

AN ACT

relating to the protection of customer telephone records; providing a penalty.

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

SECTION 1. Chapter 35, Business & Commerce Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CUSTOMER TELEPHONE RECORDS

Sec. 35.151. DEFINITIONS. In this subchapter:

(1) "Caller identification record" means a record that:

(A) is delivered electronically to the recipient of a telephone call simultaneously with the reception of the call; and

(B) indicates the telephone number from which the telephone call was made or other similar information regarding the call.

(2) "Telephone company" means a provider of commercial telephone services, or a provider that bills for those services, regardless of the technology used to provide that service, including landline, radio, wireless, microwave, satellite, Voice over Internet Protocol (VoIP), or other cable, broadband, or digital technology.

(3) "Telephone record" means a written, electronic, or oral record, other than a caller identification record collected

1 and retained by or on behalf of a customer, created by a telephone  
2 company about a customer, that includes:

3 (A) the telephone number:

4 (i) dialed by a customer; or

5 (ii) of an incoming call made to a customer;

6 (B) the time a call was made to or by a customer;

7 (C) the duration of a call made to or by a  
8 customer; or

9 (D) the location from which a call was initiated  
10 or at which a call was received by a customer.

11 Sec. 35.152. CONSTRUCTION OF SUBCHAPTER. This subchapter  
12 does not apply to expand the obligations or duties of a telephone  
13 company under federal or other state law to protect telephone  
14 records.

15 Sec. 35.153. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE,  
16 OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense  
17 if the person:

18 (1) obtains, attempts to obtain, or conspires with  
19 another to obtain a telephone record of a resident of this state  
20 without the authorization of the resident to whom the record  
21 pertains by:

22 (A) making a statement the person knows to be  
23 false to an agent of a telephone company;

24 (B) making a statement the person knows to be  
25 false to a telephone company;

26 (C) fraudulently accessing the record through  
27 the telephone company's Internet website; or

1                    (D) providing to a telephone company a document  
2 that the person knows:

3                    (i) is fraudulent;  
4                    (ii) has been lost or stolen;  
5                    (iii) has been obtained by fraud; or  
6                    (iv) contains a false, fictitious, or  
7 fraudulent statement or representation;

8                    (2) asks another person to obtain a telephone record  
9 of a resident of this state knowing that the record will be obtained  
10 in a manner prohibited by this section;

11                    (3) sells, transfers, or attempts to sell or transfer  
12 a telephone record of a resident of this state without  
13 authorization of the resident to whom the record pertains; or

14                    (4) offers to obtain or offers to sell a telephone  
15 record that has been or will be obtained without authorization from  
16 the resident to whom the record pertains.

17                    (b) An offense under this section is a Class A misdemeanor,  
18 except that a fine shall not exceed \$20,000.

19                    (c) In addition to the penalties provided by Subsection (b),  
20 a person convicted of an offense under this section may be required  
21 to forfeit personal property used or intended to be used in  
22 violation of this section.

23                    (d) In addition to the penalties provided by Subsections (b)  
24 and (c), a person convicted of an offense under this section shall  
25 be ordered to pay to a resident whose telephone record was obtained  
26 in a manner prohibited by this section an amount equal to the sum  
27 of:

1           (1) the greater of the resident's financial loss, if  
2 proof of the loss is submitted to the satisfaction of the court, or  
3 \$1,000; and

4           (2) the amount of any financial gain received by the  
5 person as the direct result of the offense.

6           (e) An offense under this section may be prosecuted in:

7           (1) the county in which the customer whose telephone  
8 record is the subject of the prosecution resided at the time of the  
9 offense; or

10          (2) any county in which any part of the offense took  
11 place regardless of whether the defendant was ever present in the  
12 county.

13          (f) If venue lies in more than one county under Subsection  
14 (e), a defendant may be prosecuted in only one county for the same  
15 conduct.

16          (g) If conduct constituting an offense under this section  
17 also constitutes an offense under another section of this code or of  
18 any other law, including the Penal Code, the actor may be prosecuted  
19 under either section or under both sections.

20          (h) This section does not create a private right of action.

21          Sec. 35.154. EXCEPTIONS. Section 35.153 does not apply to:

22           (1) a person who acted pursuant to a valid court order,  
23 warrant, subpoena, or civil investigative demand;

24           (2) a telephone company that disclosed a telephone  
25 record:

26           (A) the disclosure of which is otherwise  
27 authorized by law;

1                   (B) reasonably believing the disclosure was  
2 necessary to:

3                   (i) provide service to a customer;

4                   (ii) protect an individual from fraudulent,  
5 abusive, or unlawful use of a telephone record or telephone  
6 service; or

7                   (iii) protect the rights or property of the  
8 company;

9                   (C) to the National Center for Missing and  
10 Exploited Children in connection with a report submitted under 42  
11 U.S.C. Section 13032;

12                   (D) for purposes of testing the company's  
13 security procedures or systems for maintaining the confidentiality  
14 of customer information;

15                   (E) to a governmental entity, if the company  
16 reasonably believed that an emergency involving danger of death or  
17 serious physical injury to a person justified disclosure of the  
18 information;

19                   (F) in connection with the sale or transfer of  
20 all or part of the company's business, the purchase or acquisition  
21 of all or part of another company's business, or the migration of a  
22 customer from one telephone company to another telephone company;

23                   (G) necessarily incident to the rendition of the  
24 service, to initiate, render, bill, and collect the customer's  
25 charges, or to protect the customer of those services and other  
26 carriers from fraudulent, abusive, or unlawful use of, or  
27 subscription to, such services; or

1                   (H) while acting reasonably and in good faith,  
2 notwithstanding a later determination that the action was not  
3 authorized; or

4                   (3) a person or a telephone company that acted in  
5 connection with the official duties of a 9-1-1 governmental entity  
6 or a public agency solely for purposes of delivering or assisting in  
7 the delivery of 9-1-1 emergency services and other emergency  
8 services.

9                   Sec. 35.155. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A  
10 violation of this subchapter is a false, misleading, or deceptive  
11 act or practice under Section 17.46 and is subject to action only by  
12 the consumer protection division of the attorney general's office  
13 as provided by Section 17.46(a).

14                   Sec. 35.156. CONSISTENCY WITH FEDERAL LAW. This  
15 subchapter may not be construed in a manner that is inconsistent  
16 with 18 U.S.C. Section 1038, 47 U.S.C. Section 222, or any other  
17 applicable federal law or rule.

18                   Sec. 35.157. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES.  
19 This subchapter does not prohibit any lawfully authorized  
20 investigative, protective, or intelligence activity of a law  
21 enforcement agency of the United States, a state, or a political  
22 subdivision of a state or of an intelligence agency of the United  
23 States.

24                   SECTION 2. Article 59.01(2), Code of Criminal Procedure, is  
25 amended to read as follows:

26                   (2) "Contraband" means property of any nature,  
27 including real, personal, tangible, or intangible, that is:

1 (A) used in the commission of:

2 (i) any first or second degree felony under  
3 the Penal Code;

4 (ii) any felony under Section 15.031(b),  
5 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
6 31, 32, 33, 33A, or 35, Penal Code;

7 (iii) any felony under The Securities Act  
8 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

9 (iv) any offense under Chapter 49, Penal  
10 Code, that is punishable as a felony of the third degree or state  
11 jail felony, if the defendant has been previously convicted three  
12 times of an offense under that chapter;

13 (B) used or intended to be used in the commission  
14 of:

15 (i) any felony under Chapter 481, Health  
16 and Safety Code (Texas Controlled Substances Act);

17 (ii) any felony under Chapter 483, Health  
18 and Safety Code;

19 (iii) a felony under Chapter 153, Finance  
20 Code;

21 (iv) any felony under Chapter 34, Penal  
22 Code;

23 (v) a Class A misdemeanor under Subchapter  
24 B, Chapter 365, Health and Safety Code, if the defendant has been  
25 previously convicted twice of an offense under that subchapter;

26 (vi) any felony under Chapter 152, Finance  
27 Code;

1 (vii) any felony under Chapter 31, 32, or  
2 37, Penal Code, that involves the state Medicaid program, or any  
3 felony under Chapter 36, Human Resources Code; [~~or~~]

4 (viii) a Class B misdemeanor under Section  
5 35.60, Business & Commerce Code; or

6 (ix) a Class A misdemeanor under Section  
7 35.153, Business & Commerce Code;

8 (C) the proceeds gained from the commission of a  
9 felony listed in Paragraph (A) or (B) of this subdivision, a  
10 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a  
11 crime of violence;

12 (D) acquired with proceeds gained from the  
13 commission of a felony listed in Paragraph (A) or (B) of this  
14 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this  
15 subdivision, or a crime of violence; or

16 (E) used to facilitate or intended to be used to  
17 facilitate the commission of a felony under Section 15.031 or  
18 43.25, Penal Code.

19 SECTION 3. This Act takes effect September 1, 2007.



David Swihurst

President of the Senate

Jim Caddick

Speaker of the House

I certify that H.B. No. 73 was passed by the House on April 4, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 73 on May 17, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Robert Hancey  
Chief Clerk of the House

I certify that H.B. No. 73 was passed by the Senate, with amendments, on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Antony Spaw  
Secretary of the Senate

APPROVED: 15 JUN 07

Date

RICK PERRY  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

6 PM O'CLOCK

JUN 15 2007

Roger Williams  
Secretary of State