

By: Isett

H.B. No. 3278

Substitute the following for H.B. No. 3278:

By: Gattis

C.S.H.B. No. 3278

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the management, security, and protection of personal
3 information and governmental records; providing a criminal
4 penalty.

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

6 SECTION 1. Section 35.50, Business & Commerce Code, is
7 amended by amending Subsections (b) and (c) and adding Subsection
8 (e) to read as follows:

9 (b) A person may not capture a biometric identifier of an
10 individual for a commercial purpose [~~unless the person:~~

11 [~~(1) informs the individual before capturing the~~
12 ~~biometric identifier; and~~

13 [~~(2) receives the individual's consent to capture the~~
14 ~~biometric identifier].~~

15 (c) A person may not store [~~who possesses~~] a biometric
16 identifier of an individual[+]

17 [~~(1) may not sell, lease, or otherwise disclose the~~
18 ~~biometric identifier to another person unless:~~

19 [~~(A) the individual consents to the disclosure,~~
20 [~~(B) the disclosure completes a financial~~
21 ~~transaction requested or authorized by the individual,~~

22 [~~(C) the disclosure is required or permitted by a~~
23 ~~federal statute or by a state statute other than Chapter 552,~~
24 ~~Government Code, or~~

1 ~~[(D) the disclosure is made by or to a law~~
2 ~~enforcement agency for a law enforcement purpose; and~~

3 ~~[(2) shall store, transmit, and protect from~~
4 ~~disclosure the biometric identifier using reasonable care and in a~~
5 ~~manner that is the same as or more protective than the manner in~~
6 ~~which the person stores, transmits, and protects the person's other~~
7 ~~confidential information].~~

8 (e) This section does not apply to:

9 (1) the capture or storage of a biometric identifier
10 of an individual arrested for or convicted of a crime, by a law
11 enforcement agency for law enforcement purposes or by the Texas
12 Department of Criminal Justice for criminal justice purposes;

13 (2) a program designed to reduce the administrative
14 costs of or fraud in a state-funded or federally funded program,
15 including a program developed under Section 531.1063, Government
16 Code, or Section 31.0325, Human Resources Code;

17 (3) a state or federal credit union that uses a
18 biometric identifier solely for providing security to the credit
19 union's members; or

20 (4) a program designed to secure high-security areas
21 within an independent organization established under Section
22 39.151, Utilities Code, to ensure the reliability of the regional
23 electrical network.

24 SECTION 2. Title 6, Civil Practice and Remedies Code, is
25 amended by adding Chapter 142 to read as follows:

26 CHAPTER 142. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

27 Sec. 142.001. PROHIBITED USES. (a) In this section,

1 "publicly display" means to intentionally communicate or otherwise
2 make available to the general public.

3 (b) A person, including a governmental body, as defined by
4 Section 552.003, Government Code, may not:

5 (1) publicly display in any manner an individual's
6 social security number;

7 (2) require an individual to transmit a social
8 security number over the Internet, unless the connection is secure
9 or the social security number is encrypted;

10 (3) require an individual to use a social security
11 number to access an Internet website;

12 (4) print an individual's social security number on
13 any card required for the individual to have access to products or
14 services provided by the person, unless required by a state or
15 federal law as it existed on September 1, 2005;

16 (5) print an individual's social security number on
17 any materials that are mailed to the individual, unless a state or
18 federal law as it existed on September 1, 2005, requires the social
19 security number to be printed on the document to be mailed; or

20 (6) require an individual's social security number to
21 allow the individual access to the products or services provided by
22 the person, unless required by a state or federal law as it existed
23 on September 1, 2005.

24 (c) Subsection (b)(5) does not apply to applications or
25 forms sent by mail, including a document sent:

26 (1) as part of an application or enrollment process;

27 (2) to establish, amend, or terminate an account,

1 contract, or policy; or

2 (3) to confirm the accuracy of a social security
3 number.

4 Sec. 142.002. PERMITTED USES. (a) A person may collect,
5 use, or release a social security number for internal verification
6 or administrative purposes.

7 (b) A person who, before January 1, 2007, has used an
8 individual's social security number in a manner prohibited by
9 Section 142.001 may continue using that individual's social
10 security number in the same manner if:

11 (1) the use of the social security number is
12 continuous; and

13 (2) the person provides the individual with an annual
14 disclosure, beginning January 1, 2008, informing the individual of
15 the right to stop the use of the social security number in the
16 manner prohibited by Section 142.001.

17 (c) This chapter does not apply to:

18 (1) a person who collects, uses, or releases a social
19 security number if the person is required to collect, use, or
20 release the social security number by a federal or state law as it
21 existed on September 1, 2005, including Chapter 552, Government
22 Code;

23 (2) an institution of higher education if the use of
24 the social security number by the institution is regulated under
25 the Education Code; or

26 (3) the collection, use, or release of the social
27 security number of an individual who has been convicted of a crime

1 by a law enforcement agency for law enforcement purposes or by the
2 Texas Department of Criminal Justice for criminal justice purposes.

3 Sec. 142.003. DISCONTINUANCE OF USE ON REQUEST. (a) If a
4 person receives a written request from an individual directing the
5 person to stop using the individual's social security number in a
6 manner prohibited by Section 142.001, the person shall comply with
7 the request not later than the 30th day after the date the request
8 is received.

9 (b) The person may not impose a fee or charge for complying
10 with the request.

11 Sec. 142.004. DENIAL OF SERVICES PROHIBITED. A person may
12 not deny products or services to an individual because the
13 individual makes a written request to discontinue use under Section
14 142.003.

15 Sec. 142.005. CONFLICTS WITH LAW. Except as otherwise
16 provided by this chapter or Chapter 561, Government Code, or
17 expressly provided by other law, this chapter controls to the
18 extent of a conflict between this chapter and another state or
19 federal law.

20 SECTION 3. Section 560.002, Government Code, is amended to
21 read as follows:

22 Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A
23 governmental body that possesses a biometric identifier of an
24 individual:

25 (1) may not sell, lease, or otherwise disclose the
26 biometric identifier to another person unless:

27 (A) the individual consents to the disclosure;

1 (B) the disclosure is required or permitted by a
2 federal ~~[statute]~~ or ~~[by a]~~ state statute as it existed on September
3 1, 2005, other than Chapter 552; or

4 (C) the disclosure is made by or to a law
5 enforcement agency for a law enforcement purpose; ~~[and]~~

6 (2) shall store, transmit, and protect from disclosure
7 the biometric identifier using reasonable care and in a manner that
8 is the same as or more protective than the manner in which the
9 governmental body stores, transmits, and protects its other
10 confidential information; and

11 (3) may not store a biometric identifier in a database
12 unless:

13 (A) the individual has been arrested for or
14 convicted of a crime and the individual's information is stored by a
15 law enforcement agency for law enforcement purposes or by the Texas
16 Department of Criminal Justice for criminal justice purposes;

17 (B) the biometric identifier is stored for
18 purposes of a program designed to reduce the administrative costs
19 of or fraud in a state-funded or federally funded program,
20 including a program developed under Section 531.1063 of this code
21 or Section 31.0325, Human Resources Code; or

22 (C) the biometric identifier is stored for
23 purposes of a program designed to secure high-security areas within
24 an independent organization established under Section 39.151,
25 Utilities Code, to ensure the reliability of the regional
26 electrical network.

27 SECTION 4. Subtitle A, Title 5, Government Code, is amended

1 by adding Chapter 561 to read as follows:

2 CHAPTER 561. TEXAS PRIVACY AND SECURITY ACT

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 561.001. SHORT TITLE. This chapter may be cited as the
5 Texas Privacy and Security Act.

6 Sec. 561.002. LEGISLATIVE FINDINGS; GENERAL PRIVACY AND
7 SECURITY PRINCIPLES. (a) The legislature finds that:

8 (1) an increasing number of individuals in this state
9 are concerned that:

10 (A) personal information held by government may
11 be used inappropriately;

12 (B) unauthorized persons may have access to that
13 information; and

14 (C) some of the information may be inaccurate,
15 incomplete, or unnecessary for the effective functioning of
16 government; and

17 (2) in response to the findings stated by Subdivision
18 (1), each state and local governmental entity in this state must be
19 committed to strengthening privacy protections for personal
20 information held by government in a manner consistent with the
21 public's right to complete information about the affairs of
22 government and the official acts of public officials and employees.

23 (b) The legislature also finds that:

24 (1) because inadvertent release, careless storage, or
25 improper disposal of information could result in embarrassment or
26 other harm to individuals, each state and local governmental
27 entity:

1 (A) has an obligation to protect personal
2 information in the manner required by law; and

3 (B) must exercise particular care in protecting
4 records containing sensitive and private personal information
5 about health or financial matters and in protecting personal
6 identifiers, such as a social security number;

7 (2) each state and local governmental entity must
8 strive to balance the need to collect or protect information that
9 relates to the security needs of this state with the need for open
10 government and with the need to protect personal privacy; and

11 (3) each state and local governmental entity should
12 take affirmative steps to make information about government
13 activities fully and easily available to the public unless there is
14 a demonstrated security risk in doing so.

15 (c) It is the policy of this state that:

16 (1) an individual has a right to know how personal
17 information about the individual is handled by government and the
18 extent to which the information may be disclosed or must be kept
19 confidential under law; and

20 (2) state and local governmental entities should share
21 information as necessary to ensure accountability in government
22 programs or the security of this state while protecting personal
23 information from inappropriate dissemination to the extent
24 possible.

25 Sec. 561.003. DEFINITIONS. In this chapter:

26 (1) "Personal information" means information about an
27 individual such as:

1 (A) the individual's home address, home
2 telephone number, social security number, date of birth, physical
3 characteristics, and similar information about the individual;

4 (B) information about an individual's marital
5 status or history, whether the individual has family members, and
6 information about the individual's family members; and

7 (C) personally identifiable information about
8 the individual's health or health history, finances or financial
9 history, and purchases made from government.

10 (2) "Governmental entity" does not include a court
11 other than a commissioners court.

12 (3) "Sell" does not include the charge of a reasonable
13 fee authorized or required by law for a copy of a document.

14 Sec. 561.004. APPLICABILITY; AUTHORIZED PERSONS. (a) This
15 chapter does not apply to information held by or for a court other
16 than a commissioners court or to information regarding an
17 individual who has been convicted of a crime held by a law
18 enforcement agency for law enforcement purposes or by the Texas
19 Department of Criminal Justice for criminal justice purposes.

20 (b) Nothing in this chapter restricts access to information
21 by:

22 (1) a law enforcement officer;

23 (2) a private investigator licensed under Chapter
24 1702, Occupations Code;

25 (3) an officer of the court or an employee under the
26 direct supervision of an officer of the court; and

27 (4) any person accessing the information under an

1 executive or legislative privilege.

2 (c) Nothing in this chapter prohibits a person or a person's
3 authorized representative from requesting and accessing
4 information relating to the person as provided by Section 552.023.

5 (d) Nothing in this chapter restricts access to information
6 by a person accessing the information as necessary to perform a
7 title search or prepare an abstract of title. This subsection
8 expires September 1, 2007.

9 Sec. 561.005. CONSTRUCTION WITH OTHER LAW. (a) This
10 chapter does not affect the ability of a state or local governmental
11 entity to undertake a lawful investigation or to protect persons,
12 property, or the environment in the manner authorized by law.

13 (b) Except as otherwise provided by this chapter or
14 expressly provided by other law, this chapter controls to the
15 extent of a conflict between this chapter and another state or
16 federal law.

17 [Sections 561.006-561.050 reserved for expansion]

18 SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

19 Sec. 561.051. DISCLOSURE OF CERTAIN PERSONAL INFORMATION;
20 COMPELLING INTEREST OR INTENSE PUBLIC CONCERN REQUIREMENT. (a)
21 This section applies only to the disclosure by a governmental
22 entity of information that:

23 (1) reveals an individual's:

24 (A) social security number;

25 (B) bank account number, credit card account
26 number, or other financial account number; or

27 (C) computer password or computer network

1 location or identity; or

2 (2) contains an individual's signature or the seal of
3 office of a notary public.

4 (b) A state or local governmental entity may not disclose
5 information described by Subsection (a) under Chapter 552 or other
6 law unless the attorney general authorizes the disclosure after
7 determining that:

8 (1) there is a compelling governmental interest in
9 disclosing the information that cannot be effectively accomplished
10 without the disclosure; or

11 (2) due to extraordinary circumstances, the
12 information is especially relevant to a matter of intense public
13 concern.

14 (c) The requestor of the information or the state or local
15 governmental entity may request the attorney general to authorize
16 the disclosure of information described by Subsection (a).

17 (d) A state or local governmental entity is not required to
18 request a decision of the attorney general under Subchapter G,
19 Chapter 552, before refusing to disclose a social security number,
20 bank account number, credit card account number, other financial
21 account number, computer password, or computer network location or
22 identity or provide an individual's signature or the seal of office
23 of a notary public in response to a request made under Chapter 552.
24 The state or local governmental entity shall inform the requestor
25 that the requested information is being withheld under this section
26 and that the requestor is entitled to request the attorney general
27 to authorize the disclosure.

1 (e) If information described by Subsection (a) is requested
2 under Chapter 552, Section 552.325 applies in relation to the
3 individual who is the subject of the information in the same manner
4 as if the individual were a requestor of the information, except
5 that the attorney general shall notify the individual under Section
6 552.325(c) if the attorney general proposes to agree to the release
7 of all or part of the information.

8 (f) This section does not apply to information regarding a
9 deceased individual after the seventh anniversary of the
10 individual's death.

11 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state
12 or local governmental entity shall establish procedures to ensure
13 that the governmental entity collects personal information only to
14 the extent reasonably necessary to:

- 15 (1) implement a program;
16 (2) authenticate an individual's identity when
17 necessary;
18 (3) ensure security; or
19 (4) accomplish another legitimate governmental
20 purpose.

21 Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In
22 adopting or amending its records retention schedule, a state or
23 local governmental entity shall schedule the retention of personal
24 information only for the period necessary to accomplish the purpose
25 for which the information was collected or, if applicable, for the
26 minimum period specifically prescribed by statute.

27 (b) Subsection (a) does not apply to the retention of

1 personal information that has demonstrable historical or archival
2 value.

3 Sec. 561.054. GENERAL PRIVACY POLICIES. (a) A state or
4 local governmental entity shall develop a privacy policy that
5 completely describes in plainly written language:

6 (1) the reasons that the governmental entity requires
7 or collects each category of personal information about individuals
8 that the entity requires or collects;

9 (2) the procedures used to require or collect the
10 information;

11 (3) the persons to whom the information may be
12 disclosed;

13 (4) the manner in which the information may be
14 disclosed; and

15 (5) any current arrangement under which the
16 governmental entity sells personal information about individuals
17 or discloses the information under a contract or agreement or in
18 bulk.

19 (b) The state or local governmental entity shall promptly
20 amend the privacy policy whenever information in the policy becomes
21 incorrect or incomplete.

22 (c) The state or local governmental entity shall
23 prominently post its current privacy policy:

24 (1) through a prominent link on the main Internet site
25 maintained by or for the governmental entity; and

26 (2) next to the sign that the governmental entity
27 posts under Section 552.205.

1 Sec. 561.055. GOVERNMENT INTERNET SITES; PRIVACY POLICY.

2 (a) The Department of Information Resources shall adopt rules
3 prescribing minimum privacy standards with which an Internet site
4 or portal maintained by or for a state or local governmental entity
5 must comply. The rules must:

6 (1) be designed to limit the collection of personal
7 information about users of the government Internet site or portal
8 to information:

9 (A) that the state or local governmental entity
10 needs in order to accomplish a legitimate government purpose;

11 (B) that the user of the site or portal knowingly
12 and intentionally transmits to the state or local governmental
13 entity; or

14 (C) regarding the collection of which the user of
15 the site or portal has actively given informed consent;

16 (2) provide that personal information stored online
17 must be unavailable to unauthorized persons in accordance with
18 Subchapter D; and

19 (3) require that the Internet site or portal have
20 security measures to prevent an unauthorized person from
21 downloading personal information in bulk.

22 (b) In adopting its rules under this section, the Department
23 of Information Resources shall consider policies adopted by other
24 states and the federal government in this regard.

25 (c) A state or local governmental entity that maintains an
26 Internet site or portal or for which an Internet site or portal is
27 maintained shall adopt a privacy policy regarding information

1 collected through the site or portal and provide a prominent link to
2 the policy for users of the site or portal. The policy must be
3 consistent with the rules adopted by the Department of Information
4 Resources under this section and must be included as a prominent
5 separate element of the general privacy policy that the entity is
6 required to develop and to which it must provide an Internet link
7 under Section 561.054.

8 Sec. 561.056. STATE AUDITOR. (a) The state auditor shall
9 establish auditing guidelines to ensure that state and local
10 governmental entities that the state auditor has authority to audit
11 under other law:

12 (1) do not routinely collect or retain more personal
13 information than an entity needs to accomplish a legitimate
14 governmental purpose of the entity; and

15 (2) have established an information management system
16 that protects the privacy and security of information in accordance
17 with applicable state and federal law.

18 (b) During an appropriate type of audit, the state auditor
19 may audit a state or local governmental entity for compliance with
20 the guidelines established under Subsection (a).

21 [Sections 561.057-561.100 reserved for expansion]

22 SUBCHAPTER C. GUIDELINES

23 Sec. 561.101. ATTORNEY GENERAL GUIDELINES FOR REVIEWING
24 PRIVACY AND SECURITY ISSUES. (a) The attorney general may
25 establish guidelines for state and local governmental entities to
26 follow when considering privacy and security issues that arise in
27 connection with requests for public information. The guidelines

1 shall address procedural safeguards, legal issues, and other issues
2 that in the opinion of the attorney general would help state and
3 local governmental entities comply with applicable law and
4 recommended information practices when handling personal
5 information or information related to security. The guidelines
6 shall balance the need for open government with respect for
7 personal privacy and with the security needs of this state.

8 (b) The attorney general may establish guidelines for
9 sharing information for security purposes among state, local, and
10 federal governmental entities and with the private sector. The
11 guidelines must ensure the protection of personal privacy to the
12 extent feasible and must clarify and explain the legal consequences
13 of sharing the information.

14 (c) The guidelines do not create exceptions from required
15 disclosure under Chapter 552.

16 Sec. 561.102. OPEN RECORDS STEERING COMMITTEE; RECORDS
17 MANAGEMENT INTERAGENCY COORDINATING COUNCIL. (a) The open records
18 steering committee established under Section 552.009 shall
19 periodically study and determine the implications for the personal
20 privacy of individuals and for the security of this state of putting
21 information held by government on the Internet and shall include
22 its findings and recommendations in reports the committee makes
23 under Section 552.009.

24 (b) The Records Management Interagency Coordinating Council
25 established under Section 441.203 shall provide guidance and policy
26 direction to state and local governmental entities in appropriately
27 incorporating developments in electronic management of information

1 into their information management systems in ways that protect
2 personal privacy and the security of this state and promote
3 appropriate public access to public information that is not
4 excepted from required public disclosure.

5 [Sections 561.103-561.150 reserved for expansion]

6 SUBCHAPTER D. INFORMATION IN ELECTRONIC FORM

7 Sec. 561.151. DEFINITION. In this subchapter, "remote
8 access" means the ability of a person to search, inspect, or copy
9 information in a record through the Internet or other electronic
10 means without being physically present at the location of the
11 original record or a copy of the record.

12 Sec. 561.152. CERTAIN INFORMATION NOT REMOTELY ACCESSIBLE.
13 A state or local governmental entity may not permit remote access by
14 a member of the public to personal information contained in the
15 entity's records.

16 Sec. 561.153. RESTRICTIONS ON REMOTE ACCESS. (a) A
17 governmental entity may by rule impose reasonable conditions for
18 remote access to government records, including requiring the person
19 remotely accessing the record to:

- 20 (1) agree not to attempt unauthorized access;
21 (2) consent to monitoring of the access to the
22 records; and
23 (3) register with the governmental entity.

24 (b) A governmental entity may deny remote access to a person
25 who does not comply with the conditions imposed under this section.

26 Sec. 561.154. DISSEMINATION OF INFORMATION BY ELECTRONIC
27 MEANS. A governmental entity may not download or transfer personal

1 information in bulk by electronic means unless the entity adopts
2 rules to narrowly define the information that may be posted online
3 for an electronic download.

4 Sec. 561.155. CONTRACTS WITH OTHER PERSONS. A governmental
5 entity may not contract with a person for the gathering, storage, or
6 creation in electronic format of the governmental entity's records
7 unless the contract:

8 (1) states that the governmental entity retains all
9 rights to the information contained in the records and the
10 photographs or images of the information; and

11 (2) prohibits the person who gathers, stores, or
12 creates the records from distributing information contained in the
13 records.

14 SECTION 5. Section 118.0216(d), Local Government Code, is
15 amended to read as follows:

16 (d) The fee may be used only to provide funds for specific
17 records management and preservation, including for automation
18 purposes or for conforming with applicable laws regarding
19 confidential information.

20 SECTION 6. Section 32.51(c), Penal Code, is amended to read
21 as follows:

22 (c) An offense under this section is a third degree [state
23 jail] felony.

24 SECTION 7. (a) An institution of higher education that is
25 not exempt from Chapter 142, Civil Practice and Remedies Code, as
26 added by this Act, under Section 142.002(c)(2), Civil Practice and
27 Remedies Code, as added by this Act, must comply with Chapter 142 on

1 or before September 1, 2007.

2 (b) Each state and local governmental entity shall examine
3 its records retention schedule and amend the schedule so that it
4 complies with Section 561.053, Government Code, as added by this
5 Act.

6 SECTION 8. (a) The change in law made by this Act to Section
7 32.51, Penal Code, applies only to an offense committed on or after
8 the effective date of this Act. For purposes of this section, an
9 offense is committed before the effective date of this Act if any
10 element of the offense occurs before the effective date.

11 (b) An offense committed before the effective date of this
12 Act is covered by the law in effect when the offense was committed,
13 and the former law is continued in effect for that purpose.

14 SECTION 9. (a) Except as provided by Subsection (b) of this
15 section, this Act takes effect September 1, 2005.

16 (b) Section 2 of this Act takes effect January 1, 2006.