

By: Hinojosa

S.B. No. 405

A BILL TO BE ENTITLED

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AN ACT

relating to the prevention of, prosecution of, and punishment of identity theft and to assistance to certain victims of identity theft; providing penalties.

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

ARTICLE 1

SECTION 1.01. Chapter 20, Business & Commerce Code, is amended by adding Section 20.051 to read as follows:

Sec. 20.051. PROTECTION OF CONSUMER INFORMATION.

(a) Notwithstanding any other provision of this chapter, a consumer reporting agency may not furnish a consumer report unless the person to whom the report is furnished provides the consumer reporting agency at least four separate items of identification regarding the consumer to whom the report relates that match information about that consumer in the consumer file. Acceptable items of identification include the consumer's:

(1) complete first and last name, including a preferred name;

(2) date of birth;

(3) complete current address;

(4) social security number;

(5) driver's license or personal identification certificate number;

(6) credit card account number;

- 1 (7) current employer;
- 2 (8) former address;
- 3 (9) mobile phone carrier; and
- 4 (10) recent credit activity.

5 (b) A consumer reporting agency shall follow reasonable
6 procedures in preparing or disseminating information to assure
7 maximum possible accuracy of the information about the consumer to
8 whom the information relates.

9 (c) A consumer reporting agency may not record a requested
10 change of a consumer's address in a consumer file until the consumer
11 reporting agency verifies the change with the consumer or makes
12 attempts to verify the change with the consumer and documents in
13 writing those attempts.

14 SECTION 1.02. (a) Title 4, Business & Commerce Code, is
15 amended by adding Chapter 48 to read as follows:

16 CHAPTER 48. IDENTITY THEFT AND PROTECTION

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 48.001. SHORT TITLE. This chapter may be cited as the
19 Identity Theft Enforcement and Protection Act.

20 Sec. 48.002. DEFINITIONS. In this chapter:

21 (1) "Peace officer" has the meaning assigned by
22 Section 1.07, Penal Code.

23 (2) "Personal identifying information" means
24 information that alone or in conjunction with other information
25 identifies an individual, including an individual's:

26 (A) name, social security number, date of birth,
27 or government-issued identification number;

1 (B) mother's maiden name;

2 (C) unique biometric data, including the
3 individual's fingerprint, voice print, and retina or iris image;

4 (D) unique electronic identification number,
5 address, or routing code; and

6 (E) telecommunication identifying information or
7 access device.

8 (3) "Personal representative" means an executor or
9 administrator of a decedent's estate or a person's legal guardian.

10 (4) "Required identifying information" means a copy
11 of:

12 (A) a police report evidencing the filing of a
13 criminal complaint alleging commission of an offense under Section
14 32.51, Penal Code, or a copy of a record created under Section
15 411.0421, Government Code; and

16 (B) personal identifying information used by the
17 alleged perpetrator of an offense under Section 32.51, Penal Code.

18 (5) "Telecommunication access device" has the meaning
19 assigned by Section 32.51, Penal Code.

20 [Sections 48.003-48.100 reserved for expansion]

21 SUBCHAPTER B. IDENTITY THEFT

22 Sec. 48.101. UNAUTHORIZED USE OR POSSESSION OF PERSONAL
23 IDENTIFYING INFORMATION. (a) A person may not obtain, possess,
24 transfer, or use personal identifying information of another person
25 without the other person's consent and with intent to obtain a good,
26 service, insurance, an extension of credit, or any other thing of
27 value in the other person's name.

1 (b) An individual who outside the course and scope of a
2 legitimate business obtains, possesses, transfers, or uses the
3 personal identifying information of three or more persons without
4 the other persons' consent is presumed to have had the intent to
5 obtain a good, service, insurance, an extension of credit, or any
6 other thing of value in the other persons' names.

7 Sec. 48.102. BUSINESS DUTY TO PROTECT AND SAFEGUARD
8 PERSONAL IDENTIFYING INFORMATION. (a) A business shall protect
9 and safeguard any personal identifying information collected or
10 maintained by the business in the regular course of business.

11 (b) A business shall implement and maintain reasonable
12 procedures, including taking any appropriate corrective action, to
13 prevent the unlawful use of any personal identifying information
14 collected or maintained by the business.

15 (c) This section does not apply to a financial institution
16 as defined by 15 U.S.C. Section 6809(3), as amended.

17 Sec. 48.103. DUTY TO PROVIDE INFORMATION TO CONSUMER.

18 (a) On a request and with required identifying information
19 provided by a consumer, a person that engages in business with
20 another person who allegedly used the consumer's personal
21 identifying information shall disclose without charge to the
22 consumer or a peace officer, not later than the 10th business day
23 after the date on which the person receives the request:

24 (1) a copy of any application or transactional
25 information related to an alleged violation of Section 32.51, Penal
26 Code; and

27 (2) to the extent available, the personal identifying

1 information of the consumer that the person who allegedly
2 impersonated the consumer used to participate in the transaction or
3 complete the application or information related to the use of that
4 information.

5 (b) Before a person is required to disclose information
6 under Subsection (a) to a peace officer, the person may require the
7 consumer to submit a written statement dated and signed by the
8 consumer. The statement must:

9 (1) state that the consumer may revoke authorization
10 of the disclosure at any time before the disclosure is made;

11 (2) authorize the disclosure for a certain period of
12 time;

13 (3) specify the name of the agency or department to
14 which the disclosure is authorized; and

15 (4) identify the information that is requested to be
16 disclosed.

17 (c) A person may not be held liable under this section if the
18 person does not make a disclosure to a peace officer because a
19 consumer fails to provide the authorization requested by the person
20 as permitted by Subsection (b).

21 Sec. 48.104. CREDIT CARD ADDRESS CHANGE. A credit card
22 issuer who receives a request for a change of a cardholder's billing
23 address and receives, before the 11th day after the date of the
24 requested address change, a request for an additional credit card
25 on the same account may not mail the requested card to the new
26 address or activate the requested card unless the credit card
27 issuer verifies the change of address.

1 Sec. 48.105. BUSINESS RECEIPT CONTAINING DEBIT OR CREDIT
2 CARD INFORMATION. (a) This section does not apply to a
3 transaction in which the sole means of recording a person's debit or
4 credit card account number on a receipt or other document
5 evidencing the transaction is by handwriting or by an imprint or
6 copy of the debit or credit card.

7 (b) A person that accepts a debit or credit card for the
8 transaction of business may not use a cash register or other machine
9 to print a receipt that evidences the transaction at the point of
10 sale if the cash register or other machine prints:

11 (1) more than the last four digits of the cardholder's
12 credit card account number or debit card account number; or

13 (2) the month and year of the expiration date of the
14 cardholder's credit card or debit card.

15 (c) A person who violates Subsection (b) is liable to the
16 state for a civil penalty in an amount not to exceed \$500 for each
17 calendar month during which a violation occurs. The civil penalty
18 may not be imposed for more than one violation that occurs in a
19 month.

20 (d) The attorney general or the prosecuting attorney in the
21 county in which the violation occurs may bring suit to recover the
22 civil penalty imposed under Subsection (c).

23 (e) A person who provides, leases, or sells a cash register
24 or other machine used to print receipts or other documents
25 evidencing credit card or debit card transactions shall give notice
26 of the requirements of this section to the recipient, lessee, or
27 buyer, as applicable, of the cash register or other machine.

1 (f) A court may not certify an action brought under this
2 section as a class action.

3 Sec. 48.106. IDENTITY THEFT BY ELECTRONIC DEVICE. (a) In
4 this section:

5 (1) "Payment card" means a credit card, debit card,
6 check card, or any other card that is issued to an authorized user
7 to purchase or obtain goods, services, money, or any other thing of
8 value.

9 (2) "Re-encoder" means an electronic device that can
10 be used to transfer encoded information from a magnetic strip on a
11 payment card onto the magnetic strip of a different payment card.

12 (3) "Scanning device" means an electronic device used
13 to access, read, scan, or store information encoded on the magnetic
14 strip of a payment card.

15 (b) A person commits an offense if the person uses a
16 scanning device or re-encoder to access, read, scan, store, or
17 transfer information encoded on the magnetic strip of a payment
18 card without the consent of an authorized user of the payment card
19 and with intent to harm the authorized user.

20 [Sections 48.107-48.200 reserved for expansion]

21 SUBCHAPTER C. REMEDIES AND OFFENSES

22 Sec. 48.201. CIVIL PENALTY; INJUNCTION. (a) A person who
23 violates this chapter, other than Section 48.105, is liable to the
24 state for a civil penalty of at least \$2,000 but not more than
25 \$50,000 for each violation. The attorney general may bring suit to
26 recover the civil penalty imposed by this subsection.

27 (b) If it appears to the attorney general that a person is

1 engaging in, has engaged in, or is about to engage in conduct that
2 violates this chapter, the attorney general may bring an action in
3 the name of this state against the person to restrain the violation
4 by a temporary restraining order or a permanent or temporary
5 injunction.

6 (c) An action brought under Subsection (b) shall be filed in
7 a district court in Travis County or:

8 (1) in any county in which the violation occurred; or

9 (2) in the county in which the victim resides,
10 regardless of whether the alleged violator has resided, worked, or
11 done business in the county in which the victim resides.

12 (d) The plaintiff in an action under this section is not
13 required to give a bond. The court may also grant any other
14 equitable relief that the court considers appropriate to prevent
15 any additional harm to a victim of identity theft or a further
16 violation of this chapter or to satisfy any judgment entered
17 against the defendant, including the issuance of an order to
18 appoint a receiver, sequester assets, correct a public or private
19 record, or prevent the dissipation of a victim's assets.

20 (e) The attorney general is entitled to recover reasonable
21 expenses incurred in obtaining injunctive relief, civil penalties,
22 or both, under this section, including reasonable attorney's fees,
23 court costs, and investigatory costs. Penalties collected by the
24 attorney general under this section shall be deposited in the
25 general revenue fund and may be appropriated only for the
26 investigation and prosecution of other cases under this chapter.

27 Sec. 48.202. COURT ORDER TO DECLARE INDIVIDUAL AS A VICTIM

1 OF IDENTITY THEFT. (a) A person who is injured by a violation of
2 this chapter, other than Section 48.103, or who has filed a criminal
3 complaint alleging commission of an offense under Section 32.51,
4 Penal Code, may file an application with a district court for the
5 issuance of a court order declaring that the person is a victim of
6 identity theft. A person may file an application under this section
7 regardless of whether the person is able to identify each person who
8 allegedly transferred or used the person's identifying information
9 in an unlawful manner.

10 (b) A person is presumed to be a victim of identity theft
11 under this section if the person charged with an offense under
12 Section 32.51, Penal Code, is convicted of the offense.

13 (c) After notice and hearing, if the court is satisfied by a
14 preponderance of the evidence that the applicant has been injured
15 by a violation of this chapter, other than Section 48.103, or is the
16 victim of the commission of an offense under Section 32.51, Penal
17 Code, the court shall enter an order containing:

18 (1) a declaration that the person filing the
19 application is a victim of identity theft resulting from a
20 violation of this chapter, other than Section 48.103, or the
21 commission of an offense under Section 32.51, Penal Code, as
22 appropriate;

23 (2) any known information identifying the violator or
24 person charged with the offense;

25 (3) the specific personal identifying information and
26 any related document used to commit the alleged violation or
27 offense; and

1 (4) information identifying any financial account or
2 transaction affected by the alleged violation or offense,
3 including:

4 (A) the name of the financial institution in
5 which the account is established or of the merchant involved in the
6 transaction, as appropriate;

7 (B) any relevant account numbers;

8 (C) the dollar amount of the account or
9 transaction affected by the alleged violation or offense; and

10 (D) the date of the alleged violation or offense.

11 (d) An order rendered under this section must be sealed
12 because of the confidential nature of the information required to
13 be included in the order. The order may be opened and the order or a
14 copy of the order may be released only:

15 (1) to the proper officials in a civil proceeding
16 brought by or against the victim arising or resulting from a
17 violation of this chapter, including a proceeding to set aside a
18 judgment obtained against the victim;

19 (2) to the victim for the purpose of submitting the
20 copy of the order to a governmental entity or private business:

21 (A) to prove that a financial transaction or
22 account of the victim was directly affected by a violation of this
23 chapter or the commission of an offense under Section 32.51, Penal
24 Code; or

25 (B) to correct any record of the entity or
26 business that contains inaccurate or false information as a result
27 of the violation or offense;

1 (3) on order of the judge; or

2 (4) as otherwise required or provided by law.

3 (e) A court at any time may vacate an order issued under this
4 section if the court finds that the application or any information
5 submitted to the court by the applicant contains a fraudulent
6 misrepresentation or a material misrepresentation of fact.

7 (f) A copy of an order provided to a person under Subsection
8 (d)(1) must remain sealed throughout and after the civil
9 proceeding. Information contained in a copy of an order provided to
10 a governmental entity or business under Subsection (d)(2) is
11 confidential and may not be released to another person except as
12 otherwise required or provided by law.

13 Sec. 48.203. DECEPTIVE TRADE PRACTICE. A violation of this
14 chapter, other than Section 48.103, is a deceptive trade practice
15 actionable under Subchapter E, Chapter 17.

16 Sec. 48.204. CRIMINAL PENALTY. An offense under Section
17 48.106 is a state jail felony.

18 Sec. 48.205. AFFIRMATIVE DEFENSE. Good faith reliance on a
19 consumer report as defined by Section 20.01 by a financial
20 institution as defined by 31 U.S.C. Section 5312, as amended, is an
21 affirmative defense to an action brought against the financial
22 institution under this chapter.

23 (b) Subsections (a), (b), (e), (f), and (g), Article 18.18,
24 Code of Criminal Procedure, are amended to read as follows:

25 (a) Following the final conviction of a person for
26 possession of a gambling device or equipment, altered gambling
27 equipment, or gambling paraphernalia, for an offense involving a

1 criminal instrument, for an offense involving an obscene device or
2 material, or for an offense involving a scanning device or
3 re-encoder, the court entering the judgment of conviction shall
4 order that the machine, device, gambling equipment or gambling
5 paraphernalia, instrument, obscene device or material, or scanning
6 device or re-encoder be destroyed or forfeited to the state. Not
7 later than the 30th day after the final conviction of a person for
8 an offense involving a prohibited weapon, the court entering the
9 judgment of conviction on its own motion, on the motion of the
10 prosecuting attorney in the case, or on the motion of the law
11 enforcement agency initiating the complaint on notice to the
12 prosecuting attorney in the case if the prosecutor fails to move for
13 the order shall order that the prohibited weapon be destroyed or
14 forfeited to the law enforcement agency that initiated the
15 complaint. If the court fails to enter the order within the time
16 required by this subsection, any magistrate in the county in which
17 the offense occurred may enter the order. Following the final
18 conviction of a person for an offense involving dog fighting, the
19 court entering the judgment of conviction shall order that any
20 dog-fighting equipment be destroyed or forfeited to the state.
21 Destruction of dogs, if necessary, must be carried out by a
22 veterinarian licensed in this state or, if one is not available, by
23 trained personnel of a humane society or an animal shelter. If
24 forfeited, the court shall order the contraband delivered to the
25 state, any political subdivision of the state, or to any state
26 institution or agency. If gambling proceeds were seized, the court
27 shall order them forfeited to the state and shall transmit them to

1 the grand jury of the county in which they were seized for use in
2 investigating alleged violations of the Penal Code, or to the
3 state, any political subdivision of the state, or to any state
4 institution or agency.

5 (b) If there is no prosecution or conviction following
6 seizure, the magistrate to whom the return was made shall notify in
7 writing the person found in possession of the alleged gambling
8 device or equipment, altered gambling equipment or gambling
9 paraphernalia, gambling proceeds, prohibited weapon, obscene
10 device or material, scanning device or re-encoder, criminal
11 instrument, or dog-fighting equipment to show cause why the
12 property seized should not be destroyed or the proceeds forfeited.
13 The magistrate, on the motion of the law enforcement agency seizing
14 a prohibited weapon, shall order the weapon destroyed or forfeited
15 to the law enforcement agency seizing the weapon, unless a person
16 shows cause as to why the prohibited weapon should not be destroyed
17 or forfeited. A law enforcement agency shall make a motion under
18 this section in a timely manner after the time at which the agency
19 is informed in writing by the attorney representing the state that
20 no prosecution will arise from the seizure.

21 (e) Any person interested in the alleged gambling device or
22 equipment, altered gambling equipment or gambling paraphernalia,
23 gambling proceeds, prohibited weapon, obscene device or material,
24 scanning device or re-encoder, criminal instrument, or
25 dog-fighting equipment seized must appear before the magistrate on
26 the 20th day following the date the notice was mailed or posted.
27 Failure to timely appear forfeits any interest the person may have

1 in the property or proceeds seized, and no person after failing to
2 timely appear may contest destruction or forfeiture.

3 (f) If a person timely appears to show cause why the
4 property or proceeds should not be destroyed or forfeited, the
5 magistrate shall conduct a hearing on the issue and determine the
6 nature of property or proceeds and the person's interest therein.
7 Unless the person proves by a preponderance of the evidence that the
8 property or proceeds is not gambling equipment, altered gambling
9 equipment, gambling paraphernalia, gambling device, gambling
10 proceeds, prohibited weapon, criminal instrument, scanning device
11 or re-encoder, or dog-fighting equipment and that he is entitled to
12 possession, the magistrate shall dispose of the property or
13 proceeds in accordance with Paragraph (a) of this article.

14 (g) For purposes of this article:

15 (1) "criminal instrument" has the meaning defined in
16 the Penal Code;

17 (2) "gambling device or equipment, altered gambling
18 equipment or gambling paraphernalia" has the meaning defined in the
19 Penal Code;

20 (3) "prohibited weapon" has the meaning defined in the
21 Penal Code; and

22 (4) "dog-fighting equipment" means:

23 (A) equipment used for training or handling a
24 fighting dog, including a harness, treadmill, cage, decoy, pen,
25 house for keeping a fighting dog, feeding apparatus, or training
26 pen;

27 (B) equipment used for transporting a fighting

1 dog, including any automobile, or other vehicle, and its
2 appurtenances which are intended to be used as a vehicle for
3 transporting a fighting dog;

4 (C) equipment used to promote or advertise an
5 exhibition of dog fighting, including a printing press or similar
6 equipment, paper, ink, or photography equipment; or

7 (D) a dog trained, being trained, or intended to
8 be used to fight with another dog.

9 (6) "obscene device or material" means a device or
10 material introduced into evidence and thereafter found obscene by
11 virtue of a final judgment after all appellate remedies have been
12 exhausted.

13 (7) "re-encoder" has the meaning assigned by Section
14 48.106, Business & Commerce Code.

15 (8) "scanning device" has the meaning assigned by
16 Section 48.106, Business & Commerce Code.

17 (c) Subdivision (2), Article 59.01, Code of Criminal
18 Procedure, is amended to read as follows:

19 (2) "Contraband" means property of any nature,
20 including real, personal, tangible, or intangible, that is:

21 (A) used in the commission of:

22 (i) any first or second degree felony under
23 the Penal Code;

24 (ii) any felony under Section 15.031(b),
25 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
26 35, Penal Code; or

27 (iii) any felony under The Securities Act

1 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

2 (B) used or intended to be used in the commission
3 of:

4 (i) any felony under Chapter 481, Health
5 and Safety Code (Texas Controlled Substances Act);

6 (ii) any felony under Chapter 483, Health
7 and Safety Code;

8 (iii) a felony under Chapter 153, Finance
9 Code;

10 (iv) any felony under Chapter 34, Penal
11 Code;

12 (v) a Class A misdemeanor under Subchapter
13 B, Chapter 365, Health and Safety Code, if the defendant has been
14 previously convicted twice of an offense under that subchapter;
15 [~~or~~]

16 (vi) any felony under Chapter 152, Finance
17 Code; or

18 (vii) a state jail felony under Section
19 48.106, Business & Commerce Code;

20 (C) the proceeds gained from the commission of a
21 felony listed in Paragraph (A) or (B) of this subdivision or a crime
22 of violence; or

23 (D) acquired with proceeds gained from the
24 commission of a felony listed in Paragraph (A) or (B) of this
25 subdivision or a crime of violence.

26 SECTION 1.03. For purposes of Section 48.105, Business &
27 Commerce Code, as added by this article:

1 the report, the peace officer shall redact any otherwise
2 confidential information that is included in the report, other than
3 the information described by Subsection (a).

4 (b) The change in law made by this section applies only to
5 the investigation of an offense committed on or after September 1,
6 2003. The investigation of an offense committed before September
7 1, 2003, is covered by the law in effect when the offense was
8 committed, and the former law is continued in effect for that
9 purpose. For purposes of this subsection, an offense is committed
10 before September 1, 2003, if any element of the offense occurs
11 before that date.

12 SECTION 2.02. (a) Chapter 13, Code of Criminal Procedure,
13 is amended by adding Article 13.28 to read as follows:

14 Art. 13.28. FRAUDULENT USE OR POSSESSION OF IDENTIFYING
15 INFORMATION. An offense under Section 32.51, Penal Code, may be
16 prosecuted in:

17 (1) any county in which the identifying information
18 was obtained, possessed, transferred, or used; or

19 (2) the county of residence of the person whose
20 identifying information was fraudulently obtained, possessed,
21 transferred, or used.

22 (b) The change in law made by this section applies only to
23 the prosecution of an offense commenced by the filing of an
24 indictment or information on or after September 1, 2003. A
25 prosecution commenced before September 1, 2003, is controlled by
26 the law in effect at the time the prosecution was commenced, and the
27 former law is continued in effect for that purpose.

1 SECTION 2.03. Subdivision (3), Article 56.01, Code of
2 Criminal Procedure, is amended to read as follows:

3 (3) "Victim" means a person:

4 (A) who is the victim of sexual assault,
5 kidnapping, ~~[or]~~ aggravated robbery, or fraudulent use or
6 possession of identifying information; or

7 (B) who has suffered bodily injury or death as a
8 result of the criminal conduct of another.

9 SECTION 2.04. Chapter 411, Government Code, is amended by
10 adding Subchapter L to read as follows:

11 SUBCHAPTER L. IDENTITY THEFT UNIT

12 Sec. 411.361. DEFINITIONS. In this subchapter:

13 (1) "Attorney representing the state" has the meaning
14 assigned by Section 411.261.

15 (2) "Identity theft" means an offense under Section
16 32.51, Penal Code, or any offense that includes the elements of an
17 offense under that section.

18 Sec. 411.362. IDENTITY THEFT UNIT. (a) The director shall
19 create an identity theft unit to be operated by the department.

20 (b) The director shall employ commissioned peace officers
21 and noncommissioned employees to perform duties required of the
22 unit.

23 Sec. 411.363. DUTIES. The identity theft unit shall:

24 (1) encourage local law enforcement agencies to file a
25 report with the department immediately on receipt of a complaint
26 alleging identity theft;

27 (2) on the request of a local law enforcement agency,

1 assist the agency in the investigation of a complaint alleging
2 identity theft; and

3 (3) initiate an investigation on receipt of reports
4 from two or more local law enforcement agencies that appear to
5 involve the same offender.

6 Sec. 411.364. RULES. The department may adopt rules as
7 necessary to implement this subchapter.

8 SECTION 2.05. (a) Section 1701.253, Occupations Code, is
9 amended by adding Subsection (i) to read as follows:

10 (i) As part of the minimum curriculum requirements, the
11 commission shall establish a statewide comprehensive education and
12 training program on identity theft under Section 32.51, Penal Code,
13 for officers licensed under this chapter. An officer shall
14 complete a program established under this subsection not later than
15 the second anniversary of the date the officer is licensed under
16 this chapter or the date the officer applies for an intermediate
17 proficiency certificate, whichever date is earlier.

18 (b) Section 1701.402, Occupations Code, is amended by
19 adding Subsection (f) to read as follows:

20 (f) As a requirement for an intermediate proficiency
21 certificate, an officer must complete an education and training
22 program on identity theft established by the commission under
23 Section 1701.253(i).

24 (c) Not later than January 1, 2004, the Commission on Law
25 Enforcement Officer Standards and Education shall establish the
26 education and training programs on identity theft required under
27 Subsection (i), Section 1701.253, and Subsection (f), Section

1 1701.402, Occupations Code, as added by this Act.

2 (d) A person who, on the effective date of this Act, holds an
3 intermediate proficiency certificate issued under Section
4 1701.402, Occupations Code, or has held a peace officer license
5 issued by the Commission on Law Enforcement Officer Standards and
6 Education for more than two years shall complete an educational
7 training program on identity theft established under Subsection
8 (i), Section 1701.253, Occupations Code, as added by this Act, not
9 later than September 1, 2005.

10 SECTION 2.06. (a) Subdivision (1), Subsection (a),
11 Section 32.51, Penal Code, is amended to read as follows:

12 (1) "Identifying information" means information that
13 alone or in conjunction with other information identifies an
14 individual, living or dead, including an individual's:

15 (A) name, social security number, date of birth,
16 and government-issued identification number;

17 (B) unique biometric data, including the
18 individual's fingerprint, voice print, and retina or iris image;

19 (C) unique electronic identification number,
20 address, and routing code; and

21 (D) telecommunication identifying information or
22 access device.

23 (b) Section 32.51, Penal Code, is amended by amending
24 Subsection (d) and adding Subsections (f) and (g) to read as
25 follows:

26 (d) If a court orders a defendant convicted of an offense
27 under this section to make restitution to the victim of the offense,

1 the court may order the defendant to reimburse the victim for lost
2 income or other expenses, including [~~other than~~] attorney's fees,
3 incurred as a result of the offense.

4 (f) For the purposes of this section, intent to harm or
5 defraud another is presumed if an individual, outside the course
6 and scope of a legitimate business, obtains, possesses, transfers,
7 or uses the identifying information of three or more individuals,
8 living or dead, without the consent of those individuals.

9 (g) It is an affirmative defense to the prosecution of an
10 offense under this section that the actor obtained, possessed,
11 transferred, or used another person's identifying information for
12 the sole purpose of misrepresenting the actor's age.

13 (c) The change in law made by this section applies only to an
14 offense committed on or after September 1, 2003. An offense
15 committed before September 1, 2003, is covered by the law in effect
16 when the offense was committed, and the former law is continued in
17 effect for that purpose. For the purposes of this subsection, an
18 offense was committed before September 1, 2003, if any element of
19 the offense was committed before that date.

20 ARTICLE 3

21 SECTION 3.01. Subtitle A, Title 5, Government Code, is
22 amended by adding Chapter 561 to read as follows:

23 CHAPTER 561. PROTECTION OF PERSONAL INFORMATION

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 561.001. DEFINITIONS. In this chapter:

26 (1) "Personal information" means information about an
27 individual such as:

1 (A) the individual's home address, home
2 telephone number, social security number, date of birth, driver's
3 license number, and similar information about the individual;

4 (B) information about an individual's marital
5 status or history, whether the individual has family members, and
6 information about the individual's family members; and

7 (C) personally identifiable information about
8 the individual's finances or financial history.

9 (2) "Governmental entity" does not include a court
10 other than a commissioners court.

11 Sec. 561.002. APPLICABILITY. This chapter does not apply
12 to information held by or for a court other than a commissioners
13 court.

14 Sec. 561.003. CONSTRUCTION WITH OTHER LAW. This chapter
15 does not affect:

16 (1) the ability of a state or local governmental
17 entity to undertake a lawful investigation or to protect persons,
18 property, or the environment in the manner authorized by law; or

19 (2) the duty of a state or local governmental entity to
20 comply with applicable law, including the administration of a
21 program provided by statute.

22 [Sections 561.004-561.050 reserved for expansion]

23 SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

24 Sec. 561.051. DISCLOSURE OF CERTAIN PERSONAL INFORMATION;
25 COMPELLING INTEREST OR INTENSE PUBLIC CONCERN REQUIREMENT.

26 (a) This section applies only to the disclosure by a governmental
27 entity of information that reveals an individual's:

1 (1) social security number;

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

4 (3) driver's license number; or

5 (4) computer password or computer network location or
6 identity.

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

11 (1) there is a compelling governmental interest in
12 disclosing the information that cannot be effectively accomplished
13 without the disclosure; or

14 (2) because of extraordinary circumstances, the
15 information is especially relevant to a matter of intense public
16 concern.

17 (c) The requestor of the information or the state or local
18 governmental entity may request the attorney general to authorize
19 the disclosure of information described by Subsection (a).

20 (d) A state or local governmental entity is not required to
21 request a decision of the attorney general under Subchapter G,
22 Chapter 552, before refusing to disclose a social security number,
23 bank account number, credit card account number, other financial
24 account number, computer password, driver's license number, or
25 computer network location or identity in response to a request made
26 under Chapter 552. The state or local governmental entity shall
27 inform the requestor that the requested information is being

1 withheld under this section and that the requestor is entitled to
2 request the attorney general to authorize the disclosure.

3 (e) The attorney general may adopt rules to implement this
4 section, including rules that describe appropriate and clearly
5 defined circumstances under which a category of information
6 described by Subsection (a) is presumed to satisfy a requirement of
7 Subsection (b) and therefore may be disclosed without the necessity
8 of obtaining specific authorization for the disclosure from the
9 attorney general. A rule of the attorney general that describes
10 circumstances under which information presumptively may be
11 disclosed may limit disclosure to specific state, local, or federal
12 authorities or may allow the information to be generally disclosed
13 under Chapter 552, as appropriate.

14 (f) The attorney general shall develop procedures under
15 which the office of the attorney general will expedite a decision
16 whether to authorize disclosure of information described by
17 Subsection (a) when expedited consideration is warranted under the
18 circumstances.

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

22 (h) If information described by Subsection (a) is requested
23 under Chapter 552, Section 552.325 applies in relation to the
24 individual who is the subject of the information in the same manner
25 as if the individual were a requestor of the information, except
26 that the attorney general shall notify the individual under Section
27 552.325(c) if the attorney general proposes to agree to the release

1 of all or part of the information.

2 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state
3 or local governmental entity shall establish procedures to ensure
4 that the governmental entity collects personal information only to
5 the extent reasonably necessary to:

6 (1) implement a program;

7 (2) authenticate an individual's identity when
8 necessary;

9 (3) ensure security; or

10 (4) accomplish another legitimate governmental
11 purpose.

12 Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In
13 adopting or amending its records retention schedule, a state or
14 local governmental entity shall schedule the retention of personal
15 information only for the period necessary to accomplish the purpose
16 for which the information was collected or, if applicable, for the
17 minimum period specifically prescribed by statute.

18 (b) Subsection (a) does not apply to the retention of
19 personal information that has demonstrable historical or archival
20 value.

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

24 (1) the reasons that the governmental entity requires
25 or collects each category of personal information about individuals
26 that the entity requires or collects;

27 (2) the procedures used to require or collect the

1 information;

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

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

6 (5) any current arrangement under which the
7 governmental entity sells personal information about individuals
8 or discloses the information under a contract or agreement or in
9 bulk.

10 (b) The state or local governmental entity shall promptly
11 amend the privacy policy whenever information in the policy becomes
12 incorrect or incomplete.

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

15 (1) through a prominent link on the main Internet
16 site, if any, maintained by or for the governmental entity; and

17 (2) next to the sign that the governmental entity
18 posts under Section 552.205.

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

20 (a) The Department of Information Resources shall adopt rules
21 prescribing minimum privacy standards with which an Internet site
22 or portal maintained by or for a state governmental entity must
23 comply. The rules must be designed to limit the collection of
24 personal information about users of the government Internet site or
25 portal to information:

26 (1) that the state governmental entity needs to
27 accomplish a legitimate government purpose;

1 (2) that a user of the site or portal knowingly and
2 intentionally transmits to the state governmental entity; or

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

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

8 (c) A state governmental entity that maintains an Internet
9 site or portal or for which an Internet site or portal is maintained
10 shall adopt a privacy policy regarding information collected
11 through the site or portal and provide a prominent link to the
12 policy for users of the site or portal. The policy must be
13 consistent with the rules adopted by the Department of Information
14 Resources under this section and must be included as a prominent
15 separate element of the general privacy policy that the entity is
16 required to develop and to which it must provide an Internet link
17 under Section 561.054.

18 Sec. 561.056. GOVERNMENTAL ENTITY; PRIVACY POLICY.

19 (a) Each state and local governmental entity shall establish a
20 policy binding on the entity, its contractors, and subcontractors
21 to protect the privacy of personal information and establish an
22 information management system that protects the privacy and
23 security of information in accordance with applicable state and
24 federal law.

25 (b) During an audit otherwise authorized by law of a state
26 or local governmental entity, the state auditor may audit the
27 entity for compliance with a privacy policy adopted by the entity.

1 (c) Each state or local governmental entity must be prepared
2 to demonstrate during an audit that personal information that the
3 entity collects is necessary to accomplish a legitimate
4 governmental purpose.

5 [Sections 561.057-561.100 reserved for expansion]

6 SUBCHAPTER C. GUIDELINES

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

19 (b) The attorney general shall establish guidelines for
20 sharing information for security purposes among state, local, and
21 federal governmental entities and with the private sector. The
22 guidelines must ensure the protection of personal privacy to the
23 extent feasible and must clarify and explain the legal consequences
24 of sharing the information.

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

27 Sec. 561.102. OPEN RECORDS STEERING COMMITTEE; RECORDS

1 MANAGEMENT INTERAGENCY COORDINATING COUNCIL. (a) The open
2 records steering committee established under Section 552.009 shall
3 periodically study and determine the implications for the personal
4 privacy of individuals and for the security of this state of putting
5 information held by government on the Internet and shall include
6 its findings and recommendations in reports the committee makes
7 under Section 552.009.

8 (b) The Records Management Interagency Coordinating Council
9 established under Section 441.203 shall provide guidance and policy
10 direction to state and local governmental entities in appropriately
11 incorporating developments in electronic management of information
12 into their information management systems in ways that protect
13 personal privacy and the security of this state and promote
14 appropriate public access to information that is not excepted from
15 required public disclosure.

16 SECTION 3.02. Each state and local governmental entity
17 shall examine its records retention schedule and amend the schedule
18 so that it complies with Section 561.053, Government Code, as added
19 by this Act.

20 ARTICLE 4

21 SECTION 4.01. (a) Section 521.126, Transportation Code,
22 is amended to read as follows:

23 Sec. 521.126. ELECTRONICALLY READABLE INFORMATION.

24 (a) The department may not include any information on a driver's
25 license, commercial driver's license, or personal identification
26 certificate in an electronically readable form other than the
27 information printed on the license and a physical description of

1 the licensee.

2 (b) Except as provided by Subsection (e), a person commits
3 an offense if the person knowingly:

4 (1) obtains or uses electronically readable
5 information from a driver's license, commercial driver's license,
6 or personal identification certificate; or

7 (2) compiles or maintains a database of electronically
8 readable information from driver's licenses, commercial driver's
9 licenses, or personal identification certificates. [The
10 ~~department shall take necessary steps to ensure that the~~
11 ~~information is used only for law enforcement or governmental~~
12 ~~purposes.~~]

13 (c) An offense under Subsection (b)(1) [~~Unauthorized use of~~
14 ~~the information~~] is a Class A misdemeanor.

15 (d) An offense under Subsection (b)(2) is a state jail
16 felony.

17 (e) The prohibition provided by Subsection (b) does not
18 apply to:

19 (1) an officer or employee of the department who
20 obtains or uses the information for official purposes;

21 (2) a peace officer, as defined by Article 2.12, Code
22 of Criminal Procedure, acting in the officer's official capacity;

23 (3) a license deputy, as defined by Section 12.702,
24 Parks and Wildlife Code, issuing a license, stamp, tag, permit, or
25 other similar item through use of a point-of-sale system under
26 Section 12.703, Parks and Wildlife Code; or

27 (4) a financial institution, as defined by 31 U.S.C.

1 Section 5312(a)(2), as amended.

2 (b) The change in law made by this section applies only to an
3 offense committed on or after the effective date of this Act. For
4 the purposes of this section, an offense is committed before the
5 effective date of this Act if any element of the offense occurs
6 before that date. An offense committed before the effective date of
7 this Act is governed by the law in effect when the offense was
8 committed, and the former law is continued in effect for that
9 purpose.

10 ARTICLE 5

11 SECTION 5.01. This Act takes effect September 1, 2003.