

PENAL CODE

CHAPTER 33A. TELECOMMUNICATIONS CRIMES

Sec. 33A.01. DEFINITIONS. In this chapter:

(1) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, not issued to a legitimate telecommunications access device subscriber account, or otherwise unlawful or invalid.

(2) "Counterfeit telecommunications device" means a telecommunications device that has been altered or programmed alone or with another telecommunications device to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider and includes a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(3) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, or a counterfeit telecommunications device or any telecommunications plans, instructions, or materials, to another person.

(4) "Publish" means to communicate information or make information available to another person orally, in writing, or by means of telecommunications and includes communicating information on a computer bulletin board or similar system.

(5) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence over a communications system by any method, including an electronic, magnetic, optical, digital, or analog method.

(6) "Telecommunications access device" means an instrument, device, card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(7) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications and includes a computer, computer chip or circuit, telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(8) "Telecommunications service" means the provision, facilitation, or generation of telecommunications through the use of a telecommunications device or telecommunications access device over a telecommunications system.

(9) "Value of the telecommunications service obtained or attempted to be obtained" includes the value of:

(A) a lawful charge for telecommunications service avoided or attempted to be avoided;

(B) money, property, or telecommunications service lost, stolen, or rendered unrecoverable by an offense; and

(C) an expenditure incurred by a victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, or disrupted as a result of an offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.02. UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICE. (a) 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.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service used or diverted is less than \$500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service used or diverted is \$500 or more but less than \$1,500; or

(B) the value of the telecommunications service used or diverted is less than \$500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:
(A) the value of the telecommunications service used or diverted is \$1,500 or more but less than \$20,000; or
(B) the value of the telecommunications service used or diverted is less than \$1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service used or diverted is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the value of the telecommunications service used or diverted is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the value of the telecommunications service used or diverted is \$200,000 or more.

(c) When telecommunications service is used or diverted in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service used or diverted may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.03. MANUFACTURE, POSSESSION, OR DELIVERY OF UNLAWFUL TELECOMMUNICATIONS DEVICE. (a) A person commits an offense if the person manufactures, possesses, delivers, offers to deliver, or advertises:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to:

(A) commit an offense under Section 33A.04; or

(B) conceal the existence or place of origin or destination of a telecommunications service.

(b) A person commits an offense if the person delivers, offers to deliver, or advertises plans, instructions, or materials for manufacture of:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to commit an offense under Subsection (a).

(c) An offense under this section is a felony of the third degree.

(d) It is a defense to prosecution under this section that the person was an officer, agent, or employee of a telecommunications service provider who engaged in the conduct for the purpose of gathering information for a law enforcement investigation related to an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.04. THEFT OF TELECOMMUNICATIONS SERVICE. (a) 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 by using:

(1) a telecommunications access device without the authority or consent of the subscriber or lawful holder of the device or pursuant to an agreement for an exchange of value with the subscriber or lawful holder of the device to allow another person to use the device;

(2) a counterfeit telecommunications access device;

(3) a telecommunications device or counterfeit telecommunications device; or

(4) a fraudulent or deceptive scheme, pretense, method, or conspiracy, or other device or means, including a false, altered, or stolen identification.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service obtained or attempted to be obtained is less than \$500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service obtained or attempted to be obtained is \$500 or more but less than \$1,500; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than \$500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service

obtained or attempted to be obtained is \$1,500 or more but less than \$20,000; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than \$1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service obtained or attempted to be obtained is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the value of the telecommunications service obtained or attempted to be obtained is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the value of the telecommunications service obtained or attempted to be obtained is \$200,000 or more.

(c) When telecommunications service is obtained or attempted to be obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service obtained or attempted to be obtained may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.05. PUBLICATION OF TELECOMMUNICATIONS ACCESS DEVICE. (a) A person commits an offense if the person with criminal negligence publishes a telecommunications access device or counterfeit telecommunications access device that is designed to be used to commit an offense under Section 33A.04.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under this section is a felony of the third degree if the person has been previously convicted of an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.06. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of telecommunications equipment, services, or devices.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.