

By: Ellis, et al.

S.B. No. 473

A BILL TO BE ENTITLED

1 AN ACT

2 relating to assisting consumers to prevent and detect identity  
3 theft; providing penalties.

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

5 SECTION 1. Section 20.01, Business & Commerce Code, is  
6 amended by adding Subdivisions (7) and (8) to read as follows:

7 (7) "Security alert" means a notice placed on a  
8 consumer file that alerts a recipient of a consumer report  
9 involving that consumer file that the consumer's identity may have  
10 been used without the consumer's consent to fraudulently obtain  
11 goods or services in the consumer's name.

12 (8) "Security freeze" means a notice placed on a  
13 consumer file that prohibits a consumer reporting agency from  
14 releasing a consumer report involving that consumer file without  
15 the express authorization of the consumer.

16 SECTION 2. Section 20.03, Business & Commerce Code, is  
17 amended by adding Subsection (d) to read as follows:

18 (d) Any written disclosure to a consumer by a consumer  
19 reporting agency under this chapter must include a written  
20 statement that explains in clear and simple language the consumer's  
21 rights under this chapter and includes:

22 (1) the process for receiving a consumer report or  
23 consumer file;

24 (2) the process for requesting or removing a security

1 alert or freeze;

2 (3) the toll-free telephone number for requesting a  
3 security alert;

4 (4) applicable fees;

5 (5) dispute procedures;

6 (6) the process for correcting a consumer file or  
7 report; and

8 (7) information on a consumer's right to bring an  
9 action in court or arbitrate a dispute.

10 SECTION 3. Chapter 20, Business & Commerce Code, is amended  
11 by adding Sections 20.031 through 20.038 to read as follows:

12 Sec. 20.031. REQUESTING SECURITY ALERT. On a request in  
13 writing or by telephone and with proper identification provided by  
14 a consumer, a consumer reporting agency shall place a security  
15 alert on the consumer's consumer file not later than 24 hours after  
16 the date the agency receives the request. The security alert must  
17 remain in effect for not less than 90 days after the date the agency  
18 places the security alert on the file. There is no limit on the  
19 number of security alerts a consumer may request. At the end of a  
20 90-day security alert, on request in writing or by telephone and  
21 with proper identification provided by the consumer, the agency  
22 shall provide the consumer with a copy of the consumer's file. A  
23 consumer may include with the security alert request a telephone  
24 number to be used by persons to verify the consumer's identity  
25 before entering into a transaction with the consumer.

26 Sec. 20.032. NOTIFICATION OF SECURITY ALERT. A consumer  
27 reporting agency shall notify a person who requests a consumer

1 report if a security alert is in effect for the consumer file  
2 involved in that report and include a verification telephone number  
3 for the consumer if the consumer has provided a number under Section  
4 20.031.

5 Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. A  
6 consumer reporting agency shall maintain a toll-free telephone  
7 number that is answered at all times to accept security alert  
8 requests from consumers.

9 Sec. 20.034. REQUESTING SECURITY FREEZE. (a) On written  
10 request sent by certified mail that includes proper identification  
11 provided by a consumer, a consumer reporting agency shall place a  
12 security freeze on a consumer's consumer file not later than the  
13 fifth business day after the date the agency receives the request.

14 (b) On written request for a security freeze provided by a  
15 consumer under Subsection (a), a consumer reporting agency shall  
16 disclose to the consumer the process of placing, removing, and  
17 temporarily lifting a security freeze and the process for allowing  
18 access to information from the consumer's consumer file for a  
19 specific requester or period while the security freeze is in  
20 effect.

21 (c) A consumer reporting agency shall, not later than the  
22 10th business day after the date the agency receives the request for  
23 a security freeze:

24 (1) send a written confirmation of the security freeze  
25 to the consumer; and

26 (2) provide the consumer with a unique personal  
27 identification number or password to be used by the consumer to

1 authorize a removal or temporary lifting of the security freeze  
2 under Section 20.037.

3 Sec. 20.035. NOTIFICATION OF CHANGE. If a security freeze  
4 is in place, a consumer reporting agency shall notify the consumer  
5 in writing of a change in the consumer file to the consumer's name,  
6 date of birth, social security number, or address not later than 30  
7 calendar days after the date the change is made. The agency shall  
8 send notification of a change of address to the new address and  
9 former address. This section does not require notice of an  
10 immaterial change, including a street abbreviation change or  
11 correction of a transposition of letters or misspelling of a word.

12 Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. A consumer  
13 reporting agency shall notify a person who requests a consumer  
14 report if a security freeze is in effect for the consumer file  
15 involved in that report.

16 Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY  
17 FREEZE. (a) On a request in writing or by telephone and with  
18 proper identification provided by a consumer, including the  
19 consumer's personal identification number or password provided  
20 under Section 20.034, a consumer reporting agency shall remove a  
21 security freeze not later than the third business day after the date  
22 the agency receives the request.

23 (b) On a request in writing or by telephone and with proper  
24 identification provided by a consumer, including the consumer's  
25 personal identification number or password provided under Section  
26 20.034, a consumer reporting agency, not later than the third  
27 business day after the date the agency receives the request, shall

1 temporarily lift the security freeze for:

2 (1) a certain properly designated period; or

3 (2) a certain properly identified requester.

4 (c) A consumer reporting agency may develop procedures  
5 involving the use of a telephone, a facsimile machine, the  
6 Internet, or another electronic medium to receive and process a  
7 request from a consumer under this section.

8 (d) A consumer reporting agency shall remove a security  
9 freeze placed on a consumer file if the security freeze was placed  
10 due to a material misrepresentation of fact by the consumer. The  
11 consumer reporting agency shall notify the consumer in writing  
12 before removing the security freeze under this subsection.

13 Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. A security  
14 freeze does not apply to a consumer report provided to:

15 (1) a state or local governmental entity, including a  
16 law enforcement agency or court or private collection agency, if  
17 the entity, agency, or court is acting under a court order, warrant,  
18 subpoena, or administrative subpoena;

19 (2) a child support agency as defined by Section  
20 101.004, Family Code, acting to investigate or collect child  
21 support payments or acting under Title IV-D of the Social Security  
22 Act (42 U.S.C. Section 651 et seq.);

23 (3) the Health and Human Services Commission acting  
24 under Section 531.102, Government Code;

25 (4) the comptroller acting to investigate or collect  
26 delinquent sales or franchise taxes;

27 (5) a tax assessor-collector acting to investigate or

1 collect delinquent ad valorem taxes;

2 (6) a person for the purposes of prescreening as  
3 provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et  
4 seq.);

5 (7) a person with whom the consumer has an account or  
6 contract or to whom the consumer has issued a negotiable  
7 instrument, or the person's subsidiary, affiliate, agent,  
8 assignee, or prospective assignee, for purposes related to that  
9 account, contract, or instrument;

10 (8) a subsidiary, affiliate, agent, assignee, or  
11 prospective assignee of a person to whom access has been granted  
12 under Section 20.037(b);

13 (9) a person who administers a credit file monitoring  
14 subscription service to which the consumer has subscribed; or

15 (10) a person for the purpose of providing a consumer  
16 with a copy of the consumer's report on the consumer's request.

17 SECTION 4. Section 20.04, Business & Commerce Code, is  
18 amended to read as follows:

19 Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES OR SERVICES.

20 (a) Except as provided by Subsection (b), a consumer reporting  
21 agency may impose a reasonable charge on a consumer for the  
22 disclosure of information pertaining to the consumer or for placing  
23 a security freeze on a consumer file. The amount of the charge may  
24 not exceed \$8. On January 1 of each year, a consumer reporting  
25 agency may increase the charge for disclosure to a consumer or for  
26 placing a security freeze. The increase, if any, must be based  
27 proportionally on changes to the Consumer Price Index for All Urban

1 Consumers as determined by the United States Department of Labor  
2 with fractional changes rounded to the nearest 50 cents.

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

4 (1) a request by a consumer for a copy of the  
5 consumer's file:

6 (A) made not later than the 60th day after the  
7 date on which adverse action is taken against the consumer; or

8 (B) made on the expiration of a 90-day security  
9 alert;

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

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

17 (4) a toll-free telephone number that consumers may  
18 call to obtain additional assistance concerning the consumer report  
19 or to request a security alert;

20 (5) a request for a security freeze made by a consumer  
21 who has submitted to the consumer reporting agency a copy of a valid  
22 police report, investigative report, or complaint made under  
23 Section 32.51, Penal Code; or

24 (6) a request for a security alert made by a consumer.

25 SECTION 5. Chapter 20, Business & Commerce Code, is amended  
26 by adding Sections 20.11 and 20.12 to read as follows:

27 Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The

1 attorney general may file a suit against a person for:

2 (1) injunctive relief to prevent or restrain a  
3 violation of this chapter; or

4 (2) a civil penalty in an amount not to exceed \$2,000  
5 for each violation of this chapter.

6 (b) If the attorney general brings an action against a  
7 person under Subsection (a) and an injunction is granted against  
8 the person or the person is found liable for a civil penalty, the  
9 attorney general may recover reasonable expenses, court costs,  
10 investigative costs, and attorney's fees.

11 (c) Each day a violation continues or occurs is a separate  
12 violation for purposes of imposing a penalty under this section.

13 Sec. 20.12. DECEPTIVE TRADE PRACTICE. A violation of this  
14 chapter is a false, misleading, or deceptive act or practice under  
15 Subchapter E, Chapter 17.

16 SECTION 6. Subchapter D, Chapter 35, Business & Commerce  
17 Code, is amended by adding Section 35.58 to read as follows:

18 Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER.

19 (a) A person, other than government or a governmental subdivision  
20 or agency, may not:

21 (1) intentionally communicate or otherwise make  
22 available to the public an individual's social security number;

23 (2) display an individual's social security number on  
24 a card or other device required to access a product or service  
25 provided by the person;

26 (3) require an individual to transmit the individual's  
27 social security number over the Internet unless the connection with



1 the Internet is secure or the number is encrypted;

2 (4) require an individual's social security number for  
3 access to an Internet website, unless a password or unique personal  
4 identification number or other authentication device is also  
5 required for access; or

6 (5) print an individual's social security number on  
7 any materials, other than a form or application, that are sent by  
8 mail, unless state or federal law requires that the individual's  
9 social security number be included in the materials.

10 (b) A person that is using an individual's social security  
11 number before January 1, 2004, in a manner prohibited by Subsection  
12 (a) may continue that use if:

13 (1) the use is continuous; and

14 (2) the person provides annual disclosure to the  
15 individual stating that on written request from the individual the  
16 person will cease to use the individual's social security number in  
17 a manner prohibited by Subsection (a).

18 (c) A person, other than government or a governmental  
19 subdivision or agency, may not deny services to an individual  
20 because the individual makes a written request under Subsection  
21 (b).

22 (d) This section does not apply to:

23 (1) the collection, use, or release of a social  
24 security number that is required by state or federal law, including  
25 Chapter 552, Government Code; or

26 (2) the use of a social security number for internal  
27 verification or administrative purposes.

1 SECTION 7. Subchapter D, Chapter 35, Business & Commerce  
2 Code, is amended by adding Section 35.59 to read as follows:

3 Sec. 35.59. VERIFICATION OF CONSUMER IDENTITY. (a) In  
4 this section:

5 (1) "Consumer report" has the meaning assigned by  
6 Section 20.01.

7 (2) "Extension of credit" does not include an increase  
8 in the dollar limit of an existing open-end credit plan as defined  
9 by Regulation Z (12 C.F.R. Section 226.2), as amended, or any change  
10 to, or review of, an existing credit account.

11 (3) "Security alert" has the meaning assigned by  
12 Section 20.01.

13 (b) A person who receives notification of a security alert  
14 under Section 20.032 in connection with a request for a consumer  
15 report for the approval of a credit-based application, including an  
16 application for an extension of credit, a purchase, lease, or  
17 rental agreement for goods, or for an application for a  
18 noncredit-related service, may not lend money, extend credit, or  
19 authorize an application without taking reasonable steps to verify  
20 the consumer's identity.

21 (c) If a consumer has included with a security alert a  
22 specified telephone number to be used for identity verification  
23 purposes, a person who receives that number with a security alert  
24 must take reasonable steps to contact the consumer using that  
25 number before lending money, extending credit, or completing any  
26 purchase, lease, or rental of goods, or approving any  
27 noncredit-related services.

1        (d) If a person uses a consumer report to facilitate the  
2 extension of credit or for any other transaction on behalf of a  
3 subsidiary, affiliate, agent, assignee, or prospective assignee,  
4 that person, rather than the subsidiary, affiliate, agent,  
5 assignee, or prospective assignee, may verify the consumer's  
6 identity.

7        SECTION 8. (a) Except as provided by Subsection (b) of  
8 this section, this Act takes effect September 1, 2003.

9        (b) Section 35.58, Business & Commerce Code, as added by  
10 this Act, takes effect January 1, 2004.