

BILL ANALYSIS

Senate Research Center

S.B. 473
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Enrolled

DIGEST AND PURPOSE

Currently, consumer reporting agencies allow individuals who are or suspect that they are victims of identity theft to place security alert on their credit reports. However, security alerts are only advisory in nature and are not always followed by merchants and credit grantors. Moreover, a victim of identity theft is often embroiled in long process of clearing credit history, financial affairs, or even criminal records. S.B. 473 allows a victim of identity theft to place a freeze, for a modest fee, on his or her credit report and provides for confidentiality of social security numbers. This bill seeks to prevent identity theft, which is one of the fastest growing crimes in the United States as well as in Texas.

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 Section 20.01, Business & Commerce Code, by adding Subdivisions (7) and (8), to define “security alert” and “security freeze.”

SECTION 2. Amends Section 20.03, Business & Commerce Code, by adding Subsection (d), to requires any written disclosure by the consumer reporting agency (agency) to include a clear and simple statement that explains to the consumer the consumer’s right under this subchapter and includes certain information.

SECTION 3. Amends Chapter 20, Business & Commerce Code, by adding Sections 20.031-20.039, as follows:

Sec. 20.031. REQUESTING SECURITY ALERT. Requires an agency, not later than 24 hours after receiving a request in writing or by telephone and with proper identification by a consumer, to place a security alert on the consumer’s file. Prohibits the security alert from exceeding 45 days after the date the agency enacted the alert on the files. Provides that there is no limit on the number of security alerts a consumer may request. Requires the agency, on request in writing or by telephone and with proper identification provided by the consumer, to provide a copy of their consumer’s file, at the end of a 45-day security alert. Authorizes a consumer to include with the security alert request a telephone number to be used by persons to verify the consumer’s identity before entering into a transaction with the consumer.

Sec. 20.032. NOTIFICATION OF SECURITY ALERT. Requires an agency to notify a person who requests a consumer report if a security alert is in effect for the consumer file involved in that report and include a verification telephone number for the consumer if the consumer has provided a number under Section 20.031.

Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. Requires an agency to maintain a toll-free telephone number that is answered at a minimum during normal business hours to accept security alert requests from consumers. Requires, if calls are not answered after normal business hours, an automated answering system to record requests and

calls to be returned to the consumer not later than two hours after the time the normal business days begins on the next business day after the date the call was received.

Sec. 20.034. REQUESTING SECURITY FREEZE. (a) Requires an agency, on written request sent by certified mail that includes proper identification provided by a consumer and a copy of a valid police report, investigate report, or complaint made under Section 32.51(Fraudulent Use or Possession of Identifying Information), Penal Code, to place a security freeze on the consumer's file by the fifth business day after receiving the agency's request.

(b) Requires an agency, upon request for a security freeze provided by a consumer under Subsection (a), to disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's file for a specific requester or period while the security freeze is in effect.

(c) Requires an agency, by the 10th business day after receiving the request for a security freeze, to send certain information to the consumer.

(d) Authorizes a consumer to request in writing a replacement personal identification number or password. Requires the request to comply with the requirements for requesting a security freeze under Subsection (a). Requires the agency by the third business day after the agency receives request for a replacement personal identification number or password provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under Subsection (c).

Sec. 20.035. NOTIFICATION OF CHANGE. Requires an agency, if a security alert is enacted, to notify the consumer in writing regarding a change of name, date of birth, social security number, or address by the 30th calendar day after the date the change occurred. Requires the agency to send notification of a change of address to the new address and former address. Provides that this section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. Requires an agency to notify a person who requests a consumer report if a security freeze is in effect for the consumer file involved in that report.

Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY FREEZE. (a) Requires an agency to remove a security freeze by the third business day after receiving a request in writing or by telephone and with proper identification provided by a consumer, including the consumer personal identification number or password provided under Section 20.034.

(b) Requires an agency, under certain circumstances, to temporarily lift the security freeze, by the third business day after receiving a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034.

(c) Authorizes an agency to develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) Requires an agency to remove a security freeze placed on the consumer file if the security was placed due to a material misrepresentation of fact by the consumer.

Requires the agency to notify the consumer in writing before removing the security freeze under this subsection.

(e) Prohibits an agency from charging a fee for a request under Subsection (a) or (b).

Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. Provides that, under certain circumstances, a security freeze does not apply to a consumer report.

Sec. 20.0385. APPLICABILITY OF SECURITY ALERT AND SECURITY FREEZE. Provides that the requirement under this chapter to place a security alert or security freeze on a consumer file does not apply to certain circumstances.

Sec. 20.039. RESPECT OF SECURITY FREEZE. Requires an agency to honor a security freeze placed on a consumer file by another agency.

SECTION 4. Amends Section 20.04, Business & Commerce Code, as follows:

Sec. 20.04. New heading: CHARGES FOR CERTAIN DISCLOSURES OR SERVICES.

(a) Authorizes an agency to impose a reasonable charge on a consumer for placing a security freeze on a consumer file, except as provided by Subsection (b). Authorizes an agency, on January 1 of each year, to increase the charge for disclosure to a consumer or for placing a security freeze.

(b) Prohibits an agency from charging a fee for a request for a copy of consumer's file made on the expiration of the 45-day security alert; a toll-free telephone number that consumers may call to obtain additional assistance concerning their report or to request a security alert; or a request for a security alert made by a consumer.

SECTION 5. Amends Chapter 20, Business & Commerce Code, by adding Sections 20.11, 20.12, and 20.13, as follows:

Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) Authorizes the attorney general to file a suit against a person for injunctive relief to prevent or restrain a violation of this chapter or a civil penalty in amount not exceeding \$2,000 for each violation of this chapter.

(b) Authorizes the attorney general, if the attorney general brings an action against a person under Subsection (a) and an injunction is granted against the person or the person is found liable for a civil penalty, to recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(c) Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

Sec. 20.12. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

Sec. 20.13. VENUE. Requires an action brought under this chapter to be filed in a district court: in Travis County; in any county in which the violation occurred; or in the county in which the victim resides, regardless of whether the alleged violator has resided or done business in the county in which the victim resides.

SECTION 6. Amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.58, as follows:

Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. (a) Prohibits a

person other than government or governmental subdivision or agency from taking certain actions.

(b) Provides that a person that is using an individual's social security number before January 1, 2005, in a manner prohibited by Subsection (a) may continue that use if certain requirements are met.

(c) Prohibits a person, other than government or governmental subdivision or agency, from denying services to an individual because the individual makes a written request under Subsection (b).

(d) Requires the person, if the person receives a written request from an individual directing the person to stop using the individual's social security number in a manner prohibited by Subsection (a), to comply with the request by the 30th day after receiving the request. Prohibits the person from imposing a fee or charge for complying with the request.

(e) Provides that this section does not apply to the collection, use, or release of a social security number that is required by state or federal law, including Chapter 552 (Public Information), Government Code; or the use of social security number for internal verification or administrative purposes; documents that recorded or requested to the public under Chapter 552, Government Code; court orders; or an institution of higher education if the use of a social security number by the institution is regulated by Chapter 51 (Provision Generally Applicable to Higher Education), Education Code, or another provision of the Education code.

(f) Provides that Subsection (a)(5) does not apply to an application or form sent by mail, including a document sent as part of an application or enrollment process; to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of a social security number.

SECTION 7. Amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.59, as follows:

Sec. 35.59. VERIFICATION OF CONSUMER IDENTITY. (a) Defines "consumer report," "extension of credit," and "security alert."

(b) Provides that a person who receives notification of a security alert under Section 20.032 in connection with a request for a consumer report for the approval of a credit-based application, including an application for an extension of credit, a purchase, lease, or rental agreement for goods, or for an application for a noncredit-related service, may not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity.

(c) Provides that if a consumer has included with a security alert a specified telephone number to be used for identity verification purposes, a person who receives that number with a security alert must take reasonable steps to connect the consumer using that number before lending money, extending credit, or completing any purchase, lease, or rental goods, or approving any noncredit-related services.

(d) Provides that if a person uses a consumer report to facilitate the extension of credit or for any other transaction on behalf of a subsidiary, agent, assignee, or prospective assignee, that person, rather than the subsidiary, affiliate, agent, assignee, or prospective assignee, may verify the consumer's identity.

SECTION 8. Amends Section 1701.253, Occupations Code, by adding Subsection (i), to require the

Texas Commission on Law Enforcement Officer Standards and Education, as part of the minimum curriculum requirements, to establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. Requires an officer to complete the program established under this subsection by the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 9. Amends Section 1701.402, Occupations Code, by adding Subsection (f) to require an officer, as a requirement for an intermediate proficiency certificate, to complete an education and training program on identity theft established by the commission under Section 1701.253(i).

SECTION 10. (a) Provides that, except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Provides that Section 35.58, Business & Commerce Code, as added by this Act, takes effect January 1, 2005.

(c) Requires the office of consumer credit commissioner to review the impact and efficacy of this Act and to make a recommendation to the lieutenant governor and the speaker of the house of representatives by December 31, 2004, as to whether the provisions of this Act should remain in effect after September 1, 2005.

(d) Requires the Commission on Law Enforcement Officer Standards and Education, by January 1, 2004, to establish the education and training programs on identity theft required under Subsection (i), Section 1701.253 and Subsection (f), Section 1701.402, Occupations Code, as added by this Act.

(e) Requires a person who, on September 1, 2003, holds an intermediate proficiency certificated issued under Section 170.402, Occupations Code, or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for more than two years to complete an educational training program on identity theft established under Subsection (i), Section 1701.253, Occupations Code, as added by this Act, by September 1, 2005.

(f) Requires an institution of higher education that is not subject to the exemption prescribed by Subdivision (5), Subsection (e), Section 35.58, Business & Commerce Code, as added by this Act, to begin acting in compliance with Section 35.58, Business & Commerce Code, as added by this Act, on or before September 1, 2007.