

By: McCall

H.B. No. 1682

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a breach in the security of a computerized data system
3 that includes another person's identifying information; providing
4 a civil penalty.

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

6 SECTION 1. Title 4, Business & Commerce Code, is amended by
7 adding Chapter 50 to read as follows:

8 CHAPTER 50. DISCLOSURES RELATING TO MAINTENANCE OF ANOTHER
9 PERSON'S IDENTIFYING INFORMATION

10 Sec. 50.001. DEFINITION. In this chapter, "identifying
11 information" has the meaning assigned by Section 32.51, Penal Code.

12 Sec. 50.002. BREACH OF SECURITY OF COMPUTERIZED DATA
13 SYSTEM. (a) For purposes of this chapter, a breach in the security
14 of a person's computerized data system is considered to have
15 occurred when there is unauthorized access to data electronically
16 stored in the system that compromises the security,
17 confidentiality, or integrity of identifying information
18 maintained by the person.

19 (b) Good faith acquisition of identifying information by an
20 employee or agent of the person is not considered to be a breach in
21 the security of the person's system for purposes of this chapter if
22 the identifying information is not used or subject to further
23 unauthorized disclosure.

24 Sec. 50.003. NOTIFICATION OF SECURITY BREACH. (a) A person

1 that owns or licenses computerized data that includes identifying
2 information of a resident of this state must notify the resident of
3 any breach of the security of the person's computerized data system
4 if the resident's unencrypted identifying information was, or is
5 reasonably believed to have been, obtained by an unauthorized
6 person. Notification must be made within a reasonable period after
7 the date the person discovers the security breach, taking into
8 consideration any law enforcement agency requests as provided by
9 Subsection (f) or any measures necessary to determine the scope of
10 the breach or restore the reasonable integrity of the data system.

11 (b) A person maintaining computerized data that includes
12 identifying information that the person does not own shall
13 immediately notify the owner or licensee of the information of any
14 breach of the security of the person's system if identifying
15 information was, or is reasonably believed to have been, obtained
16 by an unauthorized person.

17 (c) Except as provided by Subsection (d) or (e), the person
18 must provide the notification required by this section in writing
19 or by electronic notice, if the electronic notice complies with the
20 requirements regarding electronic records and signatures set forth
21 in 15 U.S.C. Section 7001.

22 (d) A person that provides notice under this section in
23 accordance with notification procedures developed and maintained
24 by the person pursuant to a security policy for the handling of
25 identifying information the person maintains is considered to have
26 complied with the notice requirements of this section if the
27 procedures are not inconsistent with the timing requirements of

1 this section.

2 (e) If the cost of providing written notice under this
3 section to all affected individuals would exceed \$250,000, the
4 number of affected individuals is more than 500,000, or the person
5 does not have sufficient contact information, the person may
6 provide for that notification by:

7 (1) sending an electronic mail message to an
8 individual's electronic mail address;

9 (2) posting a conspicuous statement of the occurrence
10 of the breach on the person's website; or

11 (3) notifying print or electronic media statewide that
12 a breach in the security of the person's computerized data system
13 has occurred.

14 (f) The notification required by this section may be delayed
15 at the request of a law enforcement agency conducting a criminal
16 investigation until the time that the law enforcement agency
17 determines that providing the notice will not impede the criminal
18 investigation.

19 Sec. 50.004. APPLICABILITY. This chapter does not apply to
20 a person who maintains federal, state, or local government records
21 containing identifying information that are made available to the
22 public.

23 Sec. 50.005. CIVIL PENALTY. (a) A person who violates this
24 chapter is liable to the state for a civil penalty in an amount not
25 to exceed \$1 million for each violation.

26 (b) The attorney general or the prosecuting attorney in the
27 county in which a violation occurs may bring suit to recover the

1 civil penalty imposed under Subsection (a).

2 (c) The attorney general or the prosecuting attorney may
3 recover reasonable expenses incurred in obtaining a civil penalty
4 under this section, including court costs and reasonable attorney's
5 fees.

6 Sec. 50.006. REMEDIES CUMULATIVE. The remedies provided by
7 this chapter are cumulative of any other remedy provided by law.

8 SECTION 2. This Act takes effect September 1, 2005.