

BILL ANALYSIS

C.S.H.B. 2539
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Due to recent technological advancements, information has become readily accessible and available via the Internet. However, this increase in access to information has also led to increased access to child pornography, which is illegal under both state and federal law. Cases of child exploitation often go unreported or unprosecuted due to the anonymous nature of the Internet and computer hard drives. While federal, state, and local agencies work to combat child pornography through underground sting operations and other aggressive measures and are effectively identifying, catching, and prosecuting sexual predators, child pornography discovered by computer service technicians often goes unreported, partly due to the fact that current Texas law does not require a computer service technician to report such a discovery. Interested parties contend that several other states have enacted laws requiring computer or information technology technicians to report child pornography found on personal computers during the normal course of repair. C.S.H.B. 2539 seeks to establish a similar measure in Texas.

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. 2539 amends the Business & Commerce Code to require 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 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 such a report to include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.

C.S.H.B. 2539 grants a computer technician immunity from liability in a civil action for reporting or failing to report the discovery of such an image except in a case of wilful or wanton misconduct. The bill grants a telecommunications provider, commercial mobile service provider, or information service provider immunity from liability under the bill's provisions for the failure to report child pornography that is transmitted or stored by a user of the service.

C.S.H.B. 2539 makes it a Class B misdemeanor to intentionally fail to report an image in violation of the bill's requirement to report the discovery of child pornography and establishes a defense to prosecution for such an offense if the actor 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.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2539 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 109 to read as follows: <u>CHAPTER 109. COMPUTER TECHNICIANS REQUIRED TO REPORT CHILD PORNOGRAPHY</u>	SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 109 to read as follows: <u>CHAPTER 109. COMPUTER TECHNICIANS REQUIRED TO REPORT CHILD PORNOGRAPHY</u>
<u>Sec. 109.001. DEFINITIONS.</u>	<u>Sec. 109.001. DEFINITIONS.</u>
<u>Sec. 109.002. REPORTING OF IMAGES OF CHILD PORNOGRAPHY. (a) 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 shall 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 report must include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.</u> <u>(b) A computer technician may not be held liable on account of any action taken in good faith to comply with this section.</u>	<u>Sec. 109.002. REPORTING OF IMAGES OF CHILD PORNOGRAPHY. (a) 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 shall 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 report must include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.</u> <u>(b) Except in a case of wilful or wanton misconduct, a computer technician may not be held liable in a civil action for reporting or failing to report the discovery of an image under Subsection (a).</u>
<u>(c) A telecommunications provider, commercial mobile service provider, or information service provider may not be held liable under this chapter for the failure to report child pornography that is transmitted or stored by a user of the service.</u>	<u>(c) A telecommunications provider, commercial mobile service provider, or information service provider may not be held liable under this chapter for the failure to report child pornography that is transmitted or stored by a user of the service.</u>
<u>Sec. 109.003. CRIMINAL PENALTY. (a) A person who violates this chapter commits an offense. An offense under this subsection is a Class B misdemeanor.</u> <u>(b) It is a defense to prosecution under this section that the actor 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.</u>	<u>Sec. 109.003. CRIMINAL PENALTY. (a) A person who intentionally fails to report an image in violation of this chapter commits an offense. An offense under this subsection is a Class B misdemeanor.</u> <u>(b) It is a defense to prosecution under this section that the actor 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.</u>

SECTION 2. This Act takes effect
September 1, 2013.

SECTION 2. Same as introduced version.