

SUBJECT: Telecommunications crimes

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Nixon
0 nays
3 absent — Farrar, Keel, A. Reyna

WITNESSES: For — James E. Hausman, Houston Cellular; Jerry Slaughter, Sprint Corporation; Jamie Luby, MCI Telecommunications; Thomas Ratliff, AT&T Wireless Services; Pat Brown, GTE; Vaughn Aldredge, AT&T; Sano Blocker, EDS Corporation
Against — None

DIGEST: CSHB 1482 would amend the Penal Code to establish certain telecommunications crimes and update provisions on computer fraud.

Telecommunications crime

CSHB 1482 would create a new chapter in the Penal Code dealing with telecommunications crimes. “Telecommunications” would mean the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence over a communications system by any method, including electronic, magnetic, optical, digital or analog. The bill would define several new offenses.

Unauthorized use or theft of service. Unauthorized use of service would occur when employees or shareholders of a telecommunications service provider knowingly and without authority used the service for their own benefit or the benefit of another individual. Separate incidences of this offense could be aggregated for determining the grade of penalty if the incidences were part of a continuing scheme. Theft of service would entail knowingly obtaining or attempting to obtain telecommunications service to avoid or cause another person to avoid charges for that service by using a telecommunications device without authority or using a counterfeit device or altered or stolen identification.

The offenses would be classified as:

- Class B misdemeanor (maximum penalty 180 days in jail and \$2,000 fine) if the value involved was less than \$500;
- Class A misdemeanor (one year in jail and \$4,000 fine) if the value involved was between \$500 and \$1,500;
- state jail felony (six months to two years in jail and maximum \$10,000 fine) if the value was between \$1,500 and \$20,000 or less than \$1,500 and the defendant had been previously convicted two or more times for a computer crime;
- third-degree felony (two to 10 years in jail and maximum \$10,000 fine) for values between \$20,000 and \$100,000;
- second-degree felony (two to 20 years in jail and maximum \$10,000 fine) for values between \$100,000 and \$200,000; and
- first-degree felony (five to 99 years in jail and maximum \$10,000 fine) for values equal to or greater than \$200,000.

Manufacture, possession, or delivery of unlawful telecommunications device. It would be illegal to manufacture, possess, sell, transfer, offer or advertise a counterfeit telecommunications device (defined as any equipment that would facilitate telecommunications, including a computer, computer chip, telephone, pager, radio or modem) and advertise, teach, or offer material on how to manufacture counterfeit telecommunications devices or advertise a device intended to be used to steal telecommunications service or conceal the place of origin or destination of a service. Violations of this provision would be a third-degree felony.

Publication of telecommunications access device. Anyone negligently making available via a computer bulletin board or other means information about a telecommunications access device or counterfeit telecommunications device designed to be used to violate telecommunications law would commit a Class A misdemeanor. The penalty would be enhanced to a third-degree

felony if the person had previously been convicted of a telecommunications offense.

Computer fraud

CSHB 1482 would make computer fraud a Class B misdemeanor (maximum penalty 180 days in jail and \$2,000 fine) unless the actor committing the offense knowingly defrauded or harmed another or altered, damaged or deleted property. In such cases, the penalties would be based on the aggregate amount of the offense, defined as the direct or indirect loss incurred by a victim or any expenditure required by the victim to verify that a computer or system was not disrupted by the offense. The value ladder used for unauthorized use or theft of service would apply to these offenses.

Other provisions

An offense under the telecommunications fraud provisions could be prosecuted in the county in which the telecommunications service originated or terminated or in the county to which the bill for the telecommunications service was or would have been delivered.

CSHB 1482 would amend the definition of “contraband” in the Code of Criminal Procedure to include any felony under the computer and telecommunications fraud provisions of this bill.

The bill would take effect September 1, 1997, and would apply only to offenses occurring on or after that date.

**SUPPORTERS
SAY:**

CSHB 1482 would update the Penal Code to include fraudulent activity associated with recent advances in technology. Crafty individuals are just one step behind the cutting edge of telecommunications technology and are constantly creating new ways to abuse and steal it. The latest trend is to steal cellular phones, ID numbers, and other telecommunications devices to get free air time and long distance calling and then sell this service to other individuals for profit. This type of fraud costs consumers over \$1 billion each year, with company losses totalling nearly \$4 billion in 1996. CSHB 1482 would ensure that individuals could be punished for the unauthorized use of a telecommunications service, the manufacture or possession of a device that could be used to steal service, or the advertisement of such a

device. This technical language would give local law enforcement officials the tools necessary to catch and prosecute these thieves.

CSHB 1482 would help local law enforcement officials fight other crimes as well. Often telecommunications fraud is just a tool for heinous crimes like drug trafficking. By stealing a cell phone number, criminals can secure an untraceable method of communication to conduct other business. CSHB 1482 would help law enforcement officials track down telecommunications behavior that facilitates these other crimes.

The penalties for the offenses created and the standards set for culpability in CSHB 1482 properly address the severity of telecommunications fraud. Unlike such other devices as firearms for which there are authorized purposes, there is no legal reason to possess a fraudulent telecommunications device. In addition, the complexity and rapid rate of change of telecommunications technology warrants special mention of this fraudulent activity in the Penal Code.

**OPPONENTS
SAY:**

The offenses created in CSHB 1482 could be dealt with under current law concerning theft and fraud. The careful balance of offenses and penalties created in the 1993 Penal Code should be not distorted with exceptions for special crimes. In addition, some offenses created by CSHB 1482 would carry inappropriately harsh penalties or impose inappropriate standards. For example, the bill would make possession of a telecommunications device a third degree felony, bypassing the state jail felony and the entire range of misdemeanors. Also, the inappropriately low standard of criminal negligence would be used to define culpability for the offense involving publication of telecommunications access devices.

The 1993 revisions established a reasonable and logical “value ladder” of punishments for property crimes; the changes made by CSHB 1482 would depart from those values by eliminating the Class C misdemeanor level. The Class C misdemeanor should remain to cover all possible values of theft, even small amounts.

NOTES:

The committee substitute omitted several changes to the computer crimes section that would have: revised all definitions in the section; added sections regarding access to defraud, unauthorized access, unauthorized insertion or

attachment, and use of computer to commit another offense; and deleted sections involving breach of computer security, affirmative defenses to that crime, and assistance by the attorney general.

The companion bill, SB 683 by Armbrister, has been referred to the Senate Criminal Justice Committee.