

By: McCall

H.B. No. 698

A BILL TO BE ENTITLED

AN ACT

relating to the disposal of certain business records that contain personal identifying information; providing a civil penalty.

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

SECTION 1. The heading to Section 35.48, Business & Commerce Code, is amended to read as follows:

Sec. 35.48. RETENTION AND DISPOSAL OF BUSINESS RECORDS.

SECTION 2. Section 35.48(a), Business & Commerce Code, is amended by adding Subdivisions (1-a) and (3) to read as follows:

(1-a) "Personal identifying information" means an individual's first name or initial and last name in combination with any one or more of the following items:

(A) date of birth;

(B) social security number or other government-issued identification number;

(C) mother's maiden name;

(D) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(E) unique electronic identification number, address, or routing code;

(F) telecommunication access device, including debit and credit card information; or

(G) financial institution account number or any other financial information.

1 (3) "Telecommunication access device" has the meaning
2 assigned by Section 32.51, Penal Code.

3 SECTION 3. Section 35.48, Business & Commerce Code, is
4 amended by adding Subsections (d)-(h) to read as follows:

5 (d) When a business disposes of a business record that
6 contains personal identifying information of a customer of the
7 business, the business shall modify, by shredding, erasing, or
8 other means, the personal identifying information to make it
9 unreadable or undecipherable.

10 (e) A business that does not dispose of a business record of
11 a customer in the manner required by Subsection (d) is liable for a
12 civil penalty of up to \$500 for each record. The attorney general
13 may bring an action against the business to:

14 (1) recover the civil penalty;

15 (2) obtain any other remedy, including injunctive
16 relief; and

17 (3) recover costs and reasonable attorney's fees
18 incurred in bringing the action.

19 (f) A business that modifies a record as required by
20 Subsection (d) in good faith is not liable for a civil penalty under
21 Subsection (e) if the record is reconstructed, in whole or in part,
22 through extraordinary means.

23 (g) Subsection (d) does not require a business to modify a
24 record if:

25 (1) the business is required to retain the record
26 under other law; or

27 (2) the record is historically significant and:

1 (A) there is no potential for identify theft or
2 fraud while the record is in the custody of the business; or

3 (B) the record is transferred to a professionally
4 managed historical repository.

5 (h) Subsection (d) does not apply to:

6 (1) a financial institution as defined by 15 U.S.C.
7 Section 6809; or

8 (2) a covered entity as defined by Section 601.001 or
9 602.001, Insurance Code.

10 SECTION 4. This Act applies to the disposal of business
11 records without regard to whether the records were created before,
12 on, or after the effective date of this Act.

13 SECTION 5. This Act takes effect September 1, 2005.