

1-1 By: Ellis, Barrientos S.B. No. 473
1-2 (In the Senate - Filed February 12, 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 6, Nays 0; March 24, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 473 By: Ellis

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

1-10 relating to assisting consumers to prevent and detect identity
1-11 theft; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 20.01, Business & Commerce Code, is
1-14 amended by adding Subdivisions (7) and (8) to read as follows:

1-15 (7) "Security alert" means a notice placed on a
1-16 consumer file that alerts a recipient of a consumer report
1-17 involving that consumer file that the consumer's identity may have
1-18 been used without the consumer's consent to fraudulently obtain
1-19 goods or services in the consumer's name.

1-20 (8) "Security freeze" means a notice placed on a
1-21 consumer file that prohibits a consumer reporting agency from
1-22 releasing a consumer report involving that consumer file without
1-23 the express authorization of the consumer.

1-24 SECTION 2. Section 20.03, Business & Commerce Code, is
1-25 amended by adding Subsection (d) to read as follows:

1-26 (d) Any written disclosure to a consumer by a consumer
1-27 reporting agency under this chapter must include a written
1-28 statement that explains in clear and simple language the consumer's
1-29 rights under this chapter and includes:

1-30 (1) the process for receiving a consumer report or
1-31 consumer file;

1-32 (2) the process for requesting or removing a security
1-33 alert or freeze;

1-34 (3) the toll-free telephone number for requesting a
1-35 security alert;

1-36 (4) applicable fees;

1-37 (5) dispute procedures;

1-38 (6) the process for correcting a consumer file or
1-39 report; and

1-40 (7) information on a consumer's right to bring an
1-41 action in court or arbitrate a dispute.

1-42 SECTION 3. Chapter 20, Business & Commerce Code, is amended
1-43 by adding Sections 20.031 through 20.038 to read as follows:

1-44 Sec. 20.031. REQUESTING SECURITY ALERT. On a request in
1-45 writing or by telephone and with proper identification provided by
1-46 a consumer, a consumer reporting agency shall place a security
1-47 alert on the consumer's consumer file not later than 24 hours after
1-48 the date the agency receives the request. The security alert must
1-49 remain in effect for not less than 90 days after the date the agency
1-50 places the security alert on the file. There is no limit on the
1-51 number of security alerts a consumer may request. At the end of a
1-52 90-day security alert, on request in writing or by telephone and
1-53 with proper identification provided by the consumer, the agency
1-54 shall provide the consumer with a copy of the consumer's file. A
1-55 consumer may include with the security alert request a telephone
1-56 number to be used by persons to verify the consumer's identity
1-57 before entering into a transaction with the consumer.

1-58 Sec. 20.032. NOTIFICATION OF SECURITY ALERT. A consumer
1-59 reporting agency shall notify a person who requests a consumer
1-60 report if a security alert is in effect for the consumer file
1-61 involved in that report and include a verification telephone number
1-62 for the consumer if the consumer has provided a number under Section
1-63 20.031.

2-1 Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. A
 2-2 consumer reporting agency shall maintain a toll-free telephone
 2-3 number that is answered at all times to accept security alert
 2-4 requests from consumers.

2-5 Sec. 20.034. REQUESTING SECURITY FREEZE. (a) On written
 2-6 request sent by certified mail that includes proper identification
 2-7 provided by a consumer, a consumer reporting agency shall place a
 2-8 security freeze on a consumer's consumer file not later than the
 2-9 fifth business day after the date the agency receives the request.

2-10 (b) On written request for a security freeze provided by a
 2-11 consumer under Subsection (a), a consumer reporting agency shall
 2-12 disclose to the consumer the process of placing, removing, and
 2-13 temporarily lifting a security freeze and the process for allowing
 2-14 access to information from the consumer's consumer file for a
 2-15 specific requester or period while the security freeze is in
 2-16 effect.

2-17 (c) A consumer reporting agency shall, not later than the
 2-18 10th business day after the date the agency receives the request for
 2-19 a security freeze:

2-20 (1) send a written confirmation of the security freeze
 2-21 to the consumer; and

2-22 (2) provide the consumer with a unique personal
 2-23 identification number or password to be used by the consumer to
 2-24 authorize a removal or temporary lifting of the security freeze
 2-25 under Section 20.037.

2-26 Sec. 20.035. NOTIFICATION OF CHANGE. If a security freeze
 2-27 is in place, a consumer reporting agency shall notify the consumer
 2-28 in writing of a change in the consumer file to the consumer's name,
 2-29 date of birth, social security number, or address not later than 30
 2-30 calendar days after the date the change is made. The agency shall
 2-31 send notification of a change of address to the new address and
 2-32 former address. This section does not require notice of an
 2-33 immaterial change, including a street abbreviation change or
 2-34 correction of a transposition of letters or misspelling of a word.

2-35 Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. A consumer
 2-36 reporting agency shall notify a person who requests a consumer
 2-37 report if a security freeze is in effect for the consumer file
 2-38 involved in that report.

2-39 Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY
 2-40 FREEZE. (a) On a request in writing or by telephone and with
 2-41 proper identification provided by a consumer, including the
 2-42 consumer's personal identification number or password provided
 2-43 under Section 20.034, a consumer reporting agency shall remove a
 2-44 security freeze not later than the third business day after the date
 2-45 the agency receives the request.

2-46 (b) On a request in writing or by telephone and with proper
 2-47 identification provided by a consumer, including the consumer's
 2-48 personal identification number or password provided under Section
 2-49 20.034, a consumer reporting agency, not later than the third
 2-50 business day after the date the agency receives the request, shall
 2-51 temporarily lift the security freeze for:

2-52 (1) a certain properly designated period; or

2-53 (2) a certain properly identified requester.

2-54 (c) A consumer reporting agency may develop procedures
 2-55 involving the use of a telephone, a facsimile machine, the
 2-56 Internet, or another electronic medium to receive and process a
 2-57 request from a consumer under this section.

2-58 (d) A consumer reporting agency shall remove a security
 2-59 freeze placed on a consumer file if the security freeze was placed
 2-60 due to a material misrepresentation of fact by the consumer. The
 2-61 consumer reporting agency shall notify the consumer in writing
 2-62 before removing the security freeze under this subsection.

2-63 Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. A security
 2-64 freeze does not apply to a consumer report provided to:

2-65 (1) a state or local governmental entity, including a
 2-66 law enforcement agency or court or private collection agency, if
 2-67 the entity, agency, or court is acting under a court order, warrant,
 2-68 subpoena, or administrative subpoena;

2-69 (2) a child support agency as defined by Section

3-1 101.004, Family Code, acting to investigate or collect child
3-2 support payments or acting under Title IV-D of the Social Security
3-3 Act (42 U.S.C. Section 651 et seq.);
3-4 (3) the Health and Human Services Commission acting
3-5 under Section 531.102, Government Code;
3-6 (4) the comptroller acting to investigate or collect
3-7 delinquent sales or franchise taxes;
3-8 (5) a tax assessor-collector acting to investigate or
3-9 collect delinquent ad valorem taxes;
3-10 (6) a person for the purposes of prescreening as
3-11 provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et
3-12 seq.);
3-13 (7) a person with whom the consumer has an account or
3-14 contract or to whom the consumer has issued a negotiable
3-15 instrument, or the person's subsidiary, affiliate, agent,
3-16 assignee, or prospective assignee, for purposes related to that
3-17 account, contract, or instrument;
3-18 (8) a subsidiary, affiliate, agent, assignee, or
3-19 prospective assignee of a person to whom access has been granted
3-20 under Section 20.037(b);
3-21 (9) a person who administers a credit file monitoring
3-22 subscription service to which the consumer has subscribed; or
3-23 (10) a person for the purpose of providing a consumer
3-24 with a copy of the consumer's report on the consumer's request.
3-25 SECTION 4. Section 20.04, Business & Commerce Code, is
3-26 amended to read as follows:
3-27 Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES OR SERVICES.
3-28 (a) Except as provided by Subsection (b), a consumer reporting
3-29 agency may impose a reasonable charge on a consumer for the
3-30 disclosure of information pertaining to the consumer or for placing
3-31 a security freeze on a consumer file. The amount of the charge may
3-32 not exceed \$8. On January 1 of each year, a consumer reporting
3-33 agency may increase the charge for disclosure to a consumer or for
3-34 placing a security freeze. The increase, if any, must be based
3-35 proportionally on changes to the Consumer Price Index for All Urban
3-36 Consumers as determined by the United States Department of Labor
3-37 with fractional changes rounded to the nearest 50 cents.
3-38 (b) A consumer reporting agency may not charge a fee for:
3-39 (1) a request by a consumer for a copy of the
3-40 consumer's file:
3-41 (A) made not later than the 60th day after the
3-42 date on which adverse action is taken against the consumer; or
3-43 (B) made on the expiration of a 90-day security
3-44 alert;
3-45 (2) notification of the deletion of information that
3-46 is found to be inaccurate or can no longer be verified sent to a
3-47 person designated by the consumer, as prescribed by Section 611 of
3-48 the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as
3-49 amended;
3-50 (3) a set of instructions for understanding the
3-51 information presented on the consumer report; ~~or~~
3-52 (4) a toll-free telephone number that consumers may
3-53 call to obtain additional assistance concerning the consumer report
3-54 or to request a security alert;
3-55 (5) a request for a security freeze made by a consumer
3-56 who has submitted to the consumer reporting agency a copy of a valid
3-57 police report, investigative report, or complaint made under
3-58 Section 32.51, Penal Code; or
3-59 (6) a request for a security alert made by a consumer.
3-60 SECTION 5. Chapter 20, Business & Commerce Code, is amended
3-61 by adding Sections 20.11 and 20.12 to read as follows:
3-62 Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
3-63 attorney general may file a suit against a person for:
3-64 (1) injunctive relief to prevent or restrain a
3-65 violation of this chapter; or
3-66 (2) a civil penalty in an amount not to exceed \$2,000
3-67 for each violation of this chapter.
3-68 (b) If the attorney general brings an action against a
3-69 person under Subsection (a) and an injunction is granted against

4-1 the person or the person is found liable for a civil penalty, the
 4-2 attorney general may recover reasonable expenses, court costs,
 4-3 investigative costs, and attorney's fees.

4-4 (c) Each day a violation continues or occurs is a separate
 4-5 violation for purposes of imposing a penalty under this section.

4-6 Sec. 20.12. DECEPTIVE TRADE PRACTICE. A violation of this
 4-7 chapter is a false, misleading, or deceptive act or practice under
 4-8 Subchapter E, Chapter 17.

4-9 SECTION 6. Subchapter D, Chapter 35, Business & Commerce
 4-10 Code, is amended by adding Section 35.58 to read as follows:

4-11 Sec. 35.58. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER.
 4-12 (a) A person, other than government or a governmental subdivision
 4-13 or agency, may not:

4-14 (1) intentionally communicate or otherwise make
 4-15 available to the public an individual's social security number;

4-16 (2) display an individual's social security number on
 4-17 a card or other device required to access a product or service
 4-18 provided by the person;

4-19 (3) require an individual to transmit the individual's
 4-20 social security number over the Internet unless the connection with
 4-21 the Internet is secure or the number is encrypted;

4-22 (4) require an individual's social security number for
 4-23 access to an Internet website, unless a password or unique personal
 4-24 identification number or other authentication device is also
 4-25 required for access; or

4-26 (5) print an individual's social security number on
 4-27 any materials, other than a form or application, that are sent by
 4-28 mail, unless state or federal law requires that the individual's
 4-29 social security number be included in the materials.

4-30 (b) A person that is using an individual's social security
 4-31 number before January 1, 2004, in a manner prohibited by Subsection
 4-32 (a) may continue that use if:

4-33 (1) the use is continuous; and
 4-34 (2) the person provides annual disclosure to the
 4-35 individual stating that on written request from the individual the
 4-36 person will cease to use the individual's social security number in
 4-37 a manner prohibited by Subsection (a).

4-38 (c) A person, other than government or a governmental
 4-39 subdivision or agency, may not deny services to an individual
 4-40 because the individual makes a written request under Subsection
 4-41 (b).

4-42 (d) This section does not apply to:
 4-43 (1) the collection, use, or release of a social
 4-44 security number that is required by state or federal law, including
 4-45 Chapter 552, Government Code; or

4-46 (2) the use of a social security number for internal
 4-47 verification or administrative purposes.

4-48 SECTION 7. Subchapter D, Chapter 35, Business & Commerce
 4-49 Code, is amended by adding Section 35.59 to read as follows:

4-50 Sec. 35.59. VERIFICATION OF CONSUMER IDENTITY. (a) In
 4-51 this section:

4-52 (1) "Consumer report" has the meaning assigned by
 4-53 Section 20.01.

4-54 (2) "Extension of credit" does not include an increase
 4-55 in the dollar limit of an existing open-end credit plan as defined
 4-56 by Regulation Z (12 C.F.R. Section 226.2), as amended, or any change
 4-57 to, or review of, an existing credit account.

4-58 (3) "Security alert" has the meaning assigned by
 4-59 Section 20.01.

4-60 (b) A person who receives notification of a security alert
 4-61 under Section 20.032 in connection with a request for a consumer
 4-62 report for the approval of a credit-based application, including an
 4-63 application for an extension of credit, a purchase, lease, or
 4-64 rental agreement for goods, or for an application for a
 4-65 noncredit-related service, may not lend money, extend credit, or
 4-66 authorize an application without taking reasonable steps to verify
 4-67 the consumer's identity.

4-68 (c) If a consumer has included with a security alert a
 4-69 specified telephone number to be used for identity verification

5-1 purposes, a person who receives that number with a security alert
5-2 must take reasonable steps to contact the consumer using that
5-3 number before lending money, extending credit, or completing any
5-4 purchase, lease, or rental of goods, or approving any
5-5 noncredit-related services.

5-6 (d) If a person uses a consumer report to facilitate the
5-7 extension of credit or for any other transaction on behalf of a
5-8 subsidiary, affiliate, agent, assignee, or prospective assignee,
5-9 that person, rather than the subsidiary, affiliate, agent,
5-10 assignee, or prospective assignee, may verify the consumer's
5-11 identity.

5-12 SECTION 8. (a) Except as provided by Subsection (b) of
5-13 this section, this Act takes effect September 1, 2003.

5-14 (b) Section 35.58, Business & Commerce Code, as added by
5-15 this Act, takes effect January 1, 2004.

5-16 * * * * *