

By: Ellis, et al.

S.B. No. 473

Substitute the following for S.B. No. 473:

By: Kolkhorst

C.S.S.B. No. 473

A BILL TO BE ENTITLED

AN ACT

1  
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 relating to the extension of credit  
15 involving that consumer file without the express authorization of  
16 the consumer.

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

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

23 (1) the process for receiving a consumer report or  
24 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. 20.039. RESPECT OF SECURITY FREEZE. A consumer  
3 reporting agency shall honor a security freeze placed on a consumer  
4 file by another consumer reporting agency.

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

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

8 (a) Except as provided by Subsection (b), a consumer reporting  
9 agency may impose a reasonable charge on a consumer for the  
10 disclosure of information pertaining to the consumer or for placing  
11 a security freeze on a consumer file. The amount of the charge may  
12 not exceed \$8. On January 1 of each year, a consumer reporting  
13 agency may increase the charge for disclosure to a consumer or for  
14 placing a security freeze. The increase, if any, must be based  
15 proportionally on changes to the Consumer Price Index for All Urban  
16 Consumers as determined by the United States Department of Labor  
17 with fractional changes rounded to the nearest 50 cents.

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

19 (1) a request by a consumer for a copy of the  
20 consumer's file:

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

23 (B) made on the expiration of a 45-day security  
24 alert;

25 (2) notification of the deletion of information that  
26 is found to be inaccurate or can no longer be verified sent to a  
27 person designated by the consumer, as prescribed by Section 611 of

1 the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as  
2 amended;

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

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

8 (5) a request for a security alert made by a consumer.

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

11 Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
12 attorney general may file a suit against a person for:

13 (1) injunctive relief to prevent or restrain a  
14 violation of this chapter; or

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

17 (b) If the attorney general brings an action against a  
18 person under Subsection (a) and an injunction is granted against  
19 the person or the person is found liable for a civil penalty, the  
20 attorney general may recover reasonable expenses, court costs,  
21 investigative costs, and attorney's fees.

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

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

27 SECTION 6. Subchapter D, Chapter 35, Business & Commerce

1 Code, is amended by adding Section 35.58 to read as follows:

2 Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. (a)

3 A person, other than government or a governmental subdivision or  
4 agency, may not:

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

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

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

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

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

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

25 (1) the use is continuous; and

26 (2) the person provides annual disclosure to the  
27 individual stating that on written request from the individual the

1 person will cease to use the individual's social security number in  
2 a manner prohibited by Subsection (a).

3 (c) A person, other than government or a governmental  
4 subdivision or agency, may not deny services to an individual  
5 because the individual makes a written request under Subsection  
6 (b).

7 (d) This section does not apply to:

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

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

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

15 (4) court records.

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

18 Sec. 35.59. VERIFICATION OF CONSUMER IDENTITY. (a) In this  
19 section:

20 (1) "Consumer report" has the meaning assigned by  
21 Section 20.01.

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

26 (3) "Security alert" has the meaning assigned by  
27 Section 20.01.

1       (b) A person who receives notification of a security alert  
2 under Section 20.032 in connection with a request for a consumer  
3 report for the approval of a credit-based application, including an  
4 application for an extension of credit, a purchase, lease, or  
5 rental agreement for goods, or for an application for a  
6 noncredit-related service, may not lend money, extend credit, or  
7 authorize an application without taking reasonable steps to verify  
8 the consumer's identity.

9       (c) If a consumer has included with a security alert a  
10 specified telephone number to be used for identity verification  
11 purposes, a person who receives that number with a security alert  
12 must take reasonable steps to contact the consumer using that  
13 number before lending money, extending credit, or completing any  
14 purchase, lease, or rental of goods, or approving any  
15 noncredit-related services.

16       (d) If a person uses a consumer report to facilitate the  
17 extension of credit or for any other transaction on behalf of a  
18 subsidiary, affiliate, agent, assignee, or prospective assignee,  
19 that person, rather than the subsidiary, affiliate, agent,  
20 assignee, or prospective assignee, may verify the consumer's  
21 identity.

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

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

26       (c) Provisions of this bill continue in effect until  
27 September 1, 2005.