

By: McCall

H.B. No. 698

Substitute the following for H.B. No. 698:

By: Vo

C.S.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;

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

1                   (H) telephone number.

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

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

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

11           (e) A business that does not dispose of a business record of  
12 a customer in the manner required by Subsection (d) is liable for a  
13 civil penalty of up to \$1,000 for each record. The attorney general  
14 may bring an action against the business to:

15                   (1) recover the civil penalty;

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

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

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

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

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

1           (2) the record is historically significant and:

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

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

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

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