

By: Hupp

H.B. No. 2125

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a Texas Privacy and Security Act and addressing the ways in which the information practices of state and local governmental entities affect personal privacy and the security of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 5, Government Code, is amended by adding Chapter 561 to read as follows:

CHAPTER 561. TEXAS PRIVACY AND SECURITY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 561.001. SHORT TITLE. This chapter may be cited as the Texas Privacy and Security Act.

Sec. 561.002. LEGISLATIVE FINDINGS; GENERAL PRIVACY AND SECURITY PRINCIPLES. (a) The legislature finds that:

(1) an increasing number of individuals in this state are concerned that:

(A) personal information held by government may be used inappropriately;

(B) unauthorized persons may have access to that information; and

(C) some of the information may be inaccurate, incomplete, or unnecessary for the effective functioning of government; and

(2) in response to the findings stated by Subdivision

1 (1), each state and local governmental entity in this state must be
2 committed to strengthening privacy protections for personal
3 information held by government in a manner consistent with the
4 public's right to complete information about the affairs of
5 government and the official acts of public officials and employees.

6 (b) The legislature also finds that:

7 (1) because inadvertent release, careless storage, or
8 improper disposal of information could result in embarrassment or
9 other harm to individuals, each state and local governmental
10 entity:

11 (A) has an obligation to protect personal
12 information in the manner required by law; and

13 (B) must exercise particular care in protecting
14 records containing sensitive and private personal information
15 about health or financial matters and in protecting personal
16 identifiers, such as a social security number;

17 (2) each state and local governmental entity must
18 strive to balance the need to collect or protect information that
19 relates to the security needs of this state with the need for open
20 government and with the need to protect personal privacy; and

21 (3) each state and local governmental entity should
22 take affirmative steps to make information about government
23 activities fully and easily available to the public unless there is
24 a demonstrated security risk in doing so.

25 (c) It is the policy of this state that:

26 (1) an individual has a right to know how personal
27 information about the individual is handled by government and the

1 extent to which the information may be disclosed or must be kept
2 confidential under law; and

3 (2) state and local governmental entities should share
4 information as necessary to ensure accountability in government
5 programs or the security of this state while protecting personal
6 information from inappropriate dissemination to the extent
7 possible.

8 Sec. 561.003. DEFINITIONS. In this chapter:

9 (1) "Personal information" means information about an
10 individual such as:

11 (A) the individual's home address, home
12 telephone number, social security number, date of birth, physical
13 characteristics, and similar information about the individual;

14 (B) information about an individual's marital
15 status or history, whether the individual has family members, and
16 information about the individual's family members; and

17 (C) personally identifiable information about
18 the individual's health or health history, finances or financial
19 history, and purchases made from government.

20 (2) "Governmental entity" does not include a court
21 other than a commissioners court.

22 Sec. 561.004. APPLICABILITY. This chapter does not apply
23 to information held by or for a court other than a commissioners
24 court.

25 Sec. 561.005. CONSTRUCTION WITH OTHER LAW. This chapter
26 does not affect:

27 (1) the ability of a state or local governmental

1 entity to undertake a lawful investigation or to protect persons,
2 property, or the environment in the manner authorized by law; or

3 (2) the duty of a state or local governmental entity to
4 comply with applicable law.

5 [Sections 561.006-561.050 reserved for expansion]

6 SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

7 Sec. 561.051. DISCLOSURE OF CERTAIN PERSONAL INFORMATION;
8 COMPELLING INTEREST OR INTENSE PUBLIC CONCERN REQUIREMENT. (a)

9 This section applies only to the disclosure by a governmental
10 entity of information that reveals an individual's:

11 (1) social security number;

12 (2) bank account number, credit card account number,
13 or other financial account number; or

14 (3) computer password or computer network location or
15 identity.

16 (b) A state or local governmental entity may not disclose
17 information described by Subsection (a) under Chapter 552 or other
18 law unless the attorney general authorizes the disclosure after
19 determining that:

20 (1) there is a compelling governmental interest in
21 disclosing the information that cannot be effectively accomplished
22 without the disclosure; or

23 (2) due to extraordinary circumstances, the
24 information is especially relevant to a matter of intense public
25 concern.

26 (c) The requestor of the information or the state or local
27 governmental entity may request the attorney general to authorize

1 the disclosure of information described by Subsection (a).

2 (d) A state or local governmental entity is not required to
3 request a decision of the attorney general under Subchapter G,
4 Chapter 552, before refusing to disclose a social security number,
5 bank account number, credit card account number, other financial
6 account number, computer password, or computer network location or
7 identity in response to a request made under Chapter 552. The state
8 or local governmental entity shall inform the requestor that the
9 requested information is being withheld under this section and that
10 the requestor is entitled to request the attorney general to
11 authorize the disclosure.

12 (e) The attorney general may adopt rules to implement this
13 section, including rules that describe appropriate and clearly
14 defined circumstances under which a category of information
15 described by Subsection (a) is presumed to satisfy a requirement of
16 Subsection (b) and therefore may be disclosed without the necessity
17 of obtaining specific authorization for the disclosure from the
18 attorney general. A rule of the attorney general that describes
19 circumstances under which information presumptively may be
20 disclosed may limit disclosure to specific state, local, or federal
21 authorities or may allow the information to be generally disclosed
22 under Chapter 552, as appropriate.

23 (f) The attorney general shall develop procedures under
24 which the office of the attorney general will expedite a decision
25 whether to authorize disclosure of information described by
26 Subsection (a) when expedited consideration is warranted under the
27 circumstances.

1 (g) A decision of the attorney general under this section
2 may be challenged in court in the same manner that a decision of the
3 attorney general may be challenged under Subchapter G, Chapter 552.

4 (h) If information described by Subsection (a) is requested
5 under Chapter 552, Section 552.325 applies in relation to the
6 individual who is the subject of the information in the same manner
7 as if the individual were a requestor of the information, except
8 that the attorney general shall notify the individual under Section
9 552.325(c) if the attorney general proposes to agree to the release
10 of all or part of the information.

11 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state
12 or local governmental entity shall establish procedures to ensure
13 that the governmental entity collects personal information only to
14 the extent reasonably necessary to:

- 15 (1) implement a program;
16 (2) authenticate an individual's identity when
17 necessary;
18 (3) ensure security; or
19 (4) accomplish another legitimate governmental
20 purpose.

21 Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In
22 adopting or amending its records retention schedule, a state or
23 local governmental entity shall schedule the retention of personal
24 information only for the period necessary to accomplish the purpose
25 for which the information was collected or, if applicable, for the
26 minimum period specifically prescribed by statute.

27 (b) Subsection (a) does not apply to the retention of

1 personal information that has demonstrable historical or archival
2 value.

3 Sec. 561.054. GENERAL PRIVACY POLICIES. (a) A state or
4 local governmental entity shall develop a privacy policy that
5 completely describes in plainly written language:

6 (1) the reasons that the governmental entity requires
7 or collects each category of personal information about individuals
8 that the entity requires or collects;

9 (2) the procedures used to require or collect the
10 information;

11 (3) the persons to whom the information may be
12 disclosed;

13 (4) the manner in which the information may be
14 disclosed; and

15 (5) any current arrangement under which the
16 governmental entity sells personal information about individuals
17 or discloses the information under a contract or agreement or in
18 bulk.

19 (b) The state or local governmental entity shall promptly
20 amend the privacy policy whenever information in the policy becomes
21 incorrect or incomplete.

22 (c) The state or local governmental entity shall
23 prominently post its current privacy policy:

24 (1) through a prominent link on the main Internet site
25 maintained by or for the governmental entity; and

26 (2) next to the sign that the governmental entity
27 posts under Section 552.205.

1 Sec. 561.055. GOVERNMENT INTERNET SITES: PRIVACY POLICY.

2 (a) The Department of Information Resources shall adopt rules
3 prescribing minimum privacy standards with which an Internet site
4 or portal maintained by or for a state or local governmental entity
5 must comply. The rules must be designed to limit the collection of
6 personal information about users of the government Internet site or
7 portal to information:

8 (1) that the state or local governmental entity needs
9 in order to accomplish a legitimate government purpose;

10 (2) that the user of the site or portal knowingly and
11 intentionally transmits to the state or local governmental entity;
12 or

13 (3) regarding the collection of which the user of the
14 site or portal has actively given informed consent.

15 (b) In adopting its rules under this section, the Department
16 of Information Resources shall consider policies adopted by other
17 states and the federal government in this regard.

18 (c) A state or local governmental entity that maintains an
19 Internet site or portal or for which an Internet site or portal is
20 maintained shall adopt a privacy policy regarding information
21 collected through the site or portal and provide a prominent link to
22 the policy for users of the site or portal. The policy must be
23 consistent with the rules adopted by the Department of Information
24 Resources under this section and must be included as a prominent
25 separate element of the general privacy policy that the entity is
26 required to develop and to which it must provide an Internet link
27 under Section 561.054.

1 Sec. 561.056. STATE AUDITOR. (a) The state auditor shall
2 establish auditing guidelines to ensure that state and local
3 governmental entities that the state auditor has authority to audit
4 under other law:

5 (1) do not routinely collect or retain more personal
6 information than an entity needs to accomplish a legitimate
7 governmental purpose of the entity; and

8 (2) have established an information management system
9 that protects the privacy and security of information in accordance
10 with applicable state and federal law.

11 (b) During an appropriate type of audit, the state auditor
12 may audit a state or local governmental entity for compliance with
13 the guidelines established under Subsection (a).

14 [Sections 561.057-561.100 reserved for expansion]

15 SUBCHAPTER C. GUIDELINES

16 Sec. 561.101. ATTORNEY GENERAL GUIDELINES FOR REVIEWING
17 PRIVACY AND SECURITY ISSUES. (a) The attorney general shall
18 establish guidelines for state and local governmental entities to
19 follow when considering privacy and security issues that arise in
20 connection with requests for public information. The guidelines
21 shall address procedural safeguards, legal issues, and other issues
22 that in the opinion of the attorney general would help state and
23 local governmental entities comply with applicable law and
24 recommended information practices when handling personal
25 information or information related to security. The guidelines
26 shall balance the need for open government with respect for
27 personal privacy and with the security needs of this state.

1 (b) The attorney general shall establish guidelines for
2 sharing information for security purposes among state, local, and
3 federal governmental entities and with the private sector. The
4 guidelines must ensure the protection of personal privacy to the
5 extent feasible and must clarify and explain the legal consequences
6 of sharing the information.

7 (c) The guidelines do not create exceptions from required
8 disclosure under Chapter 552.

9 Sec. 561.102. OPEN RECORDS STEERING COMMITTEE; RECORDS
10 MANAGEMENT INTERAGENCY COORDINATING COUNCIL. (a) The open records
11 steering committee established under Section 552.009 shall
12 periodically study and determine the implications for the personal
13 privacy of individuals and for the security of this state of putting
14 information held by government on the Internet and shall include
15 its findings and recommendations in reports the committee makes
16 under Section 552.009.

17 (b) The Records Management Interagency Coordinating Council
18 established under Section 441.203 shall provide guidance and policy
19 direction to state and local governmental entities in appropriately
20 incorporating developments in electronic management of information
21 into their information management systems in ways that protect
22 personal privacy and the security of this state and promote
23 appropriate public access to public information that is not
24 excepted from required public disclosure.

25 SECTION 2. Each state and local governmental entity shall
26 examine its records retention schedule and amend the schedule so
27 that it complies with Section 561.053, Government Code, as added by

1 this Act.

2 SECTION 3. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2003.