

1-1 By: McCall (Senate Sponsor - Averitt) H.B. No. 698  
1-2 (In the Senate - Received from the House April 25, 2005;  
1-3 April 26, 2005, read first time and referred to Committee on  
1-4 Business and Commerce; May 21, 2005, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 7,  
1-6 Nays 0; May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 698 By: Averitt

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

1-10 relating to the creation and disposal of certain materials that  
1-11 contain personal identifying information; providing a civil  
1-12 penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Section 35.48, Business &  
1-15 Commerce Code, is amended to read as follows:

1-16 Sec. 35.48. RETENTION AND DISPOSAL OF BUSINESS RECORDS.

1-17 SECTION 2. Section 35.48(a), Business & Commerce Code, is  
1-18 amended by adding Subdivisions (1-a) and (3) to read as follows:

1-19 (1-a) "Personal identifying information" means an  
1-20 individual's first name or initial and last name in combination  
1-21 with any one or more of the following items:

1-22 (A) date of birth;

1-23 (B) social security number or other  
1-24 government-issued identification number;

1-25 (C) mother's maiden name;

1-26 (D) unique biometric data, including the  
1-27 individual's fingerprint, voice print, and retina or iris image;

1-28 (E) unique electronic identification number,  
1-29 address, or routing code;

1-30 (F) telecommunication access device, including  
1-31 debit and credit card information; or

1-32 (G) financial institution account number or any  
1-33 other financial information.

1-34 (3) "Telecommunication access device" has the meaning  
1-35 assigned by Section 32.51, Penal Code.

1-36 SECTION 3. Section 35.48, Business & Commerce Code, is  
1-37 amended by adding Subsections (d)-(i) to read as follows:

1-38 (d) When a business disposes of a business record that  
1-39 contains personal identifying information of a customer of the  
1-40 business, the business shall modify, by shredding, erasing, or  
1-41 other means, the personal identifying information to make it  
1-42 unreadable or undecipherable.

1-43 (e) A business is considered to comply with Subsection (d)  
1-44 if the business contracts with a person engaged in the business of  
1-45 disposing of records for the modification of personal identifying  
1-46 information on behalf of the business in accordance with Subsection  
1-47 (d).

1-48 (f) A business that does not dispose of a business record of  
1-49 a customer in the manner required by Subsection (d) is liable for a  
1-50 civil penalty of up to \$500 for each record. The attorney general  
1-51 may bring an action against the business to:

1-52 (1) recover the civil penalty;

1-53 (2) obtain any other remedy, including injunctive  
1-54 relief; and

1-55 (3) recover costs and reasonable attorney's fees  
1-56 incurred in bringing the action.

1-57 (g) A business that modifies a record as required by  
1-58 Subsection (d) in good faith is not liable for a civil penalty under  
1-59 Subsection (f) if the record is reconstructed, in whole or in part,  
1-60 through extraordinary means.

1-61 (h) Subsection (d) does not require a business to modify a  
1-62 record if:

1-63 (1) the business is required to retain the record

2-1 under other law; or  
2-2 (2) the record is historically significant and:  
2-3 (A) there is no potential for identify theft or  
2-4 fraud while the record is in the custody of the business; or  
2-5 (B) the record is transferred to a professionally  
2-6 managed historical repository.

2-7 (i) Subsection (d) does not apply to:  
2-8 (1) a financial institution as defined by 15 U.S.C.  
2-9 Section 6809; or  
2-10 (2) a covered entity as defined by Section 601.001 or  
2-11 602.001, Insurance Code.

2-12 SECTION 4. Section 35.58(a), Business & Commerce Code, is  
2-13 amended to read as follows:

2-14 (a) A person, other than government or a governmental  
2-15 subdivision or agency, may not:

2-16 (1) intentionally communicate or otherwise make  
2-17 available to the general public an individual's social security  
2-18 number;

2-19 (2) display an individual's social security number on  
2-20 a card or other device required to access a product or service  
2-21 provided by the person;

2-22 (3) require an individual to transmit the individual's  
2-23 social security number over the Internet unless the connection with  
2-24 the Internet is secure or the number is encrypted;

2-25 (4) require an individual's social security number for  
2-26 access to an Internet website, unless a password or unique personal  
2-27 identification number or other authentication device is also  
2-28 required for access; or

2-29 (5) print an individual's social security number on  
2-30 any materials, except as provided by Subsection (f), that are sent  
2-31 by mail to the individual, unless state or federal law requires that  
2-32 the individual's social security number be included in the  
2-33 materials.

2-34 SECTION 5. This Act applies to the disposal of business  
2-35 records without regard to whether the records were created before,  
2-36 on, or after the effective date of this Act.

2-37 SECTION 6. This Act takes effect September 1, 2005.

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