

By: Isett

H.B. No. 3278

A BILL TO BE ENTITLED

1 AN ACT

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 adding Subsection (b-1) and amending Subsection (c) to  
8 read as follows:

9 (b-1) A business that is not owned by a governmental entity  
10 may not require a biometric identifier of an individual for  
11 membership or to identify the individual.

12 (c) A person who possesses a biometric identifier of an  
13 individual:

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

16 (A) the person is not a business or is owned by a  
17 governmental entity, and:

18 (i) the individual consents to the  
19 disclosure;

20 (ii) [~~(B)~~] the disclosure completes a  
21 financial transaction requested or authorized by the individual;

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

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

3                    (B) the person is a business that is not owned by  
4 a governmental entity, and the disclosure is required by a warrant,  
5 subpoena, or other order issued after due process; 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 person stores, transmits, and protects the person's other  
10 confidential information.

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

13                    CHAPTER 142. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

14                    Sec. 142.001. APPLICABILITY. This chapter does not apply  
15 to public records or court records.

16                    Sec. 142.002. PROHIBITED USES. (a) In this section,  
17 "publicly display" means to intentionally communicate or otherwise  
18 make available to the general public.

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

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

23                    (2) require an individual to transmit a social  
24 security number over the Internet, unless the connection is secure  
25 or the social security number is encrypted;

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

1           (4) print an individual's social security number on  
2 any card required for the individual to have access to products or  
3 services provided by the person, unless required by state or  
4 federal law;

5           (5) print an individual's social security number on  
6 any materials that are mailed to the individual, unless state or  
7 federal law requires the social security number to be printed on the  
8 document to be mailed; or

9           (6) require an individual's social security number to  
10 allow the individual access to the products or services provided by  
11 the person, unless required by state or federal law.

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

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

15                   (2) to establish, amend, or terminate an account,  
16 contract, or policy; or

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

19           Sec. 142.003. PERMITTED USES. (a) A person may collect,  
20 use, or release a social security number for internal verification  
21 or administrative purposes.

22           (b) A person who, before January 1, 2007, has used an  
23 individual's social security number in a manner prohibited by  
24 Section 142.002 may continue using that individual's social  
25 security number in the same manner if:

26                   (1) the use of the social security number is  
27 continuous; and

1           (2) the person provides the individual with an annual  
2 disclosure, beginning January 1, 2008, informing the individual of  
3 the right to stop the use of the social security number in the  
4 manner prohibited by Section 142.002.

5           (c) This chapter does not apply to:

6           (1) a person who collects, uses, or releases a social  
7 security number if the person is required to collect, use, or  
8 release the social security number by federal or state law,  
9 including Chapter 552, Government Code; or

10           (2) an institution of higher education if the use of  
11 the social security number by the institution is regulated under  
12 the Education Code.

13           Sec. 142.004. DISCONTINUANCE OF USE ON REQUEST. (a) If a  
14 person receives a written request from an individual directing the  
15 person to stop using the individual's social security number in a  
16 manner prohibited by Section 142.002, the person shall comply with  
17 the request not later than the 30th day after the date the request  
18 is received.

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

21           Sec. 142.005. DENIAL OF SERVICES PROHIBITED. A person may  
22 not deny products or services to an individual because the  
23 individual makes a written request to discontinue use under Section  
24 142.004.

25           SECTION 3. Section 560.002, Government Code, is amended to  
26 read as follows:

27           Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A

1 governmental body that possesses a biometric identifier of an  
2 individual:

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

5 (A) the individual consents to the disclosure;

6 (B) the disclosure is required or permitted by a  
7 federal statute or by a state statute other than Chapter 552; or

8 (C) the disclosure is made by or to a law  
9 enforcement agency for a law enforcement purpose; ~~and~~

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

15 (3) may not store a biometric identifier in a  
16 database.

17 SECTION 4. Subtitle A, Title 5, Government Code, is amended  
18 by adding Chapter 561 to read as follows:

19 CHAPTER 561. TEXAS PRIVACY AND SECURITY ACT

20 SUBCHAPTER A. GENERAL PROVISIONS

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

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

25 (1) an increasing number of individuals in this state  
26 are concerned that:

27 (A) personal information held by government may

1 be used inappropriately;

2 (B) unauthorized persons may have access to that  
3 information; and

4 (C) some of the information may be inaccurate,  
5 incomplete, or unnecessary for the effective functioning of  
6 government; and

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

13 (b) The legislature also finds that:

14 (1) because inadvertent release, careless storage, or  
15 improper disposal of information could result in embarrassment or  
16 other harm to individuals, each state and local governmental  
17 entity:

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

20 (B) must exercise particular care in protecting  
21 records containing sensitive and private personal information  
22 about health or financial matters and in protecting personal  
23 identifiers, such as a social security number;

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

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

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

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

10           (2) state and local governmental entities should share  
11 information as necessary to ensure accountability in government  
12 programs or the security of this state while protecting personal  
13 information from inappropriate dissemination to the extent  
14 possible.

15           Sec. 561.003. DEFINITIONS. In this chapter:

16           (1) "Personal information" means information about an  
17 individual such as:

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

21           (B) information about an individual's marital  
22 status or history, whether the individual has family members, and  
23 information about the individual's family members; and

24           (C) personally identifiable information about  
25 the individual's health or health history, finances or financial  
26 history, and purchases made from government.

27           (2) "Governmental entity" does not include a court

1 other than a commissioners court.

2 Sec. 561.004. APPLICABILITY. This chapter does not apply  
3 to information held by or for a court other than a commissioners  
4 court.

5 Sec. 561.005. CONSTRUCTION WITH OTHER LAW. This chapter  
6 does not affect:

7 (1) the ability of a state or local governmental  
8 entity to undertake a lawful investigation or to protect persons,  
9 property, or the environment in the manner authorized by law; or

10 (2) the duty of a state or local governmental entity to  
11 comply with applicable law.

12 [Sections 561.006-561.050 reserved for expansion]

13 SUBCHAPTER B. SPECIFIC PRIVACY PROTECTIONS

14 Sec. 561.051. DISCLOSURE OF CERTAIN PERSONAL INFORMATION;  
15 COMPELLING INTEREST OR INTENSE PUBLIC CONCERN REQUIREMENT. (a)  
16 This section applies only to the disclosure by a governmental  
17 entity of information that reveals an individual's:

18 (1) social security number;

19 (2) bank account number, credit card account number,  
20 or other financial account number; or

21 (3) computer password or computer network location or  
22 identity.

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

27 (1) there is a compelling governmental interest in



1 disclosing the information that cannot be effectively accomplished  
2 without the disclosure; or

3 (2) due to extraordinary circumstances, the  
4 information is especially relevant to a matter of intense public  
5 concern.

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

9 (d) A state or local governmental entity is not required to  
10 request a decision of the attorney general under Subchapter G,  
11 Chapter 552, before refusing to disclose a social security number,  
12 bank account number, credit card account number, other financial  
13 account number, computer password, or computer network location or  
14 identity in response to a request made under Chapter 552. The state  
15 or local governmental entity shall inform the requestor that the  
16 requested information is being withheld under this section and that  
17 the requestor is entitled to request the attorney general to  
18 authorize the disclosure.

19 (e) The attorney general may adopt rules to implement this  
20 section, including rules that describe appropriate and clearly  
21 defined circumstances under which a category of information  
22 described by Subsection (a) is presumed to satisfy a requirement of  
23 Subsection (b) and therefore may be disclosed without the necessity  
24 of obtaining specific authorization for the disclosure from the  
25 attorney general. A rule of the attorney general that describes  
26 circumstances under which information presumptively may be  
27 disclosed may limit disclosure to specific state, local, or federal

1 authorities or may allow the information to be generally disclosed  
2 under Chapter 552, as appropriate.

3 (f) The attorney general shall develop procedures under  
4 which the office of the attorney general will expedite a decision  
5 whether to authorize disclosure of information described by  
6 Subsection (a) when expedited consideration is warranted under the  
7 circumstances.

8 (g) A decision of the attorney general under this section  
9 may be challenged in court in the same manner that a decision of the  
10 attorney general may be challenged under Subchapter G, Chapter 552.

11 (h) If information described by Subsection (a) is requested  
12 under Chapter 552, Section 552.325 applies in relation to the  
13 individual who is the subject of the information in the same manner  
14 as if the individual were a requestor of the information, except  
15 that the attorney general shall notify the individual under Section  
16 552.325(c) if the attorney general proposes to agree to the release  
17 of all or part of the information.

18 Sec. 561.052. COLLECTION OF PERSONAL INFORMATION. A state  
19 or local governmental entity shall establish procedures to ensure  
20 that the governmental entity collects personal information only to  
21 the extent reasonably necessary to:

22 (1) implement a program;

23 (2) authenticate an individual's identity when  
24 necessary;

25 (3) ensure security; or

26 (4) accomplish another legitimate governmental  
27 purpose.

1       Sec. 561.053. RECORDS RETENTION SCHEDULES. (a) In  
2 adopting or amending its records retention schedule, a state or  
3 local governmental entity shall schedule the retention of personal  
4 information only for the period necessary to accomplish the purpose  
5 for which the information was collected or, if applicable, for the  
6 minimum period specifically prescribed by statute.

7       (b) Subsection (a) does not apply to the retention of  
8 personal information that has demonstrable historical or archival  
9 value.

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

13           (1) the reasons that the governmental entity requires  
14 or collects each category of personal information about individuals  
15 that the entity requires or collects;

16           (2) the procedures used to require or collect the  
17 information;

18           (3) the persons to whom the information may be  
19 disclosed;

20           (4) the manner in which the information may be  
21 disclosed; and

22           (5) any current arrangement under which the  
23 governmental entity sells personal information about individuals  
24 or discloses the information under a contract or agreement or in  
25 bulk.

26       (b) The state or local governmental entity shall promptly  
27 amend the privacy policy whenever information in the policy becomes

1 incorrect or incomplete.

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

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

6 (2) next to the sign that the governmental entity  
7 posts under Section 552.205.

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

9 (a) The Department of Information Resources shall adopt rules  
10 prescribing minimum privacy standards with which an Internet site  
11 or portal maintained by or for a state or local governmental entity  
12 must comply. The rules must be designed to limit the collection of  
13 personal information about users of the government Internet site or  
14 portal to information:

15 (1) that the state or local governmental entity needs  
16 in order to accomplish a legitimate government purpose;

17 (2) that the user of the site or portal knowingly and  
18 intentionally transmits to the state or local governmental entity;  
19 or

20 (3) regarding the collection of which the user of the  
21 site or portal has actively given informed consent.

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 shall  
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 shall 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 SECTION 5. Section 118.0216, Local Government Code, is  
6 amended by amending Subsection (d) and adding Subsection (f) to  
7 read as follows:

8 (d) Except as provided by Subsection (f), the ~~[The]~~ fee may  
9 be used only to provide funds for specific records management and  
10 preservation, including for automation purposes.

11 (f) The commissioners court of a county may use the fees  
12 collected for "Records Management and Preservation" under Section  
13 118.011 that are not needed for use as provided by Subsection (d)  
14 for any county purpose.

15 SECTION 6. Section 118.025(j), Local Government Code, is  
16 amended to read as follows:

17 (j) Any excess funds generated from the collection of a fee  
18 under this section remaining after completion of a county records  
19 archive preservation and restoration project may be expended ~~[only]~~  
20 for any county purpose ~~[the purposes described by Section~~  
21 ~~118.0216]~~. The commissioners court of a county may not order the  
22 collection of a fee authorized by this section after the county  
23 records archive preservation and restoration is complete.

24 SECTION 7. Section 32.51(c), Penal Code, is amended to read  
25 as follows:

26 (c) An offense under this section is a third degree ~~[state~~  
27 ~~jail]~~ felony.

1           SECTION 8. (a) An institution of higher education that is  
2 not exempt from Chapter 142, Civil Practice and Remedies Code, as  
3 added by this Act, under Section 142.003(c)(2), Civil Practice and  
4 Remedies Code, as added by this Act, must comply with Chapter 142 on  
5 or before September 1, 2007.

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

10          SECTION 9. (a) The change in law made by this Act to Section  
11 32.51, Penal Code, applies only to an offense committed on or after  
12 the effective date of this Act. For purposes of this section, an  
13 offense is committed before the effective date of this Act if any  
14 element of the offense occurs before the effective date.

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

18          SECTION 10. (a) Except as provided by Subsection (b) of  
19 this section, this Act takes effect September 1, 2005.

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