

AN ACT

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

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

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

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

(8) "Security freeze" means a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving that consumer file without the express authorization of the consumer.

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

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

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

1 (2) the process for requesting or removing a security
2 alert or freeze;

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

5 (4) applicable fees;

6 (5) dispute procedures;

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

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

11 SECTION 3. Chapter 20, Business & Commerce Code, is amended
12 by adding Sections 20.031 through 20.039 to read as follows:

13 Sec. 20.031. REQUESTING SECURITY ALERT. On a request in
14 writing or by telephone and with proper identification provided by
15 a consumer, a consumer reporting agency shall place a security
16 alert on the consumer's consumer file not later than 24 hours after
17 the date the agency receives the request. The security alert must
18 remain in effect for not less than 45 days after the date the agency
19 places the security alert on the file. There is no limit on the
20 number of security alerts a consumer may request. At the end of a
21 45-day security alert, on request in writing or by telephone and
22 with proper identification provided by the consumer, the agency
23 shall provide the consumer with a copy of the consumer's file. A
24 consumer may include with the security alert request a telephone
25 number to be used by persons to verify the consumer's identity
26 before entering into a transaction with the consumer.

27 Sec. 20.032. NOTIFICATION OF SECURITY ALERT. A consumer

1 reporting agency shall notify a person who requests a consumer
2 report if a security alert is in effect for the consumer file
3 involved in that report and include a verification telephone number
4 for the consumer if the consumer has provided a number under Section
5 20.031.

6 Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. A
7 consumer reporting agency shall maintain a toll-free telephone
8 number that is answered at a minimum during normal business hours to
9 accept security alert requests from consumers. If calls are not
10 answered after normal business hours, an automated answering system
11 shall record requests and calls shall be returned to the consumer
12 not later than two hours after the time the normal business day
13 begins on the next business day after the date the call was
14 received.

15 Sec. 20.034. REQUESTING SECURITY FREEZE. (a) On written
16 request sent by certified mail that includes proper identification
17 provided by a consumer and a copy of a valid police report,
18 investigative report, or complaint made under Section 32.51, Penal
19 Code, a consumer reporting agency shall place a security freeze on a
20 consumer's consumer file not later than the fifth business day
21 after the date the agency receives the request.

22 (b) On written request for a security freeze provided by a
23 consumer under Subsection (a), a consumer reporting agency shall
24 disclose to the consumer the process of placing, removing, and
25 temporarily lifting a security freeze and the process for allowing
26 access to information from the consumer's consumer file for a
27 specific requester or period while the security freeze is in

1 effect.

2 (c) A consumer reporting agency shall, not later than the
3 10th business day after the date the agency receives the request for
4 a security freeze:

5 (1) send a written confirmation of the security freeze
6 to the consumer; and

7 (2) provide the consumer with a unique personal
8 identification number or password to be used by the consumer to
9 authorize a removal or temporary lifting of the security freeze
10 under Section 20.037.

11 (d) A consumer may request in writing a replacement personal
12 identification number or password. The request must comply with
13 the requirements for requesting a security freeze under Subsection
14 (a). The consumer reporting agency shall not later than the third
15 business day after the date the agency receives the request for a
16 replacement personal identification number or password provide the
17 consumer with a new unique personal identification number or
18 password to be used by the consumer instead of the number or
19 password that was provided under Subsection (c).

20 Sec. 20.035. NOTIFICATION OF CHANGE. If a security freeze
21 is in place, a consumer reporting agency shall notify the consumer
22 in writing of a change in the consumer file to the consumer's name,
23 date of birth, social security number, or address not later than 30
24 calendar days after the date the change is made. The agency shall
25 send notification of a change of address to the new address and
26 former address. This section does not require notice of an
27 immaterial change, including a street abbreviation change or

1 correction of a transposition of letters or misspelling of a word.

2 Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. A consumer
3 reporting agency shall notify a person who requests a consumer
4 report if a security freeze is in effect for the consumer file
5 involved in that report.

6 Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY
7 FREEZE. (a) On a request in writing or by telephone and with
8 proper identification provided by a consumer, including the
9 consumer's personal identification number or password provided
10 under Section 20.034, a consumer reporting agency shall remove a
11 security freeze not later than the third business day after the date
12 the agency receives the request.

13 (b) On a request in writing or by telephone and with proper
14 identification provided by a consumer, including the consumer's
15 personal identification number or password provided under Section
16 20.034, a consumer reporting agency, not later than the third
17 business day after the date the agency receives the request, shall
18 temporarily lift the security freeze for:

19 (1) a certain properly designated period; or

20 (2) a certain properly identified requester.

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

25 (d) A consumer reporting agency shall remove a security
26 freeze placed on a consumer file if the security freeze was placed
27 due to a material misrepresentation of fact by the consumer. The

1 consumer reporting agency shall notify the consumer in writing
2 before removing the security freeze under this subsection.

3 (e) A consumer reporting agency may not charge a fee for a
4 request under Subsection (a) or (b).

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

7 (1) a state or local governmental entity, including a
8 law enforcement agency or court or private collection agency, if
9 the entity, agency, or court is acting under a court order, warrant,
10 subpoena, or administrative subpoena;

11 (2) a child support agency as defined by Section
12 101.004, Family Code, acting to investigate or collect child
13 support payments or acting under Title IV-D of the Social Security
14 Act (42 U.S.C. Section 651 et seq.);

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

17 (4) the comptroller acting to investigate or collect
18 delinquent sales or franchise taxes;

19 (5) a tax assessor-collector acting to investigate or
20 collect delinquent ad valorem taxes;

21 (6) a person for the purposes of prescreening as
22 provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et
23 seq.), as amended;

24 (7) a person with whom the consumer has an account or
25 contract or to whom the consumer has issued a negotiable
26 instrument, or the person's subsidiary, affiliate, agent,
27 assignee, prospective assignee, or private collection agency, for

1 purposes related to that account, contract, or instrument;

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

5 (9) a person who administers a credit file monitoring
6 subscription service to which the consumer has subscribed;

7 (10) a person for the purpose of providing a consumer
8 with a copy of the consumer's report on the consumer's request;

9 (11) a check service or fraud prevention service
10 company that issues consumer reports:

11 (A) to prevent or investigate fraud; or

12 (B) for purposes of approving or processing
13 negotiable instruments, electronic funds transfers, or similar
14 methods of payment;

15 (12) a deposit account information service company
16 that issues consumer reports related to account closures caused by
17 fraud, substantial overdrafts, automated teller machine abuses, or
18 similar negative information regarding a consumer to an inquiring
19 financial institution for use by the financial institution only in
20 reviewing a consumer request for a deposit account with that
21 institution; or

22 (13) a consumer reporting agency that:

23 (A) acts only to resell credit information by
24 assembling and merging information contained in a database of
25 another consumer reporting agency or multiple consumer reporting
26 agencies; and

27 (B) does not maintain a permanent database of

1 credit information from which new consumer reports are produced.

2 Sec. 20.0385. APPLICABILITY OF SECURITY ALERT AND SECURITY
3 FREEZE. The requirement under this chapter to place a security
4 alert or security freeze on a consumer file does not apply to:

5 (1) a check service or fraud prevention service
6 company that issues consumer reports:

7 (A) to prevent or investigate fraud; or

8 (B) for purposes of approving or processing
9 negotiable instruments, electronic funds transfers, or similar
10 methods of payment; or

11 (2) a deposit account information service company that
12 issues consumer reports related to account closures caused by
13 fraud, substantial overdrafts, automated teller machine abuses, or
14 similar negative information regarding a consumer to an inquiring
15 financial institution for use by the financial institution only in
16 reviewing a consumer request for a deposit account with that
17 institution.

18 Sec. 20.039. RESPECT OF SECURITY FREEZE. A consumer
19 reporting agency shall honor a security freeze placed on a consumer
20 file by another consumer reporting agency.

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

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

24 (a) Except as provided by Subsection (b), a consumer reporting
25 agency may impose a reasonable charge on a consumer for the
26 disclosure of information pertaining to the consumer or for placing
27 a security freeze on a consumer file. The amount of the charge may

1 not exceed \$8. On January 1 of each year, a consumer reporting
2 agency may increase the charge for disclosure to a consumer or for
3 placing a security freeze. The increase, if any, must be based
4 proportionally on changes to the Consumer Price Index for All Urban
5 Consumers as determined by the United States Department of Labor
6 with fractional changes rounded to the nearest 50 cents.

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

8 (1) a request by a consumer for a copy of the
9 consumer's file:

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

12 (B) made on the expiration of a 45-day security
13 alert;

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

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

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

24 (5) 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, 20.12, and 20.13 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 Sec. 20.13. VENUE. An action brought under this chapter
17 shall be filed in a district court:

18 (1) in Travis County;

19 (2) in any county in which the violation occurred; or

20 (3) in the county in which the victim resides,
21 regardless of whether the alleged violator has resided, worked, or
22 done business in the county in which the victim resides.

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

25 Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER.

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

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

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

7 (3) require an individual to transmit the individual's
8 social security number over the Internet unless the connection with
9 the Internet is secure or the number is encrypted;

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

14 (5) print an individual's social security number on
15 any materials, except as provided by Subsection (f), that are sent
16 by mail, unless state or federal law requires that the individual's
17 social security number be included in the materials.

18 (b) A person that is using an individual's social security
19 number before January 1, 2005, in a manner prohibited by Subsection
20 (a) may continue that use if:

21 (1) the use is continuous; and

22 (2) the person provides annual disclosure to the
23 individual, beginning January 1, 2006, stating that on written
24 request from the individual the person will cease to use the
25 individual's social security number in a manner prohibited by
26 Subsection (a).

27 (c) A person, other than government or a governmental

1 subdivision or agency, may not deny services to an individual
2 because the individual makes a written request under Subsection
3 (b).

4 (d) If a person receives a written request from an
5 individual directing the person to stop using the individual's
6 social security number in a manner prohibited by Subsection (a),
7 the person shall comply with the request not later than the 30th day
8 after the date the request is received. The person may not impose a
9 fee or charge for complying with the request.

10 (e) This section does not apply to:

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

14 (2) the use of a social security number for internal
15 verification or administrative purposes;

16 (3) documents that are recorded or required to be open
17 to the public under Chapter 552, Government Code;

18 (4) court records; or

19 (5) an institution of higher education if the use of a
20 social security number by the institution is regulated by Chapter
21 51, Education Code, or another provision of the Education Code.

22 (f) Subsection (a)(5) does not apply to an application or
23 form sent by mail, including a document sent:

24 (1) as part of an application or enrollment process;

25 (2) to establish, amend, or terminate an account,
26 contract, or policy; or

27 (3) to confirm the accuracy of a social security

1 number.

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

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

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

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

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

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

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

1 noncredit-related services.

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

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

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

18 SECTION 9. Section 1701.402, Occupations Code, is amended
19 by adding Subsection (f) to read as follows:

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

24 SECTION 10. (a) Except as provided by Subsection (b) of
25 this section, this Act takes effect September 1, 2003.

26 (b) Section 35.58, Business & Commerce Code, as added by
27 this Act, takes effect January 1, 2005.

1 (c) The Office of Consumer Credit Commissioner shall review
2 the impact and efficacy of this Act and shall make a recommendation
3 to the lieutenant governor and the speaker of the house of
4 representatives not later than December 31, 2004, as to whether the
5 provisions of this Act should remain in effect after September 1,
6 2005.

7 (d) Not later than January 1, 2004, the Commission on Law
8 Enforcement Officer Standards and Education shall establish the
9 education and training programs on identity theft required under
10 Subsection (i), Section 1701.253, and Subsection (f), Section
11 1701.402, Occupations Code, as added by this Act.

12 (e) A person who, on September 1, 2003, holds an
13 intermediate proficiency certificate issued under Section
14 1701.402, Occupations Code, or has held a peace officer license
15 issued by the Commission on Law Enforcement Officer Standards and
16 Education for more than two years shall complete an educational
17 training program on identity theft established under Subsection
18 (i), Section 1701.253, Occupations Code, as added by this Act, not
19 later than September 1, 2005.

20 (f) An institution of higher education that is not subject
21 to the exemption prescribed by Subdivision (5), Subsection (e),
22 Section 35.58, Business & Commerce Code, as added by this Act, shall
23 begin acting in compliance with Section 35.58, Business & Commerce
24 Code, as added by this Act, on or before September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 473 passed the Senate on March 26, 2003, by a viva-voce vote; May 29, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 30, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 473 passed the House, with amendments, on May 25, 2003, by a non-record vote; May 30, 2003, House granted request of the Senate for appointment of Conference Committee; June 1, 2003, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor