

By: Hinojosa

S.B. No. 405

Substitute the following for S.B. No. 405:

By: Keel

C.S.S.B. No. 405

A BILL TO BE ENTITLED

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) A consumer reporting agency shall follow reasonable procedures in preparing or disseminating information to ensure maximum possible accuracy of the information about the consumer to whom the information relates.

(b) If a person requests a consumer report from a consumer reporting agency and if the request includes an address for the consumer that substantially differs from the address shown in the consumer file, the consumer reporting agency shall notify the requestor that the addresses are different. The notification must occur before or at the time the consumer report is provided to the requestor.

(c) Subsection (b) applies only to a consumer reporting agency that maintains a database to produce consumer reports that include:

(1) public record information; and

1 (2) credit account information compiled from
2 information furnished by persons regularly and in the ordinary
3 course of business.

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

6 CHAPTER 48. IDENTITY THEFT AND PROTECTION

7 SUBCHAPTER A. GENERAL PROVISIONS

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

10 Sec. 48.002. DEFINITIONS. In this chapter:

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

13 (2) "Personal identifying information" means
14 information that alone or in conjunction with other information
15 identifies an individual, living or dead, including an
16 individual's:

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

19 (B) mother's maiden name;

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

22 (D) unique electronic identification number,
23 address, or routing code; and

24 (E) telecommunication identifying information or
25 access device.

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

1 (4) "Required identifying information" means a copy
2 of:

3 (A) a police report evidencing the filing of a
4 criminal complaint alleging commission of an offense under Section
5 32.51, Penal Code, or a copy of a record created under Section
6 411.0421, Government Code; and

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

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

11 (6) "Transactional information" means a record of a
12 transaction or charge associated with an application or account,
13 including a complete monthly billing statement prepared in the
14 regular course of business by a financial institution.

15 [Sections 48.003-48.100 reserved for expansion]

16 SUBCHAPTER B. IDENTITY THEFT

17 Sec. 48.101. UNAUTHORIZED USE OR POSSESSION OF PERSONAL
18 IDENTIFYING INFORMATION. A person may not obtain, possess,
19 transfer, or use personal identifying information of another person
20 without the other person's consent and with fraudulent intent to
21 obtain a good, service, insurance, an extension of credit, or any
22 other thing of value in the other person's name.

23 Sec. 48.102. BUSINESS PROCEDURES TO PROTECT AND SAFEGUARD
24 PERSONAL IDENTIFYING INFORMATION. (a) A business shall implement
25 and maintain reasonable procedures, including taking any
26 appropriate corrective action, to prevent the unlawful use of any
27 personal identifying information collected or maintained by the

1 business.

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

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

5 (a) On a request and with required identifying information
6 provided by a consumer, a person that engages in business with
7 another person who allegedly used the consumer's personal
8 identifying information shall disclose without charge to the
9 consumer or a peace officer, not later than the 30th business day
10 after the date on which the person receives the request:

11 (1) a copy of any application or transactional
12 information related to an alleged violation of Section 32.51, Penal
13 Code; and

14 (2) to the extent available, the personal identifying
15 information of the consumer that the person who allegedly
16 impersonated the consumer used to participate in the transaction or
17 complete the application or information related to the use of that
18 information.

19 (b) Before a person is required to disclose information
20 under Subsection (a) to a peace officer, the person may require the
21 consumer to submit a written statement dated and signed by the
22 consumer. The statement must:

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

25 (2) authorize the disclosure for a certain period of
26 time;

27 (3) specify the name of the agency or department to

1 which the disclosure is authorized; and

2 (4) identify the information that is requested to be
3 disclosed.

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

8 Sec. 48.104. CREDIT CARD ADDRESS CHANGE. A credit card
9 issuer who receives a request for a change of a cardholder's billing
10 address and receives, before the 11th day after the date of the
11 requested address change, a request for an additional credit card
12 on the same account may not mail the requested card to the new
13 address or activate the requested card unless the credit card
14 issuer verifies the change of address.

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

21 (b) A person who accepts a credit card or debit card for the
22 transaction of business may not print more than the last four digits
23 of the credit card or debit card account number or the month and
24 year of the credit card's or debit card's expiration date on a
25 receipt or other document that evidences the transaction and that
26 is provided to a cardholder.

27 (c) A person who provides, leases, or sells a cash register

1 or other machine used to print receipts or other documents
2 evidencing credit card or debit card transactions shall provide
3 notice of the requirements of this section to the recipient,
4 lessee, or buyer, as applicable, of the machine.

5 (d) A court may not certify an action brought under this
6 section as a class action.

7 (e) A person who violates Subsection (b) is liable to the
8 state for a civil penalty in an amount not to exceed \$500 for each
9 calendar month during which a violation occurs. The civil penalty
10 may not be imposed for more than one violation that occurs in a
11 month. The attorney general or the prosecuting attorney in the
12 county in which the violation occurs may bring suit to recover the
13 civil penalty imposed under this section.

14 (f) The attorney general may bring an action in the name of
15 the state to restrain or enjoin a person from violating Subsection
16 (b).

17 Sec. 48.106. IDENTITY THEFT BY ELECTRONIC DEVICE. (a) In
18 this section:

19 (1) "Payment card" means a credit card, a debit card, a
20 check card, or any other card that is issued to an authorized user
21 to purchase or obtain goods, services, money, or any other thing of
22 value.

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

26 (3) "Scanning device" means an electronic device used
27 to access, read, scan, or store information encoded on the magnetic

1 strip of a payment card.

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

7 [Sections 48.107-48.200 reserved for expansion]

8 SUBCHAPTER C. REMEDIES AND OFFENSES

9 Sec. 48.201. CIVIL PENALTY; INJUNCTION. (a) A person who
10 violates this chapter, other than Section 48.105, is liable to the
11 state for a civil penalty of at least \$2,000 but not more than
12 \$50,000 for each violation. The attorney general may bring suit to
13 recover the civil penalty imposed by this subsection.

14 (b) If it appears to the attorney general that a person is
15 engaging in, has engaged in, or is about to engage in conduct that
16 violates this chapter, the attorney general may bring an action in
17 the name of this state against the person to restrain the violation
18 by a temporary restraining order or a permanent or temporary
19 injunction.

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

- 22 (1) in any county in which the violation occurred; or
23 (2) in the county in which the victim resides,
24 regardless of whether the alleged violator has resided, worked, or
25 done business in the county in which the victim resides.

26 (d) The plaintiff in an action under this section is not
27 required to give a bond. The court may also grant any other

1 equitable relief that the court considers appropriate to prevent
2 any additional harm to a victim of identity theft or a further
3 violation of this chapter or to satisfy any judgment entered
4 against the defendant, including the issuance of an order to
5 appoint a receiver, sequester assets, correct a public or private
6 record, or prevent the dissipation of a victim's assets.

7 (e) The attorney general is entitled to recover reasonable
8 expenses incurred in obtaining injunctive relief or civil
9 penalties, or both, under this section, including reasonable
10 attorney's fees, court costs, and investigatory costs. Penalties
11 collected by the attorney general under this section shall be
12 deposited in the general revenue fund and may be appropriated only
13 for the investigation and prosecution of other cases under this
14 chapter.

15 (f) The attorney general may in an action under this section
16 seek restitution for a person who suffers a loss as a result of a
17 violation of this chapter, other than a violation of Section
18 48.105.

19 Sec. 48.202. COURT ORDER TO DECLARE INDIVIDUAL AS A VICTIM
20 OF IDENTITY THEFT. (a) A person who is injured by a violation of
21 this chapter, other than Section 48.103, or who has filed a criminal
22 complaint alleging commission of an offense under Section 32.51,
23 Penal Code, may file an application with a district court for the
24 issuance of a court order declaring that the person is a victim of
25 identity theft. A person may file an application under this section
26 regardless of whether the person is able to identify each person who
27 allegedly transferred or used the person's identifying information

1 in an unlawful manner.

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

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

10 (1) a declaration that the person filing the
11 application is a victim of identity theft resulting from a
12 violation of this chapter, other than Section 48.103, or the
13 commission of an offense under Section 32.51, Penal Code, as
14 appropriate;

15 (2) any known information identifying the violator or
16 person charged with the offense;

17 (3) the specific personal identifying information and
18 any related document used to commit the alleged violation or
19 offense; and

20 (4) information identifying any financial account or
21 transaction affected by the alleged violation or offense,
22 including:

23 (A) the name of the financial institution in
24 which the account is established or of the merchant involved in the
25 transaction, as appropriate;

26 (B) any relevant account numbers;

27 (C) the dollar amount of the account or

1 transaction affected by the alleged violation or offense; and

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

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

7 (1) to the proper officials in a civil proceeding
8 brought by or against the victim arising or resulting from a
9 violation of this chapter, including a proceeding to set aside a
10 judgment obtained against the victim;

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

13 (A) to prove that a financial transaction or
14 account of the victim was directly affected by a violation of this
15 chapter or the commission of an offense under Section 32.51, Penal
16 Code; or

17 (B) to correct any record of the entity or
18 business that contains inaccurate or false information as a result
19 of the violation or offense;

20 (3) on order of the judge; or

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

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

26 (f) A copy of an order provided to a person under Subsection
27 (d)(1) must remain sealed throughout and after the civil

1 proceeding. Information contained in a copy of an order provided to
2 a governmental entity or business under Subsection (d)(2) is
3 confidential and may not be released to another person except as
4 otherwise required or provided by law.

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

8 Sec. 48.204. CRIMINAL PENALTY. An offense under Section
9 48.106 is a state jail felony.

10 Sec. 48.205. AFFIRMATIVE DEFENSE. Good faith reliance on a
11 consumer report as defined by Section 20.01 by a financial
12 institution as defined by 31 U.S.C. Section 5312, as amended, is an
13 affirmative defense to an action brought against the financial
14 institution under this chapter.

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

17 (a) Following the final conviction of a person for
18 possession of a gambling device or equipment, altered gambling
19 equipment, or gambling paraphernalia, for an offense involving a
20 criminal instrument, for an offense involving an obscene device or
21 material, or for an offense involving a scanning device or
22 re-encoder, the court entering the judgment of conviction shall
23 order that the machine, device, gambling equipment or gambling
24 paraphernalia, instrument, obscene device or material, or scanning
25 device or re-encoder be destroyed or forfeited to the state. Not
26 later than the 30th day after the final conviction of a person for
27 an offense involving a prohibited weapon, the court entering the

1 judgment of conviction on its own motion, on the motion of the
2 prosecuting attorney in the case, or on the motion of the law
3 enforcement agency initiating the complaint on notice to the
4 prosecuting attorney in the case if the prosecutor fails to move for
5 the order shall order that the prohibited weapon be destroyed or
6 forfeited to the law enforcement agency that initiated the
7 complaint. If the court fails to enter the order within the time
8 required by this subsection, any magistrate in the county in which
9 the offense occurred may enter the order. Following the final
10 conviction of a person for an offense involving dog fighting, the
11 court entering the judgment of conviction shall order that any
12 dog-fighting equipment be destroyed or forfeited to the state.
13 Destruction of dogs, if necessary, must be carried out by a
14 veterinarian licensed in this state or, if one is not available, by
15 trained personnel of a humane society or an animal shelter. If
16 forfeited, the court shall order the contraband delivered to the
17 state, any political subdivision of the state, or to any state
18 institution or agency. If gambling proceeds were seized, the court
19 shall order them forfeited to the state and shall transmit them to
20 the grand jury of the county in which they were seized for use in
21 investigating alleged violations of the Penal Code, or to the
22 state, any political subdivision of the state, or to any state
23 institution or agency.

24 (b) If there is no prosecution or conviction following
25 seizure, the magistrate to whom the return was made shall notify in
26 writing the person found in possession of the alleged gambling
27 device or equipment, altered gambling equipment or gambling

1 paraphernalia, gambling proceeds, prohibited weapon, obscene
2 device or material, scanning device or re-encoder, criminal
3 instrument, or dog-fighting equipment to show cause why the
4 property seized should not be destroyed or the proceeds forfeited.
5 The magistrate, on the motion of the law enforcement agency seizing
6 a prohibited weapon, shall order the weapon destroyed or forfeited
7 to the law enforcement agency seizing the weapon, unless a person
8 shows cause as to why the prohibited weapon should not be destroyed
9 or forfeited. A law enforcement agency shall make a motion under
10 this section in a timely manner after the time at which the agency
11 is informed in writing by the attorney representing the state that
12 no prosecution will arise from the seizure.

13 (e) Any person interested in the alleged gambling device or
14 equipment, altered gambling equipment or gambling paraphernalia,
15 gambling proceeds, prohibited weapon, obscene device or material,
16 scanning device or re-encoder, criminal instrument, or
17 dog-fighting equipment seized must appear before the magistrate on
18 the 20th day following the date the notice was mailed or posted.
19 Failure to timely appear forfeits any interest the person may have
20 in the property or proceeds seized, and no person after failing to
21 timely appear may contest destruction or forfeiture.

22 (f) If a person timely appears to show cause why the
23 property or proceeds should not be destroyed or forfeited, the
24 magistrate shall conduct a hearing on the issue and determine the
25 nature of property or proceeds and the person's interest therein.
26 Unless the person proves by a preponderance of the evidence that the
27 property or proceeds is not gambling equipment, altered gambling

1 equipment, gambling paraphernalia, gambling device, gambling
2 proceeds, prohibited weapon, criminal instrument, scanning device
3 or re-encoder, or dog-fighting equipment and that he is entitled to
4 possession, the magistrate shall dispose of the property or
5 proceeds in accordance with Paragraph (a) of this article.

6 (g) For purposes of this article:

7 (1) "criminal instrument" has the meaning defined in
8 the Penal Code;

9 (2) "gambling device or equipment, altered gambling
10 equipment or gambling paraphernalia" has the meaning defined in the
11 Penal Code;

12 (3) "prohibited weapon" has the meaning defined in the
13 Penal Code; ~~and~~

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

15 (A) equipment used for training or handling a
16 fighting dog, including a harness, treadmill, cage, decoy, pen,
17 house for keeping a fighting dog, feeding apparatus, or training
18 pen;

19 (B) equipment used for transporting a fighting
20 dog, including any automobile, or other vehicle, and its
21 appurtenances which are intended to be used as a vehicle for
22 transporting a fighting dog;

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

26 (D) a dog trained, being trained, or intended to
27 be used to fight with another dog; ~~[-]~~

1 (5) [~~(6)~~] "obscene device or material" means a device
2 or material introduced into evidence and thereafter found obscene
3 by virtue of a final judgment after all appellate remedies have been
4 exhausted;

5 (6) "re-encoder" has the meaning assigned by Section
6 48.106, Business & Commerce Code; and

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

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

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

13 (A) used in the commission of:

14 (i) any first or second degree felony under
15 the Penal Code;

16 (ii) any felony under Section 15.031(b),
17 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
18 35, Penal Code; or

19 (iii) any felony under The Securities Act
20 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

21 (B) used or intended to be used in the commission
22 of:

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

25 (ii) any felony under Chapter 483, Health
26 and Safety Code;

27 (iii) a felony under Chapter 153, Finance

1 Code;

2 (iv) any felony under Chapter 34, Penal
3 Code;

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

8 (vi) any felony under Chapter 152, Finance
9 Code; or

10 (vii) a state jail felony under Section
11 48.106, Business & Commerce Code;

12 (C) the proceeds gained from the commission of a
13 felony listed in Paragraph (A) or (B) of this subdivision or a crime
14 of violence; or

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

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

20 (1) with respect to a cash register or other machine
21 that is initially installed and in operation after August 31, 2003,
22 Section 48.105, Business & Commerce Code, applies only to a receipt
23 or other document evidencing a credit card or debit card
24 transaction that is electronically printed by the cash register or
25 other machine after August 31, 2004; and

26 (2) with respect to a cash register or other machine
27 that is in operation before September 1, 2003, Section 48.105,

1 Business & Commerce Code, applies only to a receipt or other
2 document evidencing a credit card or debit card transaction that is
3 electronically printed by the cash register or other machine after
4 December 31, 2005.

5 ARTICLE 2

6 SECTION 2.01. (a) Chapter 2, Code of Criminal Procedure,
7 is amended by adding Article 2.28 to read as follows:

8 Art. 2.28. REPORT REQUIRED IN CONNECTION WITH FRAUDULENT
9 USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) A peace officer
10 to whom an alleged violation of Section 32.51, Penal Code, is
11 reported shall make a written report that includes the following
12 information:

- 13 (1) the name of the victim;
14 (2) the name of the suspect, if known;
15 (3) the type of identifying information obtained,
16 possessed, transferred, or used in violation of Section 32.51; and
17 (4) the results of the investigation.

18 (b) On the victim's request, the peace officer shall provide
19 the report created under Subsection (a) to the victim. In providing
20 the report, the peace officer shall redact any otherwise
21 confidential information that is included in the report, other than
22 the information described by Subsection (a).

23 (b) The change in law made by this section applies only to
24 the investigation of an offense committed on or after September 1,
25 2003. The investigation of an offense committed before September
26 1, 2003, is covered by the law in effect when the offense was
27 committed, and the former law is continued in effect for that

1 purpose. For purposes of this subsection, an offense is committed
2 before September 1, 2003, if any element of the offense occurs
3 before that date.

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

6 Art. 13.28. FRAUDULENT USE OR POSSESSION OF IDENTIFYING
7 INFORMATION. An offense under Section 32.51, Penal Code, may be
8 prosecuted in:

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

11 (2) the county of residence of the person whose
12 identifying information was fraudulently obtained, possessed,
13 transferred, or used.

14 (b) The change in law made by this section applies only to
15 the prosecution of an offense commenced by the filing of an
16 indictment or information on or after September 1, 2003. A
17 prosecution commenced before September 1, 2003, is controlled by
18 the law in effect at the time the prosecution was commenced, and the
19 former law is continued in effect for that purpose.

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

22 (3) "Victim" means a person:

23 (A) who is the victim of sexual assault,
24 kidnapping, ~~or~~ aggravated robbery, or fraudulent use or
25 possession of identifying information; or

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

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

3 SUBCHAPTER L. IDENTITY THEFT UNIT

4 Sec. 411.361. DEFINITIONS. In this subchapter:

5 (1) "Attorney representing the state" has the meaning
6 assigned by Section 411.261.

7 (2) "Identity theft" means an offense under Section
8 32.51, Penal Code, or any offense that includes the elements of an
9 offense under that section.

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

12 (b) The director shall employ commissioned peace officers
13 and noncommissioned employees to perform duties required of the
14 unit.

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

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

19 (2) on the request of a local law enforcement agency,
20 assist the agency in the investigation of a complaint alleging
21 identity theft; and

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

25 Sec. 411.364. RULES. The department may adopt rules as
26 necessary to implement this subchapter.

27 SECTION 2.05. (a) Section 1701.253, Occupations Code, is

1 amended by adding Subsection (i) to read as follows:

2 (i) As part of the minimum curriculum requirements, the
3 commission shall establish a statewide comprehensive education and
4 training program on identity theft under Section 32.51, Penal Code,
5 for officers licensed under this chapter. An officer shall
6 complete a program established under this subsection not later than
7 the second anniversary of the date the officer is licensed under
8 this chapter or the date the officer applies for an intermediate
9 proficiency certificate, whichever date is earlier.

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

12 (f) As a requirement for an intermediate proficiency
13 certificate, an officer must complete an education and training
14 program on identity theft established by the commission under
15 Section 1701.253(i).

16 (c) Not later than January 1, 2004, the Commission on Law
17 Enforcement Officer Standards and Education shall establish the
18 education and training programs on identity theft required under
19 Subsection (i), Section 1701.253, and Subsection (f), Section
20 1701.402, Occupations Code, as added by this Act.

21 (d) A person who, on the effective date of this Act, holds an
22 intermediate proficiency certificate issued under Section
23 1701.402, Occupations Code, or has held a peace officer license
24 issued by the Commission on Law Enforcement Officer Standards and
25 Education for more than two years shall complete an educational
26 training program on identity theft established under Subsection
27 (i), Section 1701.253, Occupations Code, as added by this Act, not

1 later than September 1, 2005.

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

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

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

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

11 (C) unique electronic identification number,
12 address, and routing code; and

13 (D) telecommunication identifying information or
14 access device.

15 (b) Subsection (d), Section 32.51, Penal Code, is amended to
16 read as follows:

17 (d) If a court orders a defendant convicted of an offense
18 under this section to make restitution to the victim of the offense,
19 the court may order the defendant to reimburse the victim for lost
20 income or other expenses, including ~~other than~~ attorney's fees,
21 incurred as a result of the offense.

22 (c) The change in law made by this section applies only to an
23 offense committed on or after September 1, 2003. An offense
24 committed before September 1, 2003, is covered by the law in effect
25 when the offense was committed, and the former law is continued in
26 effect for that purpose. For the purposes of this subsection, an
27 offense was committed before September 1, 2003, if any element of

1 the offense was committed before that date.

2 ARTICLE 3

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

5 CHAPTER 561. PROTECTION OF PERSONAL INFORMATION

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 561.001. DEFINITIONS. In this chapter:

8 (1) "Document" includes information created or
9 maintained in a paper, electronic, or other format.

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

12 (3) "Personal information" means information about an
13 individual such as:

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

17 (B) information about an individual's marital
18 status or history, whether the individual has family members, and
19 information about the individual's family members; and

20 (C) personally identifiable information about
21 the individual's finances or financial history or purchases made
22 from government.

23 Sec. 561.002. APPLICABILITY. This chapter does not apply:

24 (1) to court records or other information held by or on
25 behalf of a court other than a commissioners court;

26 (2) in relation to a historical document, which for
27 purposes of this subdivision is a document held by or on behalf of a

1 state or local governmental entity if the state or local
2 governmental entity or its predecessor in function, or an agent of
3 the state or local governmental entity or its predecessor in
4 function, has held the document for 50 years or longer;

5 (3) to information collected by the Texas Department
6 of Criminal Justice about an offender;

7 (4) to information collected by the Texas Youth
8 Commission about an offender;

9 (5) to personal information that:

10 (A) relates to a motor vehicle accident and is
11 subject to Section 550.065, Transportation Code; or

12 (B) a state or local governmental entity obtains
13 from or in connection with a motor vehicle record subject to Chapter
14 730, Transportation Code;

15 (6) to a record that is subject to the federal Family
16 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
17 1232g), as amended; or

18 (7) in relation to information that is:

19 (A) filed with a county clerk under Chapter 192,
20 Local Government Code; or

21 (B) otherwise filed with a county clerk in the
22 clerk's capacity as county recorder.

23 Sec. 561.003. CONSTRUCTION WITH OTHER LAW. This chapter
24 does not affect:

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

1 (2) the duty of a state or local governmental entity to
2 comply with applicable law; or

3 (3) the ability of a private investigator regulated
4 under Chapter 1702, Occupations Code, to conduct a lawful
5 investigation.

6 [Sections 561.004-561.050 reserved for expansion]

7 SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

8 Sec. 561.051. DISCLOSURE OF CERTAIN PERSONAL INFORMATION.

9 (a) 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 debit card number, or other financial account number, including an
14 access number related to a financial account;

15 (3) computer password or access code or computer
16 network location or identity; or

17 (4) passport number.

18 (b) Notwithstanding Section 552.022 or other law, a state or
19 local governmental entity may not disclose information described by
20 Subsection (a) to a member of the public and shall redact or
21 otherwise obscure information described by Subsection (a) from a
22 document that is made available to a member of the public.

23 (c) A governmental entity may disclose information
24 described by Subsection (a) only to:

25 (1) another state or local governmental entity in this
26 state;

27 (2) a federal governmental entity;

1 (3) the person or the authorized representative of the
2 person who is the subject of the information, subject to Section
3 552.023, if the governmental entity is also a governmental body
4 under Chapter 552;

5 (4) an entity described by 15 U.S.C. Section 6809(3);
6 or

7 (5) a private investigator regulated under Chapter
8 1702, Occupations Code.

9 (d) Section 552.022 does not apply in relation to
10 information described by Subsection (a).

11 (e) When a person requests a document that contains
12 information described by Subsection (a), the governmental entity
13 may charge the requestor a reasonable fee to recover the cost of
14 personnel time or programming or other costs incurred in redacting
15 or otherwise obscuring the information described by Subsection (a).
16 A governmental entity that is also a governmental body under
17 Chapter 552 shall comply with Subchapter F, Chapter 552, to the
18 extent Subchapter F is consistent with this subsection.

19 (f) A governmental entity that is also a governmental body
20 under Chapter 552 is not required to request a decision of the
21 attorney general under Subchapter G, Chapter 552, before refusing
22 to disclose information described by Subsection (a). In responding
23 to a request under Chapter 552 for a document that contains
24 information described by Subsection (a), the governmental body
25 shall promptly inform the requestor that the information described
26 by Subsection (a) is being redacted or otherwise obscured as
27 required by this chapter. The requestor may complain to the

1 attorney general if the requestor believes that the governmental
2 body, in response to the requestor's written request for
3 information under Chapter 552, redacted or otherwise withheld or
4 obscured information other than information described by
5 Subsection (a) without complying with the procedures prescribed by
6 Subchapter G, Chapter 552.

7 (g) If a person complains to the attorney general under
8 Subsection (f), the attorney general may review the matter to
9 determine whether the governmental body redacted or otherwise
10 obscured or withheld information other than information described
11 by Subsection (a) without complying with the procedures prescribed
12 by Subchapter G, Chapter 552. The governmental body shall, within
13 10 business days after the date of receiving a request for the
14 following information from the attorney general, submit to the
15 attorney general:

16 (1) a copy of the requestor's applicable written
17 request for information;

18 (2) a copy of the document at issue in unredacted and
19 unobscured form and in the form in which the document was provided
20 to the requestor; and

21 (3) a copy of the governmental body's correspondence
22 to the requestor, if possible, or a statement regarding the
23 governmental body's other form of communication to the requestor
24 that the information at issue was redacted or obscured as required
25 by this chapter because it was information described by Subsection
26 (a).

27 (h) If the attorney general determines under Subsection (g)

1 that the governmental body redacted or otherwise withheld or
2 obscured information other than information described by
3 Subsection (a) without complying with the procedures prescribed by
4 Subchapter G, Chapter 552:

5 (1) the attorney general shall promptly notify the
6 governmental body, the requestor, and other interested persons of
7 that determination; and

8 (2) Chapter 552 applies in relation to the information
9 that the attorney general determines to have been improperly
10 redacted or withheld or obscured under this chapter, except that:

11 (A) it is a defense to prosecution under Section
12 552.351 or 552.353 that the information at issue is information
13 described by Subsection (a);

14 (B) in any action under Subchapter H, Chapter
15 552, it is a ground for withholding the information at issue that
16 the information is information described by Subsection (a); and

17 (C) the information at issue may be withheld
18 under Section 552.302 only if there is a compelling reason to
19 withhold the information and the information is confidential under
20 law.

21 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state
22 or local governmental entity shall establish procedures to ensure
23 that the governmental entity collects personal information only to
24 the extent reasonably necessary to:

25 (1) implement a program;

26 (2) authenticate an individual's identity when
27 necessary;

1 (3) ensure security; or

2 (4) accomplish another legitimate governmental
3 purpose.

4 Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In
5 adopting or amending its records retention schedule, a state or
6 local governmental entity shall schedule the retention of personal
7 information only for the period necessary to accomplish the purpose
8 for which the information was collected or, if applicable, for the
9 minimum period specifically prescribed by statute.

10 (b) Subsection (a) does not apply to the retention of
11 personal information that has demonstrable historical or archival
12 value.

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

16 (1) the reasons that the governmental entity requires
17 or collects each category of personal information about individuals
18 that the entity requires or collects;

19 (2) the procedures used to require or collect the
20 information;

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

23 (4) the manner in which the information may be
24 disclosed, such as by placing the information in a public viewing
25 area or making the information available on the Internet;

26 (5) any current arrangement under which the
27 governmental entity sells personal information about individuals

1 or discloses the information under a contract or agreement or in
2 bulk; and

3 (6) the manner in which a member of the public may
4 protect private information that is described by Section 561.051(a)
5 by redacting or omitting the information from a document that will
6 be filed with the governmental entity.

7 (b) The state or local governmental entity shall promptly
8 amend the privacy policy whenever information in the policy becomes
9 incorrect or incomplete.

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

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

14 (2) if applicable, next to the sign that the
15 governmental entity posts under Section 552.205.

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

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

23 (1) that the state governmental entity needs in order
24 to accomplish a legitimate government purpose;

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

27 (3) regarding the collection of which the user of the

1 site or portal has actively given informed consent.

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

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

15 Sec. 561.056. AUDITOR GUIDELINES; PRIVACY POLICY. (a) The
16 state auditor shall establish auditing guidelines to ensure that a
17 state or local governmental entity:

18 (1) does not routinely collect or retain more personal
19 information than the entity needs to accomplish a legitimate
20 governmental purpose of the entity; and

21 (2) establishes an information management system that
22 protects the privacy and security of information in accordance with
23 applicable state and federal law.

24 (b) Each state and local governmental entity shall
25 establish a policy binding on the entity, its contractors, and
26 subcontractors to protect the privacy of personal information and
27 establish an information management system that protects the

1 privacy and security of information in accordance with the
2 guidelines established by the state auditor under Subsection (a).
3 With regard to a governmental entity's contractors and
4 subcontractors, this subsection applies to information a
5 contractor or subcontractor receives in connection with a contract
6 with the governmental entity.

7 (c) During an audit otherwise authorized by law of a state
8 or local governmental entity, the state auditor may audit a state or
9 local governmental entity for compliance with the guidelines
10 established under Subsection (a) and the privacy policy established
11 under Subsection (b). An audit performed under this subsection is
12 subject to a risk assessment and the inclusion of the audit in the
13 audit plan recommended under Section 321.013(c).

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 (d) The attorney general is not required to adopt formal
10 guidelines under this section to the extent that the attorney
11 general accomplishes the purposes of this section through other
12 education, training, and publication efforts of the office of the
13 attorney general.

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

22 (b) The Records Management Interagency Coordinating Council
23 established under Section 441.203 shall provide guidance and policy
24 direction to state and local governmental entities in appropriately
25 incorporating developments in electronic management of information
26 into their information management systems in ways that protect
27 personal privacy and the security of this state and promote

1 appropriate public access to public information that is not
2 excepted from required public disclosure.

3 SECTION 3.02. Chapter 11, Property Code, is amended by
4 adding Section 11.008 to read as follows:

5 Sec. 11.008. CONFIDENTIAL INFORMATION IN REAL PROPERTY
6 RECORDS. (a) In this section, "instrument" means a deed, mortgage,
7 or deed of trust.

8 (b) An instrument executed on or after January 1, 2004,
9 transferring an interest in real property to or from an individual
10 may not be recorded unless a notice appears on the first page of the
11 instrument in 12-point boldfaced type or 12-point uppercase letters
12 and reads substantially as follows:

13 NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL
14 PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING
15 INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED
16 FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY
17 NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

18 (c) The validity of an instrument as between the parties to
19 the instrument and the notice provided by the instrument are not
20 affected by a party's failure to include the notice required under
21 Subsection (b).

22 (d) The county clerk may not reject an instrument presented
23 for recording because the instrument contains or fails to contain a
24 social security number or driver's license number. If the county
25 clerk accepts an instrument for recording, the recording of the
26 instrument creates a conclusive presumption that the requirements
27 of this section have been met.

1 (e) The county clerk shall post a notice in the county
2 clerk's office stating that instruments recorded in the real
3 property or official public records or the equivalent of the real
4 property or official public records of the county and executed on or
5 after January 1, 2004:

6 (1) are not required to contain a social security
7 number or driver's license number; and

8 (2) are public records available for review by the
9 public.

10 (f) All instruments recorded under this section are subject
11 to inspection by the public.

12 (g) Unless this section is cited in a law enacted after
13 September 1, 2003, this section is the exclusive law governing the
14 confidentiality of personal information contained in the real
15 property or official public records or the equivalent of the real
16 property or official public records of a county.

17 (h) To the extent that federal law conflicts with this
18 section, an instrument must contain the information required by and
19 must be filed in a manner that complies with federal law.

20 SECTION 3.03. Section 13.002, Property Code, is amended to
21 read as follows:

22 Sec. 13.002. EFFECT OF RECORDED INSTRUMENT. An instrument
23 that is properly recorded in the proper county is:

24 (1) notice to all persons of the existence of the
25 instrument; and

26 (2) subject to inspection by the public.

27 SECTION 3.04. Each state and local governmental entity

1 shall examine its records retention schedule and amend the schedule
2 so that it complies with Section 561.053, Government Code, as added
3 by this Act.

4 SECTION 3.05. Section 11.008, Property Code, as added by
5 this Act, applies only to a deed, mortgage, or deed of trust
6 executed on or after January 1, 2004.

7 ARTICLE 4

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

10 Sec. 521.126. ELECTRONICALLY READABLE INFORMATION.

11 (a) The department may not include any information on a driver's
12 license, commercial driver's license, or personal identification
13 certificate in an electronically readable form other than the
14 information printed on the license and a physical description of
15 the licensee.

16 (b) Except as provided by Subsection (e), a person commits
17 an offense if the person:

18 (1) accesses or uses electronically readable
19 information from a driver's license, commercial driver's license,
20 or personal identification certificate; or

21 (2) compiles or maintains a database of electronically
22 readable information derived from driver's licenses, commercial
23 driver's licenses, or personal identification certificates. [The
24 department shall take necessary steps to ensure that the
25 information is used only for law enforcement or governmental
26 purposes.]

27 (c) An offense under Subsection (b) [Unauthorized use of the

1 ~~information]~~ is a Class A misdemeanor.

2 (d) The prohibition provided by Subsection (b) does not
3 apply to:

4 (1) an officer or employee of the department who
5 accesses or uses the information for law enforcement or government
6 purposes;

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

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

13 (4) a person acting as authorized by Section 109.61,
14 Alcoholic Beverage Code.

15 (e) The prohibition provided by Subsection (b)(1) does not
16 apply to a financial institution if the information is accessed or
17 used only for purposes of identification of an individual. The
18 prohibition provided by Subsection (b)(2) does not apply to a
19 financial institution if each license or certificate holder whose
20 information is included in the compilation or database consents to
21 the inclusion of the person's information in the compilation or
22 database. Consent under this subsection must be on a separate
23 document, signed by the license or certificate holder, that
24 explains in at least 14-point bold type the information that will be
25 included in the compilation or database. For the purposes of this
26 subsection, "financial institution" has the meaning assigned by 31
27 U.S.C. Section 5312(a)(2), as amended.

1 (f) A person may not use information derived from
2 electronically readable information from a driver's license,
3 commercial driver's license, or personal identification
4 certificate to engage in telephone solicitation to encourage the
5 purchase or rental of, or investment in, goods, other property, or
6 services.

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

15 ARTICLE 5

16 SECTION 5.01. (a) Except as provided by Subsections (b)
17 and (c) of this section, this Act takes effect September 1, 2003.

18 (b) Section 2.04 of this Act takes effect September 1, 2005.

19 (c) Section 3.01 of this Act takes effect January 1, 2004,
20 as that section applies to a municipality with a population of less
21 than 1.2 million.