

BILL ANALYSIS

Senate Research Center
78R6349 PEP-F

S.B. 1116
By: Williams
Criminal Justice
5/5/2003
As Filed

DIGEST AND PURPOSE

As proposed, S.B. 1116 provides for criminal and civil consequences for conduct involving the theft of or tampering with certain communication or information services.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading of Section 31.12, Penal Code, to read as follows:

Sec. 31.12. THEFT OF OR TAMPERING WITH COMMUNICATION SERVICES.

SECTION 2. Amends Sections 31.12(a), (b), and (e), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to harm or defraud a communication service, rather than “without the authorization of the multichannel video or information services,” provider, the person engages in certain activities. Deletes “intentionally or knowingly” in reference to state of mind.

(b) Defines “communication device,” “communication service,” and “communication service provider.”

(e) Provides that for the purposes of this section, each modification, rather than connection and attachment, or act of tampering is a separate offense.

SECTION 3. Amends the heading to Section 31.13, Penal Code, to read as follows:

Sec. 31.13. POSSESSION OR USE OF COMMUNICATION DEVICE OR UNAUTHORIZED ACCESS DEVICE.

SECTION 4. Amends Sections 31.13(a), (b), and (d), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to harm or defraud a communication service provider, the person possesses or uses a communication device or unauthorized access device. Deletes “for remuneration intentionally or knowingly manufactures, assembles, modifies, imports into the state, exports out of the state, distributes, advertises, or offers for sale, with an intent to aid in the commission of an offense under Section 31.12, a device, a kit or part for a device, or a plan for a system of components wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried or caused by a multichannel video or information services provider.”

(b) Provides definitions for “communication device,” “communication service,” “communication service provider,” and “unauthorized access device” for this section and Section 31.145.

(d) Provides that an offense under this section is a Class A misdemeanor, unless it is shown on the trial of the offense that the offense was committed with respect to five or more communication devices or unauthorized access devices in a single criminal episode, in which event it is a state jail felony.

SECTION 5. Amends the heading to Section 31.14, Penal Code, to read as follows:

Sec. 31.14. MANUFACTURE, DISTRIBUTION, SALE, LEASE, OR
ADVERTISEMENT OF COMMUNICATION DEVICE OR UNAUTHORIZED
ACCESS DEVICE.

SECTION 6. Amends Sections 31.14(a), (b), and (d), Penal Code, as follows:

(a) Provides that a person commits an offense if the person intentionally or knowingly manufactures, assembles, imports into the state, exports out of the state, distributes, advertises, sells, or leases, or offers for sale or lease certain items.

(b) Defines "communication device," "communication service," "communication service provider," and "unauthorized access device."

(d) Provides that, except as otherwise provided by this subsection, an offense under this section is a Class A misdemeanor. Provides that an offense under this section is:

(1) a state jail felony if it is shown on the trial of the offense that:

(A) the offense was committed with respect to more than one but not more than 50 communication devices or unauthorized access devices in a single criminal episode; or

(B) the defendant has been previously convicted one time of an offense under this section or of an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under this section; or

(2) a felony of the third degree if it is shown on the trial of the offense that:

(A) the offense was committed with respect to more than 50 communication devices or unauthorized access devices in a single criminal episode; or

(B) the defendant has been previously convicted on two or more occasions of an offense under this section or of an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under this section.

SECTION 7. Amends Chapter 31, Penal Code, by adding Section 31.145, as follows:

Sec. 31.145. PRESUMPTION FOR OFFENSES AFFECTING COMMUNICATION SERVICE. Provides that for purposes of the prosecution of an offense under Section 31.12, 31.13, or 31.14, it is prima facie evidence of the actor's intent to harm or defraud a communication service provider that the actor failed to respond within 30 days to written notice from the provider stating certain information.

SECTION 8. Amends Section 134.002(2), Civil Practice and Remedies Code, to remove references to Sections 31.12, 31.13, or 31.14, Penal Code from the definition of "theft."

SECTION 9. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 135, as follows:

CHAPTER 135. COMMUNICATION SERVICES OFFENSES

Sec. 135.001. DEFINITIONS. Defines "claimant," "communication device," "communication service," "communication service provider," "communication services offense," and "unauthorized access device."

Sec. 135.002. EQUITABLE REMEDIES. Authorizes a claimant, including a communication service provider, aggrieved by a communication services offense to obtain a declaratory judgment or other equitable remedy, including a preliminary or final injunction to prevent or restrain the conduct that constitutes the communication services offense. Authorizes a claimant to obtain a remedy under this subsection regardless of whether the claimant proves that the claimant has suffered or is threatened with actual damages or irreparable harm or lacks an adequate remedy at law.

Sec. 135.003. DAMAGES. (a) Authorizes a claimant to elect at any time before the final judgment is entered to recover damages under Subsection (b) or under Subsection (c).

(b) Authorizes a claimant that elects to recover damages under this subsection to recover actual damages incurred by the claimant arising out of the communication services offense and any profits of the defendant attributable to the communication services offense that are not included in the computation of the claimant's actual damages. Provides that actual damages computed under this subsection include the retail value of the communication services to which the defendant had unauthorized access as a result of the offense and the retail value of any unauthorized communication services obtained by other persons through the defendant's provision or distribution of a communication device or unauthorized access device. Authorizes the claimant to prove actual damages by proving only that the defendant manufactured, distributed, or sold any communication device or unauthorized access device and is not required to prove the devices were actually used to commit a communication services offense. Authorizes the claimant to prove the defendant's profits by proving only the defendant's gross revenue. Prohibits the defendant's expenses and profits attributable to factors other than the communication services offense from being deducted unless proved by the defendant.

(c) Authorizes a claimant that elects to recover damages under this subsection to recover, instead of actual damages and the defendant's profits, an amount of damages specified by the court for each communication device or unauthorized access device involved in the communication services offense and for each day the defendant committed the communication services offense. Provides that the amount of damages specified by the court must be least \$2,500 and not more than \$10,000, as the court considers just.

(d) Authorizes the court, if the court determines that the communication services offense was committed wilfully and for the purposes of commercial advantage or private financial gain, to increase the amount of damages awarded under Subsection (b) or (c) by an amount of not more than \$50,000 for each communication or unauthorized access device involved in the action and for each day the defendant committed the communication services offense.

Sec. 135.004. ADDITIONAL REMEDIES. Authorizes the court, in an action filed under this section, to impose certain remedies.

SECTION 10. (a) Effective date: September 1, 2003.

(b) and (c) Make the application of this Act prospective.