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H.B. No. 9

A BILL TO BE ENTITLED

AN ACT

relating to cybercrime; creating criminal offenses.

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

SECTION 1. This Act may be cited as the Texas Cybercrime Act.

SECTION 2. Section 33.01, Penal Code, is amended by amending Subdivision (2) and adding Subdivisions (11-a), (13-a), (13-b), and (13-c) to read as follows:

(2) "Aggregate amount" means the amount of:

(A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen, appropriated, or rendered unrecoverable by the offense; or

(B) any expenditure required by the victim to:

(i) determine whether data or [verify that]
a computer, computer network, computer program, or computer system was ~~[not]~~ altered, acquired, appropriated, damaged, deleted, or disrupted by the offense; or

(ii) attempt to restore, recover, or replace any data altered, acquired, appropriated, damaged, deleted, or disrupted.

(11-a) "Decryption," "decrypt," or "decrypted" means the decoding of encrypted communications or information, whether by use of a decryption key, by breaking an encryption formula or algorithm, or by the interference with a person's use of an

1 encryption service in a manner that causes information or
2 communications to be stored or transmitted without encryption.

3 (13-a) "Encrypted private information" means
4 encrypted data, documents, wire or electronic communications, or
5 other information stored on a computer or computer system, whether
6 in the possession of the owner or a provider of an electronic
7 communications service or a remote computing service, and which has
8 not been accessible to the public.

9 (13-b) "Encryption," "encrypt," or "encrypted" means
10 the encoding of data, documents, wire or electronic communications,
11 or other information, using mathematical formulas or algorithms in
12 order to preserve the confidentiality, integrity, or authenticity
13 of, and prevent unauthorized access to, such information.

14 (13-c) "Encryption service" means a computing
15 service, a computer device, computer software, or technology with
16 encryption capabilities, and includes any subsequent version of or
17 update to an encryption service.

18 SECTION 3. Chapter 33, Penal Code, is amended by adding
19 Sections 33.022, 33.023, and 33.024 to read as follows:

20 Sec. 33.022. ELECTRONIC ACCESS INTERFERENCE. (a) A
21 person, other than a network provider or online service provider
22 acting for a legitimate business purpose, commits an offense if the
23 person intentionally interrupts or suspends access to a computer
24 system or computer network without the effective consent of the
25 owner.

26 (b) An offense under this section is a third degree felony.

27 (c) 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 Sec. 33.023. ELECTRONIC DATA TAMPERING. (a) In this
5 section, "ransomware" means a computer contaminant or lock that
6 restricts access by an unauthorized person to a computer, computer
7 system, or computer network or any data in a computer, computer
8 system, or computer network under circumstances in which a person
9 demands money, property, or a service to remove the computer
10 contaminant or lock, restore access to the computer, computer
11 system, computer network, or data, or otherwise remediate the
12 impact of the computer contaminant or lock.

13 (b) A person commits an offense if the person intentionally
14 alters data as it transmits between two computers in a computer
15 network or computer system through deception and without a
16 legitimate business purpose.

17 (c) A person commits an offense if the person intentionally
18 introduces ransomware onto a computer, computer network, or
19 computer system through deception and without a legitimate business
20 purpose.

21 (d) An offense under this section is a Class A misdemeanor,
22 unless the person acted with the intent to defraud or harm another,
23 in which event the offense is:

24 (1) a state jail felony if the aggregate amount
25 involved is \$2,500 or more but less than \$30,000;

26 (2) a felony of the third degree if the aggregate
27 amount involved is \$30,000 or more but less than \$150,000;

1 (3) a felony of the second degree if:

2 (A) the aggregate amount involved is \$150,000 or
3 more but less than \$300,000; or

4 (B) the aggregate amount involved is any amount
5 less than \$300,000 and the computer, computer network, or computer
6 system is owned by the government or a critical infrastructure
7 facility; or

8 (4) a felony of the first degree if the aggregate
9 amount involved is \$300,000 or more.

10 (e) When benefits are obtained, a victim is defrauded or
11 harmed, or property is altered, appropriated, damaged, or deleted
12 in violation of this section, whether or not in a single incident,
13 the conduct may be considered as one offense and the value of the
14 benefits obtained and of the losses incurred because of the fraud,
15 harm, or alteration, appropriation, damage, or deletion of property
16 may be aggregated in determining the grade of the offense.

17 (f) A person who is subject to prosecution under this
18 section and any other section of this code may be prosecuted under
19 either or both sections.

20 (g) Software is not ransomware for the purposes of this
21 section if the software restricts access to data because:

22 (1) authentication is required to upgrade or access
23 purchased content; or

24 (2) access to subscription content has been blocked
25 for nonpayment.

26 Sec. 33.024. UNLAWFUL DECRYPTION. (a) A person commits an
27 offense if the person intentionally decrypts encrypted private

1 information through deception and without a legitimate business
2 purpose.

3 (b) An offense under this section is a Class A misdemeanor,
4 unless the person acted with the intent to defraud or harm another,
5 in which event the offense is:

6 (1) a state jail felony if the aggregate amount
7 involved is less than \$30,000;

8 (2) a felony of the third degree if the aggregate
9 amount involved is \$30,000 or more but less than \$150,000;

10 (3) a felony of the second degree if:

11 (A) the aggregate amount involved is \$150,000 or
12 more but less than \$300,000; or

13 (B) the aggregate amount involved is any amount
14 less than \$300,000 and the computer, computer network, or computer
15 system is owned by the government or a critical infrastructure
16 facility; or

17 (4) a felony of the first degree if the aggregate
18 amount involved is \$300,000 or more.

19 (c) It is a defense to prosecution under this section that
20 the actor's conduct was pursuant to an agreement entered into with
21 the owner for the purpose of:

22 (1) assessing or maintaining the security of the
23 information or of a computer, computer network, or computer system;

24 or

25 (2) providing other services related to security.

26 (d) A person who is subject to prosecution under this
27 section and any other section of this code may be prosecuted under

1 either or both sections.

2 SECTION 4. Section 33.03, Penal Code, is amended to read as
3 follows:

4 Sec. 33.03. DEFENSES. It is an affirmative defense to
5 prosecution under Section 33.02 or 33.022 that the actor was an
6 officer, employee, or agent of a communications common carrier or
7 electric utility and committed the proscribed act or acts in the
8 course of employment while engaged in an activity that is a
9 necessary incident to the rendition of service or to the protection
10 of the rights or property of the communications common carrier or
11 electric utility.

12 SECTION 5. The change in law made by this Act applies only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 6. This Act takes effect September 1, 2017.