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H.B. No. 1321

A BILL TO BE ENTITLED

AN ACT

relating to the prevention and punishment of identity theft and the rights of certain victims of identity theft; providing penalties.

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

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

Art. 2.29. REPORT REQUIRED IN CONNECTION WITH FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report that includes the following information:

(1) the name of the victim;

(2) the name of the suspect, if known;

(3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and

(4) the results of the investigation.

(b) On the victim's request, the peace officer shall provide the report created under Subsection (a) to the victim. In providing the report, the peace officer shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

(b) The change in law made by this section applies only to the investigation of an offense committed on or after September 1,

1 2005. The investigation of an offense committed before September
2 1, 2005, is covered by the law in effect when the offense was
3 committed, and the former law is continued in effect for that
4 purpose. For purposes of this subsection, an offense is committed
5 before September 1, 2005, if any element of the offense occurs
6 before that date.

7 SECTION 2. Title 4, Business & Commerce Code, is amended by
8 adding Chapter 48 to read as follows:

9 CHAPTER 48. UNAUTHORIZED USE OF PERSONAL IDENTIFYING INFORMATION

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 48.001. SHORT TITLE. This chapter may be cited as the
12 Identity Theft Enforcement and Protection Act.

13 Sec. 48.002. DEFINITIONS. In this chapter:

14 (1) "Peace officer" has the meaning assigned by
15 Section 1.07, Penal Code.

16 (2) "Personal identifying information" means
17 information that alone or in conjunction with other information
18 identifies an individual, including an individual's:

19 (A) name, social security number, date of birth,
20 or government-issued identification number;

21 (B) mother's maiden name;

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

24 (D) unique electronic identification number,
25 address, or routing code; and

26 (E) telecommunication access device.

27 (3) "Telecommunication access device" has the meaning

1 assigned by Section 32.51, Penal Code.

2 (4) "Victim" means a person whose identifying
3 information is used by an unauthorized person.

4 [Sections 48.003-48.100 reserved for expansion]

5 SUBCHAPTER B. IDENTITY THEFT

6 Sec. 48.101. UNAUTHORIZED USE OR POSSESSION OF PERSONAL
7 IDENTIFYING INFORMATION. A person may not obtain, possess,
8 transfer, or use personal identifying information of another person
9 without the other person's consent and with intent to obtain a good,
10 service, insurance, an extension of credit, or any other thing of
11 value in the other person's name.

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

16 (b) A business shall implement and maintain reasonable
17 procedures, including taking any appropriate corrective action, to
18 prevent the unlawful use of any personal identifying information
19 collected or maintained by the business.

20 (c) This section does not apply to a financial institution
21 as defined by 15 U.S.C. Section 6809(3).

22 Sec. 48.103. VICTIM'S RIGHT TO INFORMATION. (a) On request
23 of a victim and presentation of the information specified by
24 Subsection (b), a person that engages in business with another
25 person who allegedly used the victim's personal identifying
26 information without authorization shall provide to the victim or a
27 peace officer without charge:

1 (1) a copy of any application or transaction
2 information related to an alleged violation of Section 32.51, Penal
3 Code; and

4 (2) to the extent available, the personal identifying
5 information that the unauthorized person used to participate in the
6 transaction or complete the application or information related to
7 the use of that information.

8 (b) To be entitled to receive information under Subsection
9 (a), the victim shall provide to the person:

10 (1) a copy of a record created under Section 411.0421,
11 Government Code, or a copy of a police report, investigative
12 report, or complaint, if any, involving the alleged commission of
13 an offense under Section 32.51, Penal Code; and

14 (2) identifying information in the categories of
15 information that the unauthorized person used in the commission of
16 the offense.

17 (c) To enable a victim to comply with Subsection (b)(2), a
18 person, on request of a victim, shall inform the victim of the
19 categories of identifying information used by the unauthorized
20 person.

21 (d) The person shall provide the information as required by
22 this section not later than the 10th business day after the date the
23 person receives the request.

24 Sec. 48.104. ADDITIONAL INFORMATION FOR RELEASE OF
25 INFORMATION TO PEACE OFFICER. Before a person is required to
26 provide information to a peace officer under Section 48.103, the
27 person may require the victim to submit a signed and dated

1 statement:

2 (1) authorizing the disclosure for a stated period;

3 (2) specifying the law enforcement agency to which
4 disclosure is authorized;

5 (3) identifying the types of information authorized to
6 be disclosed; and

7 (4) authorizing the victim to revoke the authorization
8 at any time.

9 [Sections 48.105-48.200 reserved for expansion]

10 SUBCHAPTER C. REMEDIES AND OFFENSES

11 Sec. 48.201. A CIVIL PENALTY; INJUNCTION. (a) A person who
12 violates this chapter is liable to the state for a civil penalty of
13 at least \$2,000 but not more than \$50,000 for each violation. The
14 attorney general may bring suit to recover the civil penalty
15 imposed by this subsection.

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

22 (c) An action brought under Subsection (b) shall be filed in
23 a district court in Travis County or:

24 (1) in any county in which the violation occurred; or

25 (2) in the county in which the victim resides,
26 regardless of whether the alleged violator has resided, worked, or
27 done business in the county in which the victim resides.

1 (d) The plaintiff in an action under this section is not
2 required to give a bond. The court may also grant any other
3 equitable relief that the court considers appropriate to prevent
4 any additional harm to a victim of identity theft or a further
5 violation of this chapter or to satisfy any judgment entered
6 against the defendant, including the issuance of an order to
7 appoint a receiver, sequester assets, correct a public or private
8 record, or prevent the dissipation of a victim's assets.

9 (e) The attorney general is entitled to recover reasonable
10 expenses incurred in obtaining injunctive relief, civil penalties,
11 or both, under this section, including reasonable attorney's fees,
12 court costs, and investigatory costs. Amounts collected by the
13 attorney general under this section shall be deposited in the
14 general revenue fund and may be appropriated only for the
15 investigation and prosecution of other cases under this chapter.

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

26 (b) A person is presumed to be a victim of identity theft
27 under this section if the person charged with an offense under

1 Section 32.51, Penal Code, is convicted of the offense.

2 (c) After notice and hearing, if the court is satisfied by a
3 preponderance of the evidence that the applicant has been injured
4 by a violation of Section 48.101 or is the victim of an offense
5 under Section 32.51, Penal Code, the court shall enter an order
6 containing:

7 (1) a declaration that the person filing the
8 application is a victim of identity theft resulting from a
9 violation of Section 48.101 or an offense under Section 32.51,
10 Penal Code, as appropriate;

11 (2) any known information identifying the violator or
12 person charged with the offense;

13 (3) the specific personal identifying information and
14 any related document used to commit the alleged violation or
15 offense; and

16 (4) information identifying any financial account or
17 transaction affected by the alleged violation or offense,
18 including:

19 (A) the name of the financial institution in
20 which the account is established or of the merchant involved in the
21 transaction, as appropriate;

22 (B) any relevant account numbers;

23 (C) the dollar amount of the account or
24 transaction affected by the alleged violation or offense; and

25 (D) the date of the alleged violation or offense.

26 (d) An order rendered under this section must be sealed
27 because of the confidential nature of the information required to

1 be included in the order. The order may be opened and the order or a
2 copy of the order may be released only:

3 (1) to the proper officials in a civil proceeding
4 brought by or against the victim arising or resulting from a
5 violation of this chapter, including a proceeding to set aside a
6 judgment obtained against the victim;

7 (2) to the victim for the purpose of submitting the
8 copy of the order to a governmental entity or private business to:

9 (A) prove that a financial transaction or account
10 of the victim was directly affected by a violation of this chapter
11 or the commission of an offense under Section 32.51, Penal Code; or

12 (B) correct any record of the entity or business
13 that contains inaccurate or false information as a result of the
14 violation or offense;

15 (3) on order of the judge; or

16 (4) as otherwise required or provided by law.

17 (e) A court at any time may vacate an order issued under this
18 section if the court finds that the application or any information
19 submitted to the court by the applicant contains a fraudulent
20 misrepresentation or a material misrepresentation of fact.

21 (f) A copy of an order provided to a person under Subsection
22 (d)(1) must remain sealed throughout and after the civil
23 proceeding. Information contained in a copy of an order provided to
24 a governmental entity or business under Subsection (d)(2) is
25 confidential and may not be released to another person except as
26 otherwise required or provided by law.

27 Sec. 48.203. DECEPTIVE TRADE PRACTICE. A violation of this

1 chapter, other than Section 48.103, is a deceptive trade practice
2 actionable under Subchapter E, Chapter 17.

3 Sec. 48.204. AFFIRMATIVE DEFENSE. Good faith reliance on a
4 consumer report as defined by Section 20.01 by a financial
5 institution as defined by 31 U.S.C. Section 5312 is an affirmative
6 defense to an action brought against the financial institution
7 under this chapter.

8 SECTION 3. This Act takes effect September 1, 2005.

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 1321 as follows:

(1) On page 3, between lines 19 and 20, insert the following:

(c) A business shall destroy or arrange for the destruction of customer records containing personal identifying information within the business's custody or control that are not to be retained by the business by:

(1) shredding;

(2) erasing; or

(3) otherwise modifying the personal identifying information in the records to make the information unreadable or undecipherable through any means.

(2) On page 3, line 20, strike "(c)" and substitute "(d)".