

1-1 By: Hinojosa S.B. No. 405
1-2 (In the Senate - Filed February 6, 2003; February 17, 2003,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 24, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 24, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 405 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the prevention of, prosecution of, and punishment of
1-11 identity theft and to assistance to certain victims of identity
1-12 theft; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1

1-15 SECTION 1.01. Chapter 20, Business & Commerce Code, is
1-16 amended by adding Section 20.051 to read as follows:

1-17 Sec. 20.051. PROTECTION OF CONSUMER INFORMATION.

1-18 (a) Notwithstanding any other provision of this chapter, a
1-19 consumer reporting agency may not furnish a consumer report unless
1-20 the person to whom the report is furnished provides the consumer
1-21 reporting agency at least four separate items of identification
1-22 regarding the consumer to whom the report relates that match
1-23 information about that consumer in the consumer file. Acceptable
1-24 items of identification include the consumer's:

- 1-25 (1) complete first and last name;
1-26 (2) date of birth;
1-27 (3) complete current address;
1-28 (4) social security number;
1-29 (5) driver's license or personal identification
1-30 certificate number;
1-31 (6) mother's maiden name; and
1-32 (7) current employer.

1-33 (b) A consumer reporting agency shall follow reasonable
1-34 procedures in preparing or disseminating information to assure
1-35 maximum possible accuracy of the information about the consumer to
1-36 whom the information relates.

1-37 (c) A consumer reporting agency may not record a requested
1-38 change of a consumer's address in a consumer file until the consumer
1-39 reporting agency verifies the change with the consumer.

1-40 SECTION 1.02. (a) Title 4, Business & Commerce Code, is
1-41 amended by adding Chapter 48 to read as follows:

1-42 CHAPTER 48. IDENTITY THEFT AND PROTECTION

1-43 SUBCHAPTER A. GENERAL PROVISIONS

1-44 Sec. 48.001. SHORT TITLE. This chapter may be cited as the
1-45 Identity Theft Enforcement and Protection Act.

1-46 Sec. 48.002. DEFINITIONS. In this chapter:

1-47 (1) "Peace officer" has the meaning assigned by
1-48 Section 1.07, Penal Code.

1-49 (2) "Personal identifying information" means
1-50 information that alone or in conjunction with other information
1-51 identifies an individual, including an individual's:

1-52 (A) name, social security number, date of birth,
1-53 or government-issued identification number;

1-54 (B) mother's maiden name;

1-55 (C) unique biometric data, including the
1-56 individual's fingerprint, voice print, and retina or iris image;

1-57 (D) unique electronic identification number,
1-58 address, or routing code; and

1-59 (E) telecommunication identifying information or
1-60 access device.

1-61 (3) "Personal representative" means an executor or
1-62 administrator of a decedent's estate or a person's legal guardian.

1-63 (4) "Required identifying information" means a copy

of:

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

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

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

Sec. 48.003. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purposes, which are:

(1) to prevent and protect against the unlawful acquisition, possession, transfer, or use of personal identifying information and to provide for enforcement sanctions against persons who unlawfully obtain, possess, transfer, or use that information; and

(2) to provide victims of identity theft with efficient and economical procedures to recover economic losses sustained as a result of the identity theft and restore their good names.

[Sections 48.004-48.100 reserved for expansion]

SUBCHAPTER B. IDENTITY THEFT

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

(b) A person who obtains, possesses, transfers, or uses the personal identifying information of six or more persons without the other persons' consent is presumed to have had the intent to obtain a good, service, insurance, an extension of credit, or any other thing of value in the other persons' names.

Sec. 48.102. SALE OF PERSONAL IDENTIFYING INFORMATION. A person may not sell or otherwise provide to another person in exchange for consideration the personal identifying information of a resident of this state without the resident's consent and with intent to harm or defraud the resident.

Sec. 48.103. BUSINESS DUTY TO PROTECT AND SAFEGUARD PERSONAL IDENTIFYING INFORMATION. (a) A business shall protect and safeguard any personal identifying information collected or maintained by the business in the regular course of business.

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

Sec. 48.104. REFERENCE SERVICES PROVIDER OR MARKETING LIST BROKER--ACCURACY OF INFORMATION. A person in the business of providing reference services or brokering marketing lists shall implement and maintain reasonable procedures in preparing or disseminating information to assure maximum possible accuracy of the information.

Sec. 48.105. DUTY TO PROVIDE INFORMATION TO CONSUMER.

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

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

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

(b) Before a person is required to disclose information

3-1 under Subsection (a) to a peace officer, the person may require the
 3-2 consumer to submit a written statement dated and signed by the
 3-3 consumer. The statement must:

3-4 (1) state that the consumer may revoke authorization
 3-5 of the disclosure at any time before the disclosure is made;

3-6 (2) authorize the disclosure for a certain period of
 3-7 time;

3-8 (3) specify the name of the agency or department to
 3-9 whom the disclosure is authorized; and

3-10 (4) identify the information that is requested to be
 3-11 disclosed.

3-12 (c) A person may not be held liable under this section if the
 3-13 person does not make a disclosure to a peace officer because a
 3-14 consumer fails to provide the authorization requested by the person
 3-15 as permitted by Subsection (b).

3-16 Sec. 48.106. CREDIT CARD ADDRESS CHANGE. A credit card
 3-17 issuer who receives a request for a change of a cardholder's billing
 3-18 address and receives, before the 11th day after the date of the
 3-19 requested address change, a request for an additional credit card
 3-20 on the same account may not mail the requested card to the new
 3-21 address or activate the requested card unless the credit card
 3-22 issuer verifies the change of address.

3-23 Sec. 48.107. BUSINESS RECEIPT CONTAINING DEBIT OR CREDIT
 3-24 CARD INFORMATION. (a) This section does not apply to a
 3-25 transaction in which the sole means of recording a person's debit or
 3-26 credit card account number on a receipt or other document
 3-27 evidencing the transaction is by handwriting or by an imprint or
 3-28 copy of the debit or credit card.

3-29 (b) A person that accepts a debit or credit card for the
 3-30 transaction of business may not use a cash register or other machine
 3-31 to print a receipt or other document that evidences the transaction
 3-32 if the cash register or other machine prints:

3-33 (1) more than the last four digits of the cardholder's
 3-34 credit card account number or debit card account number; or

3-35 (2) the month and year of the expiration date of the
 3-36 cardholder's credit card or debit card.

3-37 (c) A person who violates Subsection (b) is liable to the
 3-38 state for a civil penalty in an amount not to exceed \$500 for each
 3-39 calendar month during which a violation occurs. The civil penalty
 3-40 may not be imposed for more than one violation that occurs in a
 3-41 month.

3-42 (d) The attorney general or the prosecuting attorney in the
 3-43 county in which the violation occurs may bring suit to recover the
 3-44 civil penalty imposed under Subsection (c).

3-45 (e) A person who provides, leases, or sells a cash register
 3-46 or other machine used to print receipts or other documents
 3-47 evidencing credit card or debit card transactions shall give notice
 3-48 of the requirements of this section to the recipient, lessee, or
 3-49 buyer, as applicable, of the cash register or other machine.

3-50 (f) A court may not certify an action brought under this
 3-51 section as a class action.

3-52 Sec. 48.108. IDENTITY THEFT BY ELECTRONIC DEVICE. (a) In
 3-53 this section:

3-54 (1) "Payment card" means a credit card, debit card,
 3-55 check card, or any other card that is issued to an authorized user
 3-56 to purchase or obtain goods, services, money, or any other thing of
 3-57 value.

3-58 (2) "Re-encoder" means an electronic device that can
 3-59 be used to transfer encoded information from a magnetic strip on a
 3-60 payment card onto the magnetic strip of a different payment card.

3-61 (3) "Scanning device" means an electronic device used
 3-62 to access, read, scan, or store information encoded on the magnetic
 3-63 strip of a payment card.

3-64 (b) A person commits an offense if the person uses a
 3-65 scanning device or re-encoder to access, read, scan, store, or
 3-66 transfer information encoded on the magnetic strip of a payment
 3-67 card without the consent of an authorized user of the payment card
 3-68 and with intent to harm or defraud another.

3-69 [Sections 48.109-48.200 reserved for expansion]

SUBCHAPTER C. REMEDIES AND OFFENSES

4-1 Sec. 48.201. CIVIL PENALTY; INJUNCTION. (a) A person who
 4-2 violates this chapter, other than Section 48.107, is liable to the
 4-3 state for a civil penalty of at least \$2,000 but not more than
 4-4 \$50,000 for each violation. The attorney general may bring suit to
 4-5 recover the civil penalty imposed by this subsection.

4-6 (b) If it appears to the attorney general that a person is
 4-7 engaging in, has engaged in, or is about to engage in conduct that
 4-8 violates this chapter, the attorney general may bring an action in
 4-9 the name of this state against the person to restrain the violation
 4-10 by a temporary restraining order or a permanent or temporary
 4-11 injunction.

4-12 (c) An action brought under Subsection (b) shall be filed in
 4-13 a district court in Travis County or:

4-14 (1) in any county in which the violation occurred; or
 4-15 (2) in the county in which the victim resides,
 4-16 regardless of whether the alleged violator has resided, worked, or
 4-17 done business in the county in which the victim resides.

4-18 (d) The plaintiff in an action under this section is not
 4-19 required to give a bond. The court may also grant any other
 4-20 equitable relief that the court considers appropriate to prevent
 4-21 any additional harm to a victim of identity theft or a further
 4-22 violation of this chapter or to satisfy any judgment entered
 4-23 against the defendant, including the issuance of an order to
 4-24 appoint a receiver, sequester assets, correct a public or private
 4-25 record, or prevent the dissipation of a victim's assets.

4-26 (e) The attorney general is entitled to recover reasonable
 4-27 expenses incurred in obtaining injunctive relief, civil penalties,
 4-28 or both, under this section, including reasonable attorney's fees,
 4-29 court costs, and investigatory costs. Amounts collected by the
 4-30 attorney general under this section shall be deposited in the
 4-31 general revenue fund and may be appropriated only for the
 4-32 investigation and prosecution of other cases under this chapter.

4-33 Sec. 48.202. PRIVATE CAUSE OF ACTION. (a) A person
 4-34 injured by a violation of this chapter, other than Section 48.103 or
 4-35 48.104, may bring an action to:

4-36 (1) enjoin the violation; or
 4-37 (2) recover the greater of actual damages or \$5,000
 4-38 for each violation.

4-39 (b) A person who prevails in an action filed under this
 4-40 section is entitled to recover court costs and reasonable
 4-41 attorney's fees.

4-42 (c) Except as provided by Subsection (d), a person must
 4-43 bring an action under this section not later than the fourth
 4-44 anniversary of the date on which the person becomes aware of the
 4-45 violation.

4-46 (d) An heir or personal representative of a person or
 4-47 decendent injured by a violation of this chapter, other than Section
 4-48 48.103 or 48.104, must bring an action under this section not later
 4-49 than the second anniversary of the date on which the personal
 4-50 representative or heir becomes aware of the violation.

4-51 Sec. 48.203. COURT ORDER TO DECLARE INDIVIDUAL AS A VICTIM
 4-52 OF IDENTITY THEFT. (a) A person who is injured by a violation of
 4-53 this chapter, other than Section 48.103 or 48.104, or who has filed
 4-54 a criminal complaint alleging commission of an offense under
 4-55 Section 32.51, Penal Code, may file an application with a district
 4-56 court for the issuance of a court order declaring that the person is
 4-57 a victim of identity theft. A person may file an application under
 4-58 this section regardless of whether the person is able to identify
 4-59 each person who allegedly transferred or used the person's
 4-60 identifying information in an unlawful manner.

4-61 (b) A person is presumed to be a victim of identity theft
 4-62 under this section if:

4-63 (1) the person prevails in an action brought under
 4-64 Section 48.202; or

4-65 (2) the person charged with an offense under Section
 4-66 32.51, Penal Code, is convicted of the offense.

4-67 (c) After notice and hearing, if the court is satisfied by a
 4-68 preponderance of the evidence that the applicant has been injured
 4-69

5-1 by a violation of this chapter, other than Section 48.103 or 48.104,
 5-2 or is the victim of the commission of an offense under Section
 5-3 32.51, Penal Code, the court shall enter an order containing:

5-4 (1) a declaration that the person filing the
 5-5 application is a victim of identity theft resulting from a
 5-6 violation of this chapter, other than Section 48.103 or 48.104, or
 5-7 the commission of an offense under Section 32.51, Penal Code, as
 5-8 appropriate;

5-9 (2) any known information identifying the violator or
 5-10 person charged with the offense;

5-11 (3) the specific personal identifying information and
 5-12 any related document used to commit the alleged violation or
 5-13 offense; and

5-14 (4) information identifying any financial account or
 5-15 transaction affected by the alleged violation or offense,
 5-16 including:

5-17 (A) the name of the financial institution in
 5-18 which the account is established or of the merchant involved in the
 5-19 transaction, as appropriate;

5-20 (B) any relevant account numbers;

5-21 (C) the dollar amount of the account or
 5-22 transaction affected by the alleged violation or offense; and

5-23 (D) the date of the alleged violation or offense.

5-24 (d) An order rendered under this section must be sealed
 5-25 because of the confidential nature of the information required to
 5-26 be included in the order. The order may be opened and the order or a
 5-27 copy of the order may be released only:

5-28 (1) to the proper officials in a civil proceeding
 5-29 brought by or against the victim arising or resulting from a
 5-30 violation of this chapter, including a proceeding to set aside a
 5-31 judgment obtained against the victim;

5-32 (2) to the victim for the purpose of submitting the
 5-33 copy of the order to a governmental entity or private business:

5-34 (A) to prove that a financial transaction or
 5-35 account of the victim was directly affected by a violation of this
 5-36 chapter or the commission of an offense under Section 32.51, Penal
 5-37 Code; or

5-38 (B) to correct any record of the entity or
 5-39 business that contains inaccurate or false information as a result
 5-40 of the violation or offense;

5-41 (3) on order of the judge; or

5-42 (4) as otherwise required or provided by law.

5-43 (e) A court at any time may vacate an order issued under this
 5-44 section if the court finds that the application or any information
 5-45 submitted to the court by the applicant contains a fraudulent
 5-46 misrepresentation or a material misrepresentation of fact.

5-47 (f) A copy of an order provided to a person under Subsection
 5-48 (d)(1) must remain sealed throughout and after the civil
 5-49 proceeding. Information contained in a copy of an order provided to
 5-50 a governmental entity or business under Subsection (d)(2) is
 5-51 confidential and may not be released to another person except as
 5-52 otherwise required or provided by law.

5-53 Sec. 48.204. DECEPTIVE TRADE PRACTICE. A violation of this
 5-54 chapter, other than Section 48.103 or 48.104, is a deceptive trade
 5-55 practice actionable under Subchapter E, Chapter 17.

5-56 Sec. 48.205. CRIMINAL PENALTY. An offense under Section
 5-57 48.108 is a Class B misdemeanor.

5-58 (b) Subsections (a), (b), (e), (f), and (g), Article 18.18,
 5-59 Code of Criminal Procedure, are amended to read as follows:

5-60 (a) Following the final conviction of a person for
 5-61 possession of a gambling device or equipment, altered gambling
 5-62 equipment, or gambling paraphernalia, for an offense involving a
 5-63 criminal instrument, for an offense involving an obscene device or
 5-64 material, or for an offense involving a scanning device or
 5-65 re-encoder, the court entering the judgment of conviction shall
 5-66 order that the machine, device, gambling equipment or gambling
 5-67 paraphernalia, instrument, obscene device or material, or scanning
 5-68 device or re-encoder be destroyed or forfeited to the state. Not
 5-69 later than the 30th day after the final conviction of a person for

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

6-25 (b) If there is no prosecution or conviction following
 6-26 seizure, the magistrate to whom the return was made shall notify in
 6-27 writing the person found in possession of the alleged gambling
 6-28 device or equipment, altered gambling equipment or gambling
 6-29 paraphernalia, gambling proceeds, prohibited weapon, obscene
 6-30 device or material, scanning device or re-encoder, criminal
 6-31 instrument, or dog-fighting equipment to show cause why the
 6-32 property seized should not be destroyed or the proceeds forfeited.
 6-33 The magistrate, on the motion of the law enforcement agency seizing
 6-34 a prohibited weapon, shall order the weapon destroyed or forfeited
 6-35 to the law enforcement agency seizing the weapon, unless a person
 6-36 shows cause as to why the prohibited weapon should not be destroyed
 6-37 or forfeited. A law enforcement agency shall make a motion under
 6-38 this section in a timely manner after the time at which the agency
 6-39 is informed in writing by the attorney representing the state that
 6-40 no prosecution will arise from the seizure.

6-41 (e) Any person interested in the alleged gambling device or
 6-42 equipment, altered gambling equipment or gambling paraphernalia,
 6-43 gambling proceeds, prohibited weapon, obscene device or material,
 6-44 scanning device or re-encoder, criminal instrument, or
 6-45 dog-fighting equipment seized must appear before the magistrate on
 6-46 the 20th day following the date the notice was mailed or posted.
 6-47 Failure to timely appear forfeits any interest the person may have
 6-48 in the property or proceeds seized, and no person after failing to
 6-49 timely appear may contest destruction or forfeiture.

6-50 (f) If a person timely appears to show cause why the
 6-51 property or proceeds should not be destroyed or forfeited, the
 6-52 magistrate shall conduct a hearing on the issue and determine the
 6-53 nature of property or proceeds and the person's interest therein.
 6-54 Unless the person proves by a preponderance of the evidence that the
 6-55 property or proceeds is not gambling equipment, altered gambling
 6-56 equipment, gambling paraphernalia, gambling device, gambling
 6-57 proceeds, prohibited weapon, criminal instrument, scanning device
 6-58 or re-encoder, or dog-fighting equipment and that he is entitled to
 6-59 possession, the magistrate shall dispose of the property or
 6-60 proceeds in accordance with Paragraph (a) of this article.

6-61 (g) For purposes of this article:

6-62 (1) "criminal instrument" has the meaning defined in
 6-63 the Penal Code;

6-64 (2) "gambling device or equipment, altered gambling
 6-65 equipment or gambling paraphernalia" has the meaning defined in the
 6-66 Penal Code;

6-67 (3) "prohibited weapon" has the meaning defined in the
 6-68 Penal Code; and

6-69 (4) "dog-fighting equipment" means:

7-1 (A) equipment used for training or handling a
7-2 fighting dog, including a harness, treadmill, cage, decoy, pen,
7-3 house for keeping a fighting dog, feeding apparatus, or training
7-4 pen;

7-5 (B) equipment used for transporting a fighting
7-6 dog, including any automobile, or other vehicle, and its
7-7 appurtenances which are intended to be used as a vehicle for
7-8 transporting a fighting dog;

7-9 (C) equipment used to promote or advertise an
7-10 exhibition of dog fighting, including a printing press or similar
7-11 equipment, paper, ink, or photography equipment; or

7-12 (D) a dog trained, being trained, or intended to
7-13 be used to fight with another dog.

7-14 (6) "obscene device or material" means a device or
7-15 material introduced into evidence and thereafter found obscene by
7-16 virtue of a final judgment after all appellate remedies have been
7-17 exhausted.

7-18 (7) "re-encoder" has the meaning assigned by Section
7-19 48.108, Business & Commerce Code.

7-20 (8) "scanning device" has the meaning assigned by
7-21 Section 48.108, Business & Commerce Code.

7-22 (c) Subdivision (2), Article 59.01, Code of Criminal
7-23 Procedure, is amended to read as follows:

7-24 (2) "Contraband" means property of any nature,
7-25 including real, personal, tangible, or intangible, that is:

7-26 (A) used in the commission of:

7-27 (i) any first or second degree felony under
7-28 the Penal Code;

7-29 (ii) any felony under Section 15.031(b),
7-30 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
7-31 35, Penal Code; or

7-32 (iii) any felony under The Securities Act
7-33 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

7-34 (B) used or intended to be used in the commission
7-35 of:

7-36 (i) any felony under Chapter 481, Health
7-37 and Safety Code (Texas Controlled Substances Act);

7-38 (ii) any felony under Chapter 483, Health
7-39 and Safety Code;

7-40 (iii) a felony under Chapter 153, Finance
7-41 Code;

7-42 (iv) any felony under Chapter 34, Penal
7-43 Code;

7-44 (v) a Class A misdemeanor under Subchapter
7-45 B, Chapter 365, Health and Safety Code, if the defendant has been
7-46 previously convicted twice of an offense under that subchapter;
7-47 [~~or~~]

7-48 (vi) any felony under Chapter 152, Finance
7-49 Code; or

7-50 (vii) a Class B misdemeanor under Section
7-51 48.108, Business & Commerce Code;

7-52 (C) the proceeds gained from the commission of a
7-53 felony listed in Paragraph (A) or (B) of this subdivision, a
7-54 misdemeanor listed in Paragraph (B)(vii) of this subdivision, or a
7-55 crime of violence; or

7-56 (D) acquired with proceeds gained from the
7-57 commission of a felony listed in Paragraph (A) or (B) of this
7-58 subdivision, a misdemeanor listed in Paragraph (B)(vii) of this
7-59 subdivision, or a crime of violence.

7-60 SECTION 1.03. For purposes of Section 48.107, Business &
7-61 Commerce Code, as added by this article:

7-62 (1) with respect to a cash register or other machine
7-63 that is initially installed and in operation after August 31, 2003,
7-64 Section 48.107, Business & Commerce Code, applies only to a receipt
7-65 or other document evidencing a credit card or debit card
7-66 transaction that is electronically printed by the cash register or
7-67 other machine after August 31, 2004; and

7-68 (2) with respect to a cash register or other machine
7-69 that is in operation before September 1, 2003, Section 48.107,

8-1 Business & Commerce Code, applies only to a receipt or other
 8-2 document evidencing a credit card or debit card transaction that is
 8-3 electronically printed by the cash register or other machine after
 8-4 December 31, 2005.

ARTICLE 2

8-5
 8-6 SECTION 2.01. (a) Chapter 2, Code of Criminal Procedure,
 8-7 is amended by adding Article 2.28 to read as follows:

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

- 8-13 (1) the name of the victim;
 8-14 (2) the name of the suspect, if known;
 8-15 (3) the type of identifying information obtained,
 8-16 possessed, transferred, or used in violation of Section 32.51; and
 8-17 (4) the results of the investigation.

8-18 (b) On the victim's request, the peace officer shall provide
 8-19 the report created under Subsection (a) to the victim. In providing
 8-20 the report, the peace officer shall redact any otherwise
 8-21 confidential information that is included in the report, other than
 8-22 the information described by Subsection (a).

8-23 (b) The change in law made by this section applies only to
 8-24 the investigation of an offense committed on or after September 1,
 8-25 2003. The investigation of an offense committed before September
 8-26 1, 2003, is covered by the law in effect when the offense was
 8-27 committed, and the former law is continued in effect for that
 8-28 purpose. For purposes of this subsection, an offense is committed
 8-29 before September 1, 2003, if any element of the offense occurs
 8-30 before that date.

8-31 SECTION 2.02. (a) Chapter 13, Code of Criminal Procedure,
 8-32 is amended by adding Article 13.28 to read as follows:

8-33 Art. 13.28. FRAUDULENT USE OR POSSESSION OF IDENTIFYING
 8-34 INFORMATION. An offense under Section 32.51, Penal Code, may be
 8-35 prosecuted in:

- 8-36 (1) any county in which the offense was committed; or
 8-37 (2) the county of residence for the person whose
 8-38 identifying information was fraudulently obtained, possessed,
 8-39 transferred, or used.

8-40 (b) The change in law made by this section applies only to
 8-41 the prosecution of an offense commenced by the filing of an
 8-42 indictment or information on or after September 1, 2003. A
 8-43 prosecution commenced before September 1, 2003, is controlled by
 8-44 the law in effect at the time the prosecution was commenced, and the
 8-45 former law is continued in effect for that purpose.

8-46 SECTION 2.03. Subdivision (3), Article 56.01, Code of
 8-47 Criminal Procedure, is amended to read as follows:

- 8-48 (3) "Victim" means a person:
 8-49 (A) who is the victim of sexual assault,
 8-50 kidnapping, ~~or~~ aggravated robbery, or fraudulent use or
 8-51 possession of identifying information; or
 8-52 (B) who has suffered bodily injury or death as a
 8-53 result of the criminal conduct of another.

8-54 SECTION 2.04. Chapter 411, Government Code, is amended by
 8-55 adding Subchapter L to read as follows:

SUBCHAPTER L. IDENTITY THEFT UNIT

8-56 Sec. 411.361. DEFINITIONS. In this subchapter:

- 8-57 (1) "Attorney representing the state" has the meaning
 8-58 assigned by Section 411.261.
 8-59 (2) "Identity theft" means an offense under Section
 8-60 32.51, Penal Code, or any offense that includes the elements of an
 8-61 offense under that section.

8-62 Sec. 411.362. IDENTITY THEFT UNIT. (a) The director shall
 8-63 create an identity theft unit to be operated by the department.

8-64 (b) The director shall employ commissioned peace officers
 8-65 and noncommissioned employees to perform duties required of the
 8-66 unit.

8-67 Sec. 411.363. DUTIES. The identity theft unit shall:

- 8-68 (1) encourage local law enforcement agencies to file a
 8-69

9-1 report with the department immediately on receipt of a complaint
 9-2 alleging identity theft;

9-3 (2) on the request of a local law enforcement agency,
 9-4 assist the agency in the investigation of a complaint alleging
 9-5 identity theft; and

9-6 (3) initiate an investigation on receipt of reports
 9-7 from two or more local law enforcement agencies that appear to
 9-8 involve the same offender.

9-9 Sec. 411.364. RULES. The department may adopt rules as
 9-10 necessary to implement this subchapter.

9-11 SECTION 2.05. (a) Section 1701.253, Occupations Code, is
 9-12 amended by adding Subsection (i) to read as follows:

9-13 (i) As part of the minimum curriculum requirements, the
 9-14 commission shall establish a statewide comprehensive education and
 9-15 training program on identity theft under Section 32.51, Penal Code,
 9-16 for officers licensed under this chapter. An officer shall
 9-17 complete a program established under this subsection not later than
 9-18 the second anniversary of the date the officer is licensed under
 9-19 this chapter or the date the officer applies for an intermediate
 9-20 proficiency certificate, whichever date is earlier.

9-21 (b) Section 1701.402, Occupations Code, is amended by
 9-22 adding Subsection (f) to read as follows:

9-23 (f) As a requirement for an intermediate proficiency
 9-24 certificate, an officer must complete an education and training
 9-25 program on identity theft established by the commission under
 9-26 Section 1701.253(i).

9-27 (c) Not later than January 1, 2004, the Commission on Law
 9-28 Enforcement Officer Standards and Education shall establish the
 9-29 education and training programs on identity theft required under
 9-30 Subsection (i), Section 1701.253, and Subsection (f), Section
 9-31 1701.402, Occupations Code, as added by this Act.

9-32 (d) A person who, on the effective date of this Act, holds an
 9-33 intermediate proficiency certificate issued under Section
 9-34 1701.402, Occupations Code, or has held a peace officer license
 9-35 issued by the Commission on Law Enforcement Officer Standards and
 9-36 Education for more than two years shall complete an educational
 9-37 training program on identity theft established under Subsection
 9-38 (i), Section 1701.253, Occupations Code, as added by this Act, not
 9-39 later than September 1, 2005.

9-40 SECTION 2.06. (a) Subdivision (1), Subsection (a),
 9-41 Section 32.51, Penal Code, is amended to read as follows:

9-42 (1) "Identifying information" means information that
 9-43 alone or in conjunction with other information identifies an
 9-44 individual, living or dead, including an individual's:

9-45 (A) name, social security number, date of birth,
 9-46 and government-issued identification number;

9-47 (B) unique biometric data, including the
 9-48 individual's fingerprint, voice print, and retina or iris image;

9-49 (C) unique electronic identification number,
 9-50 address, and routing code; and

9-51 (D) telecommunication identifying information or
 9-52 access device.

9-53 (b) Section 32.51, Penal Code, is amended by amending
 9-54 Subsection (d) and adding Subsections (f) and (g) to read as
 9-55 follows:

9-56 (d) If a court orders a defendant convicted of an offense
 9-57 under this section to make restitution to the victim of the offense,
 9-58 the court may order the defendant to reimburse the victim for lost
 9-59 income or other expenses, including ~~other than~~ attorney's fees,
 9-60 incurred as a result of the offense.

9-61 (f) For the purposes of this section, intent to harm or
 9-62 defraud another is presumed if the actor obtains, possesses,
 9-63 transfers, or uses the identifying information of three or more
 9-64 individuals, living or dead, without the consent of those
 9-65 individuals.

9-66 (g) It is an exception to the application of this section
 9-67 that the actor obtained, possessed, transferred, or used another
 9-68 person's identifying information for the sole purpose of
 9-69 misrepresenting the actor's age.

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

ARTICLE 3

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

CHAPTER 561. PROTECTION OF PERSONAL INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 561.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

[Sections 561.004-561.050 reserved for expansion]

SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

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

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

(1) social security number;

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

(3) driver's license number; or

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

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

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

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

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

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

11-1 request the attorney general to authorize the disclosure.

11-2 (e) The attorney general may adopt rules to implement this
 11-3 section, including rules that describe appropriate and clearly
 11-4 defined circumstances under which a category of information
 11-5 described by Subsection (a) is presumed to satisfy a requirement of
 11-6 Subsection (b) and therefore may be disclosed without the necessity
 11-7 of obtaining specific authorization for the disclosure from the
 11-8 attorney general. A rule of the attorney general that describes
 11-9 circumstances under which information presumptively may be
 11-10 disclosed may limit disclosure to specific state, local, or federal
 11-11 authorities or may allow the information to be generally disclosed
 11-12 under Chapter 552, as appropriate.

11-13 (f) The attorney general shall develop procedures under
 11-14 which the office of the attorney general will expedite a decision
 11-15 whether to authorize disclosure of information described by
 11-16 Subsection (a) when expedited consideration is warranted under the
 11-17 circumstances.

11-18 (g) A decision of the attorney general under this section
 11-19 may be challenged in court in the same manner that a decision of the
 11-20 attorney general may be challenged under Subchapter G, Chapter 552.

11-21 (h) If information described by Subsection (a) is requested
 11-22 under Chapter 552, Section 552.325 applies in relation to the
 11-23 individual who is the subject of the information in the same manner
 11-24 as if the individual were a requestor of the information, except
 11-25 that the attorney general shall notify the individual under Section
 11-26 552.325(c) if the attorney general proposes to agree to the release
 11-27 of all or part of the information.

11-28 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state
 11-29 or local governmental entity shall establish procedures to ensure
 11-30 that the governmental entity collects personal information only to
 11-31 the extent reasonably necessary to:

- 11-32 (1) implement a program;
 11-33 (2) authenticate an individual's identity when
 11-34 necessary;
 11-35 (3) ensure security; or
 11-36 (4) accomplish another legitimate governmental
 11-37 purpose.

11-38 Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In
 11-39 adopting or amending its records retention schedule, a state or
 11-40 local governmental entity shall schedule the retention of personal
 11-41 information only for the period necessary to accomplish the purpose
 11-42 for which the information was collected or, if applicable, for the
 11-43 minimum period specifically prescribed by statute.

11-44 (b) Subsection (a) does not apply to the retention of
 11-45 personal information that has demonstrable historical or archival
 11-46 value.

11-47 Sec. 561.054. GENERAL PRIVACY POLICIES. (a) A state or
 11-48 local governmental entity shall develop a privacy policy that
 11-49 completely describes in plainly written language:

- 11-50 (1) the reasons that the governmental entity requires
 11-51 or collects each category of personal information about individuals
 11-52 that the entity requires or collects;
 11-53 (2) the procedures used to require or collect the
 11-54 information;
 11-55 (3) the persons to whom the information may be
 11-56 disclosed;
 11-57 (4) the manner in which the information may be
 11-58 disclosed; and
 11-59 (5) any current arrangement under which the
 11-60 governmental entity sells personal information about individuals
 11-61 or discloses the information under a contract or agreement or in
 11-62 bulk.

11-63 (b) The state or local governmental entity shall promptly
 11-64 amend the privacy policy whenever information in the policy becomes
 11-65 incorrect or incomplete.

11-66 (c) The state or local governmental entity shall
 11-67 prominently post its current privacy policy:

- 11-68 (1) through a prominent link on the main Internet site
 11-69 maintained by or for the governmental entity; and

12-1 (2) next to the sign that the governmental entity
12-2 posts under Section 552.205.

12-3 Sec. 561.055. GOVERNMENT INTERNET SITES: PRIVACY POLICY.

12-4 (a) The Department of Information Resources shall adopt rules
12-5 prescribing minimum privacy standards with which an Internet site
12-6 or portal maintained by or for a state or local governmental entity
12-7 must comply. The rules must be designed to limit the collection of
12-8 personal information about users of the government Internet site or
12-9 portal to information:

12-10 (1) that the state or local governmental entity needs
12-11 to accomplish a legitimate government purpose;

12-12 (2) that a user of the site or portal knowingly and
12-13 intentionally transmits to the state or local governmental entity;
12-14 or

12-15 (3) regarding the collection of which a user of the
12-16 site or portal has actively given informed consent.

12-17 (b) In adopting rules under this section, the Department of
12-18 Information Resources shall consider policies adopted by other
12-19 states and the federal government in this regard.

12-20 (c) A state or local governmental entity that maintains an
12-21 Internet site or portal or for which an Internet site or portal is
12-22 maintained shall adopt a privacy policy regarding information
12-23 collected through the site or portal and provide a prominent link to
12-24 the policy for users of the site or portal. The policy must be
12-25 consistent with the rules adopted by the Department of Information
12-26 Resources under this section and must be included as a prominent
12-27 separate element of the general privacy policy that the entity is
12-28 required to develop and to which it must provide an Internet link
12-29 under Section 561.054.

12-30 Sec. 561.056. STATE AUDITOR. (a) The state auditor shall
12-31 establish auditing guidelines to ensure that state and local
12-32 governmental entities that the state auditor has authority to audit
12-33 under other law:

12-34 (1) do not routinely collect or retain more personal
12-35 information than an entity needs to accomplish a legitimate
12-36 governmental purpose of the entity; and

12-37 (2) have established an information management system
12-38 that protects the privacy and security of information in accordance
12-39 with applicable state and federal law.

12-40 (b) During an appropriate type of audit, the state auditor
12-41 may audit a state or local governmental entity for compliance with
12-42 the guidelines established under Subsection (a).

12-43 [Sections 561.057-561.100 reserved for expansion]

12-44 SUBCHAPTER C. GUIDELINES

12-45 Sec. 561.101. ATTORNEY GENERAL GUIDELINES FOR REVIEWING
12-46 PRIVACY AND SECURITY ISSUES. (a) The attorney general shall
12-47 establish guidelines for state and local governmental entities to
12-48 follow when considering privacy and security issues that arise in
12-49 connection with requests for public information. The guidelines
12-50 shall address procedural safeguards, legal issues, and other issues
12-51 that in the opinion of the attorney general would help state and
12-52 local governmental entities comply with applicable law and
12-53 recommended information practices when handling personal
12-54 information or information related to security. The guidelines
12-55 shall balance the need for open government with respect for
12-56 personal privacy and with the security needs of this state.

12-57 (b) The attorney general shall establish guidelines for
12-58 sharing information for security purposes among state, local, and
12-59 federal governmental entities and with the private sector. The
12-60 guidelines must ensure the protection of personal privacy to the
12-61 extent feasible and must clarify and explain the legal consequences
12-62 of sharing the information.

12-63 (c) The guidelines do not create exceptions from required
12-64 disclosure under Chapter 552.

12-65 Sec. 561.102. OPEN RECORDS STEERING COMMITTEE; RECORDS
12-66 MANAGEMENT INTERAGENCY COORDINATING COUNCIL. (a) The open
12-67 records steering committee established under Section 552.009 shall
12-68 periodically study and determine the implications for the personal
12-69 privacy of individuals and for the security of this state of putting

13-1 information held by government on the Internet and shall include
13-2 its findings and recommendations in reports the committee makes
13-3 under Section 552.009.

13-4 (b) The Records Management Interagency Coordinating Council
13-5 established under Section 441.203 shall provide guidance and policy
13-6 direction to state and local governmental entities in appropriately
13-7 incorporating developments in electronic management of information
13-8 into their information management systems in ways that protect
13-9 personal privacy and the security of this state and promote
13-10 appropriate public access to information that is not excepted from
13-11 required public disclosure.

13-12 SECTION 3.02. Each state and local governmental entity
13-13 shall examine its records retention schedule and amend the schedule
13-14 so that it complies with Section 561.053, Government Code, as added
13-15 by this Act.

13-16 ARTICLE 4

13-17 SECTION 4.01. (a) Section 521.126, Transportation Code,
13-18 is amended to read as follows:

13-19 Sec. 521.126. ELECTRONICALLY READABLE INFORMATION.

13-20 (a) The department may not include any information on a driver's
13-21 license, commercial driver's license, or personal identification
13-22 certificate in an electronically readable form other than the
13-23 information printed on the license and a physical description of
13-24 the licensee.

13-25 (b) Except as provided by Subsection (e), a person commits
13-26 an offense if the person knowingly:

13-27 (1) accesses or uses electronically readable
13-28 information from a driver's license, commercial driver's license,
13-29 or personal identification certificate; or

13-30 (2) compiles or maintains a database of electronically
13-31 readable information from driver's licenses, commercial driver's
13-32 licenses, or personal identification certificates. [The

13-33 department shall take necessary steps to ensure that the
13-34 information is used only for law enforcement or governmental
13-35 purposes.]

13-36 (c) An offense under Subsection (b)(1) [Unauthorized use of
13-37 the information] is a Class A misdemeanor.

13-38 (d) An offense under Subsection (b)(2) is a state jail
13-39 felony.

13-40 (e) The prohibition provided by Subsection (b) does not
13-41 apply to:

13-42 (1) an officer or employee of the department who
13-43 accesses or uses the information for official purposes;

13-44 (2) a peace officer, as defined by Article 2.12, Code
13-45 of Criminal Procedure, acting in the officer's official capacity;

13-46 (3) a license deputy, as defined by Section 12.702,
13-47 Parks and Wildlife Code, issuing a license, stamp, tag, permit, or
13-48 other similar item through use of a point-of-sale system under
13-49 Section 12.703, Parks and Wildlife Code; or

13-50 (4) a financial institution, as defined by 31 U.S.C.
13-51 Section 5312(a)(2), as amended.

13-52 (b) The change in law made by this section applies only to an
13-53 offense committed on or after the effective date of this Act. For
13-54 the purposes of this section, an offense is committed before the
13-55 effective date of this Act if any element of the offense occurs
13-56 before that date. An offense committed before the effective date of
13-57 this Act is governed by the law in effect when the offense was
13-58 committed, and the former law is continued in effect for that
13-59 purpose.

13-60 ARTICLE 5

13-61 SECTION 5.01. This Act takes effect September 1, 2003.

13-62 * * * * *