20 office;

21 (H) a port, railroad switching yard, trucking
22 terminal, or other freight transportation facility;

23 (I) a gas processing plant, including a plant
24 used in the processing, treatment, or fractionation of natural gas;

1 (J) a transmission facility used by a federally
2 licensed radio or television station; or
3 (K) a cable television or video service provider
4 headend.

5 (14-a) "Identifying information" has the meaning
6 assigned by Section 32.51.

7 SECTION 2. Section 33.02, Penal Code, is amended by
8 amending Subsections (b) and (d) and adding Subsections (b-1),
9 (b-2), and (e) to read as follows:

10 (b) An offense under Subsection (a) [this section] is a
11 Class B misdemeanor, except that the offense is a state jail felony
12 if:

13 (1) the defendant has been previously convicted two or
14 more times of an offense under this chapter; or

15 (2) the computer, computer network, or computer system
16 is owned by the government or a critical infrastructure facility.

17 (b-1) A person commits an offense if with the intent to
18 obtain [unless in committing the offense the actor knowingly
19 obtains] a benefit, defraud [defrauds] or harm [harms] another, or
20 alter [alters], damage [damages], or delete [deletes] property, the
21 person knowingly accesses a computer, computer network, or computer
22 system without the effective consent of the owner.

23 (b-2) An offense under Subsection (b-1) [in which event the
24 offense] is:

25 (1) [a Class A misdemeanor if the aggregate amount
26 involved is less than \$1,500,

27 [(2) a state jail felony if:

1 [~~(A)~~ the aggregate amount involved is ~~\$1,500 or~~
2 ~~more but less than \$20,000, or~~

3 [~~(B)~~ the aggregate amount involved is less than
4 ~~\$1,500 and the defendant has been previously convicted two or more~~
5 ~~times of an offense under this chapter,~~

6 [~~(3)~~] a felony of the third degree if the aggregate
7 amount involved is [~~\$20,000 or more but~~] less than \$100,000;

8 (2) [~~(4)~~] a felony of the second degree if:

9 (A) the aggregate amount involved is \$100,000 or
10 more but less than \$200,000; [~~or~~]

11 (B) the aggregate amount involved is any amount
12 less than \$200,000 and the computer, computer network, or computer
13 system is owned by the government or a critical infrastructure
14 facility; or

15 (C) the actor obtains the identifying
16 information of another by accessing only one computer, computer
17 network, or computer system; or

18 (3) [~~(5)~~] a felony of the first degree if:

19 (A) the aggregate amount involved is \$200,000 or
20 more; or

21 (B) the actor obtains the identifying
22 information of another by accessing more than one computer,
23 computer network, or computer system.

24 (d) A person who is [~~his~~] subject to prosecution under this
25 section and any other section of this code may be prosecuted under
26 either or both sections.

27 (e) It is a defense to prosecution under this section that

1 the person acted with the intent to facilitate a lawful seizure or
2 search of, or lawful access to, a computer, computer network, or
3 computer system for a legitimate law enforcement purpose.

4 SECTION 3. The change in law made by this Act applies only
5 to an offense committed on or after the effective date of this Act.
6 An offense committed before the effective date of this Act is
7 covered by the law in effect when the offense was committed, and the
8 former law is continued in effect for that purpose. For purposes of
9 this section, an offense was committed before the effective date of
10 this Act if any element of the offense occurred before that date.

11 SECTION 4. This Act takes effect September 1, 2011.

ADOPTED

Robley Ellis

FLOOR AMENDMENT NO. 1

MAY 24 2011

BY: _____

Atay Spaw
Secretary of the Senate

1 Amend C.S.H.B. No. 3396 (senate committee report) as
2 follows:

3 (1) In SECTION 2 of the bill, in proposed Section 33.02(b-
4 1), Penal Code, on page 1, strike lines 48 and 49 and substitute
5 the following:

6 defraud [~~unless in committing the offense the actor knowingly~~
7 ~~obtains a benefit, defrauds~~] or harm [~~harms~~] another[~~7~~] or

8 (2) In SECTION 2 of the bill, in proposed Section 33.02(b-
9 2), Penal Code, strike page 1, line 55, through page 2, line 11,
10 and substitute the following:

11 (1) [~~a Class A misdemeanor if the aggregate amount~~
12 ~~involved is less than \$1,500,~~

13 [~~2~~] a state jail felony if [~~+~~

14 [~~A~~] the aggregate amount involved is [~~\$1,500~~
15 ~~or more but~~] less than \$20,000[~~7~~ ~~or~~

16 [~~B~~] ~~the aggregate amount involved is less than~~
17 ~~\$1,500 and the defendant has been previously convicted two or~~
18 ~~more times of an offense under this chapter];~~

19 (2) [~~3~~] a felony of the third degree if the
20 aggregate amount involved is \$20,000 or more but less than
21 \$100,000;

22 (3) [~~4~~] a felony of the second degree if:

23 (A) the aggregate amount involved is \$100,000 or
24 more but less than \$200,000;

25 (B) the aggregate amount involved is any amount
26 less than \$200,000 and the computer, computer network, or
27 computer system is owned by the government or a critical
28 infrastructure facility; or

29 (C) the actor obtains the identifying

1 information of another by accessing only one computer, computer
2 network, or computer system; or

3 (4) [~~5~~] a felony of the first degree if:

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3396 by Hernandez Luna (Relating to the prosecution of and punishment for the offense of breach of computer security.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code as it relates to the prosecution of and punishment for the offense of breach of computer security. The bill would expand the definitions of computer crimes provided in the Penal Code to include "Critical infrastructure facility" and "Identifying information". The bill would amend the Penal Code by making knowingly accessing a computer, computer network, or computer system without the effective consent of the owner a state jail felony if the defendant has been previously convicted two or more times, or if it involves certain government property or critical infrastructure facility. Under the provisions of the bill, punishment for certain breach of computer security would begin at the state jail felony level and increase in severity based on the total dollar amount of the losses incurred. Under current statute, punishment for the offense of breach of computer security begins at the Class B Misdemeanor level and increases in severity based on the total dollar amount of the losses incurred.

The bill would also provide a defense to prosecution related to the lawful seizure, search or access for a legitimate law enforcement purpose, for the offense of breach of computer security. The bill would take effect on September 1, 2011 and apply to offenses committed on or after that date.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community, or longer terms of confinement in county jail, state jail or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. For this analysis it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, SD, GG, LM, ADM, ESi

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3396 by Hernandez Luna (Relating to the prosecution of and punishment for the offense of breach of computer security.), **As Engrossed**

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LEGISLATIVE BUDGET BOARD
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FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 28, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3396 by Hernandez Luna (Relating to the prosecution of and punishment for the offense of breach of computer security.), **Committee Report 1st House, Substituted**

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April 1, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3396 by Hernandez Luna (Relating to the prosecution of and punishment for the offense of breach of computer security.), **As Introduced**

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The bill would amend the Penal Code as it relates to the prosecution and punishment for the offense of breach of computer security. The bill would expand the definitions of computer crimes provided in the Penal Code to include "Critical infrastructure facility". The bill would amend the Penal Code by making knowingly accessing a computer, computer network, or computer system without the effective consent of the owner a state jail felony if the defendant has been previously convicted two or more times, or it involves certain government property or critical infrastructure facility. The bill would also make certain breach of computer security committed with the intent to obtain a benefit, defraud or harm, or alter or damage property punishable at various felony levels, contingent upon the total dollar amount of the losses incurred. Under current statute, the offense of breach of computer security is punishable as a Class B Misdemeanor; and punishment is enhanced to various levels, misdemeanor and felony, contingent upon the total dollar amount of the losses incurred. The bill would take effect on September 1, 2011 and apply to offenses committed on or after that date.

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CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3396 by Hernandez Luna (Relating to the prosecution of and punishment for the offense of breach of computer security.), **As Passed 2nd House**

The provisions of the bill that are the subject of this analysis are the provisions that deal with criminal sanctions. The bill would amend the Penal Code by making knowingly accessing a computer, computer network, or computer system without the effective consent of the owner a state jail felony if the defendant has been previously convicted two or more times, or it involves certain government property or critical infrastructure facility. Under the provisions of the bill, punishment for certain breach of computer security would begin at the state jail felony level and increase in severity based on the total dollar amount of the losses incurred. Under current statute, punishment for the offense of breach of computer security begins at the Class B Misdemeanor level and increases in severity based on the total dollar amount of the losses incurred.

A Class B Misdemeanor is punishable by confinement in a county jail for any term of not more than 180 days, or, in addition to confinement, a fine not to exceed \$2,000. A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000. A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed \$10,000 or Class A Misdemeanor punishment (mandatory post conviction community supervision). A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000. A felony of the second degree is punishable by confinement in prison for a term from 2 to 20 years and, in addition to confinement, an optional fine not to exceed \$10,000. A felony of the first degree is punishable by confinement in prison for life or a term from 5 to 99 years and, in addition to confinement, an optional fine not to exceed \$10,000.

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A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed \$10,000 or Class A Misdemeanor punishment (mandatory post conviction community supervision). A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000. A felony of the second degree is punishable by confinement in prison for a term from 2 to 20 years and, in addition to confinement, an optional fine not to exceed \$10,000. A felony of the first degree is punishable by confinement in prison for life or a term from 5 to 99 years and, in addition to confinement, an optional fine not to exceed \$10,000.

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