

By: Hinojosa

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. (a) Section 20.02(a), Business & Commerce Code, is amended to read as follows:

(a) Except as provided by Section 20.035, a [A] consumer reporting agency may furnish a consumer report only:

(1) in response to a court order issued by a court with proper jurisdiction;

(2) in accordance with the written instructions of the consumer to whom the report relates; or

(3) to a person the agency has reason to believe:

(A) intends to use the information in connection with a transaction involving the extension of credit to, or review or collection of an account of, the consumer to whom the report relates;

(B) intends to use the information for employment purposes as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(C) intends to use the information in connection

1 with the underwriting of insurance involving the consumer as
2 authorized under the Fair Credit Reporting Act (15 U.S.C. Section
3 1681 et seq.), as amended, and regulations adopted under that Act;

4 (D) intends to use the information in connection
5 with a determination of the consumer's eligibility for a license or
6 other benefit granted by a governmental entity required by law to
7 consider an applicant's financial responsibility or status;

8 (E) has a legitimate business need for the
9 information in connection with a business transaction involving the
10 consumer; or

11 (F) intends to use the information for any
12 purpose authorized under the Fair Credit Reporting Act (15 U.S.C.
13 Section 1681 et seq.), as amended, and regulations adopted under
14 that Act.

15 (b) Chapter 20, Business & Commerce Code, is amended by
16 adding Section 20.035 to read as follows:

17 Sec. 20.035. DISCLOSURE CONCERNING IDENTITY THEFT. (a) A
18 consumer reporting agency that knows or should have known of
19 suspicious activity related to a consumer's credit or other
20 financial accounts shall immediately disclose to the consumer in
21 writing all information pertaining to the consumer in the agency's
22 files as described by Section 20.03, regardless of whether the
23 consumer requests the information.

24 (b) For purposes of this section, a consumer reporting
25 agency is presumed to know or have known of suspicious activity
26 related to a consumer's credit or other financial accounts if:

27 (1) a new account is opened in the consumer's name

1 using a different address;

2 (2) the consumer informs the consumer reporting agency
3 in writing that the consumer has filed a complaint alleging
4 commission of an offense under Section 32.51, Penal Code; or

5 (3) the consumer informs the consumer reporting agency
6 in a notarized written declaration that the consumer is concerned
7 about fraudulent activities related to the consumer's credit or
8 other financial accounts, including:

9 (A) the opening of a credit card account in the
10 consumer's name without authorization; or

11 (B) the finding of unauthorized charges on a
12 credit card account held by the consumer.

13 (c) It is a defense to a civil action brought under this
14 section that the consumer reporting agency made a good faith effort
15 to make the disclosure required by Subsection (a) but was unable to
16 locate the consumer.

17 (c) Section 20.04(b), Business & Commerce Code, is amended
18 to read as follows:

19 (b) A consumer reporting agency may not charge a fee for:

20 (1) a request by a consumer for a copy of the
21 consumer's file made not later than the 60th day after the date on
22 which adverse action is taken against the consumer;

23 (2) notification of the deletion of information that
24 is found to be inaccurate or can no longer be verified sent to a
25 person designated by the consumer, as prescribed by Section 611 of
26 the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as
27 amended;

1 (3) a set of instructions for understanding the
2 information presented on the consumer report; ~~[or]~~

3 (4) a toll-free telephone number that consumers may
4 call to obtain additional assistance concerning the consumer
5 report; or

6 (5) a disclosure of a consumer file required by
7 Section 20.035.

8 (d) This section applies only to conduct occurring on or
9 after September 1, 2003.

10 SECTION 1.02. Subchapter D, Chapter 35, Business & Commerce
11 Code, is amended by adding Section 35.58 to read as follows:

12 Sec. 35.58. BUSINESS RECEIPT CONTAINING DEBIT OR CREDIT
13 CARD INFORMATION. (a) This section does not apply to a transaction
14 in which the sole means of recording a person's debit or credit card
15 account number on a receipt or other document evidencing the
16 transaction is by handwriting or by an imprint or copy of the debit
17 or credit card.

18 (b) A person that accepts a debit or credit card for the
19 transaction of business may not use a cash register or other machine
20 to print a receipt or other document that evidences the transaction
21 unless at least four digits of the cardholder's credit card account
22 number or debit card account number are omitted from the receipt or
23 document.

24 (c) A person who violates this section is liable to the
25 state for a civil penalty in an amount not to exceed \$500 for each
26 calendar month during which a violation occurs. The civil penalty
27 may not be imposed for more than one violation that occurs in a

1 month.

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

5 SECTION 1.03. Subchapter D, Chapter 35, Business & Commerce
6 Code, is amended by adding Section 35.59 to read as follows:

7 Sec. 35.59. RETAIL CREDIT CARD APPLICATION. (a) A person
8 engaged in the retail sale of goods or services that issues a credit
9 card for use by a consumer shall ensure that only persons who are
10 supervisors or managers employed by the person process or otherwise
11 have access to the consumer's credit card application.

12 (b) A person that violates this section is liable to the
13 state for a civil penalty in an amount not to exceed \$1,000 for each
14 violation. The attorney general or the prosecuting attorney in the
15 county in which the violation occurs may bring suit to recover the
16 civil penalty imposed under this section.

17 (c) The attorney general may bring an action in the name of
18 the state to restrain or enjoin a business entity from violating
19 this section.

20 SECTION 1.04. Subchapter D, Chapter 392, Finance Code, is
21 amended by adding Section 392.307 to read as follows:

22 Sec. 392.307. VICTIM OF IDENTITY THEFT. (a) On receipt of
23 a copy of a criminal complaint alleging commission of an offense
24 under Section 32.51, Penal Code, and a copy of an accompanying
25 police report from a consumer, a debt collector shall stop debt
26 collection activities against the consumer on any debt incurred
27 because of the use of identifying information in violation of that

1 section.

2 (b) The debt collector may resume debt collection
3 activities against the consumer under Subsection (a) only if:

4 (1) the person charged with an offense under Section
5 32.51, Penal Code, is acquitted or the charge is dismissed; or

6 (2) the statute of limitations bars prosecution of the
7 offense.

8 SECTION 1.05. Subtitle Z, Title 3, Finance Code, is amended
9 by adding Chapter 278 to read as follows:

10 CHAPTER 278. THUMBPRINT SIGNATURE PROGRAM

11 Sec. 278.001. DEFINITION. In this chapter, "financial
12 institution" has the meaning assigned by Section 31.002.

13 Sec. 278.002. THUMBPRINT SIGNATURE REQUIRED TO CASH CERTAIN
14 CHECKS. (a) A financial institution may not pay a check presented
15 by a person who does not have an account with the financial
16 institution unless the person provides the person's thumbprint on
17 the check.

18 (b) Subsection (a) does not apply to a check presented by a
19 person whose physical condition makes taking the person's
20 thumbprint impossible.

21 Sec. 278.003. CIVIL PENALTY. (a) A financial institution
22 that violates Section 278.002 is liable to the state for a civil
23 penalty in an amount not to exceed \$750 for each violation. The
24 attorney general or the prosecuting attorney in the county in which
25 the violation occurs may bring suit to recover the civil penalty
26 under this section.

27 (b) The attorney general may bring an action in the name of

1 the state to restrain or enjoin a financial institution from
2 violating this section.

3 ARTICLE 2

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

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

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

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

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

1 before that date.

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

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

- 7 (1) any county in which the offense was committed; or
8 (2) the county of residence for the person whose
9 identifying information was fraudulently obtained, possessed,
10 transferred, or used.

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

17 SECTION 2.03. Article 15.03, Code of Criminal Procedure, is
18 amended by adding Subsection (c) to read as follows:

19 (c) Notwithstanding Subsection (a), a magistrate may issue
20 a warrant of arrest or a summons based on a person's statement under
21 oath alleging an offense under Section 32.41, Penal Code, or
22 alleging an offense under Section 31.03 or 31.04, Penal Code,
23 committed by means of fraudulently issuing or passing a check or
24 similar sight order for the payment of money, only if the person's
25 statement indicates that two or more forms of identification were
26 required from the alleged offender at the time the check or similar
27 sight order was accepted for the payment of money.

1 SECTION 2.04. 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 2.05. 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
25 immediately a report with the department 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 2.06. (a) Section 32.51, Penal Code, is amended by
9 amending Subsection (d) and adding Subsection (f) to read as
10 follows:

11 (d) If a court orders a defendant convicted of an offense
12 under this section to make restitution to the victim of the offense,
13 the court may order the defendant to reimburse the victim for lost
14 income or other expenses, including ~~[other than]~~ attorney's fees,
15 incurred as a result of the offense.

16 (f) For purposes of this section, intent to harm or defraud
17 another is presumed if the actor obtains, possesses, transfers, or
18 uses the identifying information of six or more persons without the
19 consent of those persons.

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

27 ARTICLE 3

1 SECTION 3.01. (a) Except as provided by Subsection (b),
2 this Act takes effect September 1, 2003.

3 (b) Section 1.02 of this Act takes effect January 1, 2004.