

BILL ANALYSIS

Senate Research Center

S.B. 683
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Criminal Justice
3-13-97
As Filed

DIGEST

Currently, Texas law contains no provisions which recognize computer and telecommunications crimes. This legislation establishes computer and telecommunications offenses for computer access with intent to defraud; unauthorized computer access or use of telecommunications service; unauthorized insertion or attachment of a destructive set of instructions into a computer; use of a computer to commit an offense; manufacture, possession, or delivery of unlawful telecommunications devices; theft of telecommunications service; and unlawful publication of telecommunications access devices. S.B. 683 also provides penalties increasing in severity according to the loss incurred by and expenditure required of the victim, or the value of the service used or diverted as a result of the offense.

PURPOSE

As proposed, S.B. 683 establishes computer and telecommunications offenses and provides penalties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 33, Penal Code, as follows:

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. **DEFINITIONS.** Defines "aggregate amount," "device," and "service." Redefines "access," "computer," "computer network," "computer program," "computer system," and "property." Deletes the definitions of "communications common carrier," "computer security system," "computer services," "computer software," "computer virus," "data," "effective consent," "electric utility," "harm," and "owner."

Sec. 33.02. **ACCESS TO DEFRAUD.** Provides that a person commits an offense if the person intentionally accesses a computer, computer network, computer program, or computer system to obtain money, property, or a service by deception. Defines "deception."

Sec. 33.03. **UNAUTHORIZED ACCESS.** Provides that a person commits an offense if the person intentionally, without authorization, or by exceeding authorization accesses a computer, computer network, or computer system to alter, damage, or delete property; or use its services. Sets forth the terms by which it is presumed that the actor did not have authorization or exceeded authorization.

Sec. 33.04. **UNAUTHORIZED INSERTION OR ATTACHMENT.** Provides that a person commits an offense if the person intentionally, without authorization, or by exceeding authorization inserts, attaches, or knowingly creates the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions into a computer, computer network, or computer system to alter, damage, delete, or disrupt property; or use its services.

Sec. 33.05. USE OF COMPUTER TO COMMIT OFFENSE. Provides that a person commits an offense if the person uses a computer, computer network, computer program, or computer system to commit a criminal offense.

Sec. 33.06. PENALTY. Sets forth the terms by which, except as provided by Subsection (b), an offense under this chapter is punishable according to the loss incurred by, or expenditure required of, the victim of the offense and ranges from a Class B misdemeanor to a first degree felony, depending on the aggregate amount involved. Provides that an offense under Section 33.05 is a Class B misdemeanor. Deletes existing Sections 33.02-33.04, regarding breach of computer security, affirmative defense to prosecution for breach of computer security, and assistance by the attorney general in prosecuting any offense involving the use of a computer.

SECTION 2. Amends Title 7, Penal Code, by adding Chapter 33A, as follows:

CHAPTER 33A. TELECOMMUNICATIONS CRIMES

Sec. 33A.01. DEFINITIONS. Defines "counterfeit telecommunications access device," "counterfeit telecommunications device," "deliver," "publish," "telecommunications," "telecommunications access device," "telecommunications device," "telecommunications service," and "value of the telecommunications service obtained or attempted to be obtained."

Sec. 33A.02. UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICE. Provides that a person commits an offense if the person is an officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider and the person knowingly and without authority uses or diverts telecommunications service for the person's own benefit or to the benefit of another. Provides that an offense under this section ranges from a Class B misdemeanor to a first degree felony, depending on the value of the telecommunications service used or diverted. Establishes the method for determining the grade of the offense in the case of a continuing course of conduct.

Sec. 33A.03. MANUFACTURE, POSSESSION, OR DELIVERY OF UNLAWFUL TELECOMMUNICATIONS DEVICE. Provides that a person commits a third degree felony if the person manufactures, possesses, delivers, offers to deliver, or advertises an unlawful telecommunications device or a device intended to be used to commit an offense. Provides that a person commits a third degree felony if the person delivers, offers to deliver, or advertises plans, instructions, or materials for manufacture of an unlawful telecommunications device or a device intended to be used to commit an offense under Subsection (a).

Sec. 33A.04. THEFT OF TELECOMMUNICATIONS SERVICE. Provides that a person commits an offense if the person knowingly obtains or attempts to obtain telecommunications service to avoid or cause another person to avoid a lawful charge for that service using an unauthorized telecommunications access device; a telecommunications access device pursuant to an agreement to allow another person to use the device; a counterfeit telecommunications access device; a telecommunications device or counterfeit telecommunications device; or a fraudulent or deceptive scheme, pretense, method, or conspiracy. Provides that an offense under this section ranges from a Class B misdemeanor to a first degree felony, depending on the value of the telecommunications service obtained or attempted to be obtained. Establishes the method for determining the grade of the offense in the case of a continuing course of conduct.

Sec. 33A.05. PUBLICATION OF TELECOMMUNICATIONS ACCESS DEVICE. Provides that a person commits a Class A misdemeanor if the person with criminal negligence publishes a telecommunications access device or counterfeit device designed to be used to commit an offense under Section 33A.04. Provides an exception if the person has been previously convicted, in which case the offense is a third degree felony.

SECTION 3. Amends Article 13.25, Code of Criminal Procedure, to make conforming changes.

SECTION 4. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.26, as follows:

Art. 13.26. TELECOMMUNICATIONS CRIMES. Authorizes an offense under Chapter 33A, Penal Code, to be prosecuted in the county in which the telecommunications service originated or terminated or in the county to which the telecommunications service bill would be delivered.

SECTION 5. Amends Article 59.01(2), Code of Criminal Procedure, to redefine "contraband."

SECTION 6. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 7. Emergency clause.