

1 AN ACT

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

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

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

7 Sec. 35.48. RETENTION AND DISPOSAL OF BUSINESS RECORDS.

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

10 (1-a) "Personal identifying information" means an
11 individual's first name or initial and last name in combination
12 with any one or more of the following items:

13 (A) date of birth;

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

16 (C) mother's maiden name;

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

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

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

23 (G) financial institution account number or any
24 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)-(i) 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 is considered to comply with Subsection (d)
11 if the business contracts with a person engaged in the business of
12 disposing of records for the modification of personal identifying
13 information on behalf of the business in accordance with Subsection
14 (d).

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

19 (1) recover the civil penalty;

20 (2) obtain any other remedy, including injunctive
21 relief; and

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

24 (g) A business that modifies a record as required by
25 Subsection (d) in good faith is not liable for a civil penalty under
26 Subsection (f) if the record is reconstructed, in whole or in part,
27 through extraordinary means.

1 (h) Subsection (d) does not require a business to modify a
2 record if:

3 (1) the business is required to retain the record
4 under other law; or

5 (2) the record is historically significant and:

6 (A) there is no potential for identity theft or
7 fraud while the record is in the custody of the business; or

8 (B) the record is transferred to a professionally
9 managed historical repository.

10 (i) Subsection (d) does not apply to:

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

13 (2) a covered entity as defined by Section 601.001 or
14 602.001, Insurance Code.

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 698 was passed by the House on April 22, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 698 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 698 on May 29, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 698

I certify that H.B. No. 698 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 698 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor