

BILL ANALYSIS

Senate Research Center

S.B. 122
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Criminal Justice
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Identity theft is the fastest growing crime in the country. In 2004, there were 635,173 consumer fraud and identity theft complaints in the United States. Texas has the fourth-highest rate of identity theft and ranks second, behind California, in the total number of identity thefts by state.

Victims spend an average of 600 hours over two to four years and \$1,400 to clear their names. In 2002, the cost to businesses was almost \$50 billion and the cost to consumers was \$5 billion.

As proposed, S.B. 122 prevents identity theft by protecting the consumer's personal information, helps victims recover from the offense, and authorizes the attorney general to bring suit for identity theft.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.29, as follows:

Art. 2.29. REPORT REQUIRED IN CONNECTION WITH FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) Requires a peace officer to whom an alleged violation of Section 32.51 (Fraudulent Use or Possession of Identifying Information), Penal Code, is reported to make a written report. Sets forth the information the report is required to include.

(b) Requires the police officer, on the victim's request, to provide the report to the victim. Requires the peace officer, in providing the report, to redact any otherwise confidential information that is included in the report, except for the information set forth in Subsection (a).

(b) Makes application of the change in law made by this section prospective.

SECTION 2. Amends Title 4, Business & Commerce Code, by adding Chapter 48, as follows:

CHAPTER 48. IDENTITY THEFT AND PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. SHORT TITLE. Provides that this chapter may be cited as the Identity Theft Enforcement and Protection Act.

Sec. 48.002. DEFINITIONS. Defines "peace officer," "personal identifying information," "required identifying information," and "telecommunication access device."

[Reserves Sections 48.003-48.100 for expansion.]

SUBCHAPTER B. IDENTITY THEFT

Sec. 48.101. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION. Prohibits a person from obtaining, possessing, transferring, or using the 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.

Sec. 48.102. BUSINESS DUTY TO PROTECT AND SAFEGUARD PERSONAL IDENTIFYING INFORMATION. (a) Requires a business to protect and safeguard any personal identifying information collected or maintained by the business in the regular course of business.

(b) Requires a business to 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.

(c) Provides that this section does not apply to a financial institution as defined by 15 U.S.C. Section 6809(3).

Sec. 48.103. DUTY TO PROVIDE INFORMATION TO CONSUMER. (a) Requires a person who engages in a business with another person who allegedly used a consumer's personal identifying information, on request and with required identifying information provided by the consumer, to disclose to the consumer or a peace officer certain information and documents relating to the transaction and the identity of the alleged impersonator within a certain time.

(b) Authorizes a person, before the person is required to disclose information under Subsection (a) to a peace officer, to require the consumer to submit a written statement signed and dated by the consumer. Sets forth the information and authorization the statement is required to include.

(c) Prohibits a person from being held liable under this section if the person does not make a disclosure to a peace officer because a consumer fails to provide the requested authorization as permitted by Subsection (b).

[Reserves Sections 48.104-48.200 for expansion.]

SUBCHAPTER C. REMEDIES AND OFFENSES

Sec. 48.201. A CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates this chapter is liable to the state for a civil penalty within certain minimum and maximum limits. Authorizes the attorney general to bring suit to recover the civil penalty.

(b) Authorizes the attorney general, if it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, to bring an action in the name of the state against the person to restrain the violation by a temporary restraining order, or a permanent or temporary injunction.

(c) Requires an action brought under Subsection (b) to be filed in district court and sets forth the counties in which the action may be filed.

(d) Provides that a plaintiff in an action under this section is not required to give a bond. Authorizes the court to grant any other equitable relief that the court considers appropriate to prevent any additional harm to a victim of identity theft or a further violation of this chapter or to satisfy any judgment entered against the defendant.

(e) Entitles the attorney general to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section. Sets forth

in which fund the penalties are required to be deposited, and the circumstances under which the penalties may be appropriated.

Sec. 48.202. COURT ORDER TO DECLARE INDIVIDUAL A VICTIM OF IDENTITY THEFT. (a) Authorizes a person who is injured by a violation of Section 48.101, or who has filed a criminal complaint alleging an offense under Section 32.51, Penal Code, to file an application with a district court for the issuance of a court order declaring that the person is a victim of identity theft. Authorizes a person to file an application under this section regardless of whether the person is able to identify each person who allegedly transferred or used the person's identifying information in an unlawful manner.

(b) Provides that a person is presumed to be a victim of identity theft under this section if the person charged with an offense under Section 32.51, Penal Code, is convicted of the offense.

(c) Requires the court, after notice and hearing, if the court is satisfied by a preponderance of the evidence that the applicant has been injured by a violation of Section 48.101 or is a victim of an offense under Section 32.51, Penal Code, to enter an order containing a declaration that the person filing the application is a victim of identity theft and containing certain other information about the violation or offense.

(d) Requires an order entered under this section to be sealed because of the confidential nature of the information required to be included in the order. Authorizes the order to be released to the proper officials in a civil proceeding brought by or against the victim arising or resulting from a violation of this chapter. Authorizes the order to be released to the victim for the purpose of submitting the copy of the order to a governmental entity or private business to prove that a transaction or account of the victim was directly affected by the violation of this chapter or offense under Section 32.51, Penal Code, or to correct any record of the entity or business that contains inaccurate or false information as a result of the violation or offense. Authorizes the order to be released on order of the judge or as otherwise required or provided by law.

(e) Authorizes a court to vacate an order issued under this section at any time if the court finds that the application or any information submitted to the court by the applicant contains a fraudulent misrepresentation or a material misrepresentation.

(f) Requires a copy of the order provided to the proper officials in a civil proceeding brought by or against the victim arising or resulting from a violation of this chapter to remain sealed throughout and after the civil proceeding. Provides that information contained in a copy of an order provided to a governmental entity or business by the person to prove that a transaction or account of the victim was directly affected by the violation of this chapter or offense under Section 32.51, Penal Code, or to correct any record of the entity or business that contains inaccurate or false information as a result of the violation or offense is confidential and may not be released except as required or provided by law.

Sec. 48.203. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter, other than Section 48.103, is a deceptive trade practice actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17.

Sec. 48.204. AFFIRMATIVE DEFENSE. Provides that good faith reliance on a consumer report by a financial institution is an affirmative defense to an action brought against the financial institution under this chapter.

SECTION 3. Effective date: September 1, 2005.