

By: Branch

H.B. No. 87

A BILL TO BE ENTITLED

AN ACT

relating to acquisition of personal information in a business record through fraudulent means.

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

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

CHAPTER 50. PROTECTION OF PERSONAL INFORMATION IN A BUSINESS

RECORD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 50.001. DEFINITIONS. In this chapter:

(1) "Business record":

(A) means any material on which information is recorded or preserved, including information that is:

(i) in written or spoken words;

(ii) graphically depicted;

(iii) printed; or

(iv) electromagnetically transmitted; and

(B) does not include a publicly available directory containing information that an individual has voluntarily consented to have publicly disseminated, including the individual's name, address, or telephone number.

(2) "Customer" means an individual who provides personal information to a business to purchase or lease a product or obtain a service from the business.

1           (3) "Personal information" means any information that  
2 identifies, relates to, or describes an individual, including the  
3 individual's:

4                   (A) name or signature;

5                   (B) social security number, passport number,  
6 driver's license number, or state identification card number;

7                   (C) physical characteristics;

8                   (D) address, telephone number, or telephone  
9 calling pattern record or list;

10                   (E) insurance policy number;

11                   (F) education, employment, or employment  
12 history; and

13                   (G) bank account number, credit card or debit  
14 card number, or any other financial information.

15           Sec. 50.002. APPLICABILITY OF CHAPTER. This chapter does  
16 not apply to an action taken by:

17                   (1) a law enforcement agency or an officer, employee,  
18 or agent of that agency in connection with the performance of an  
19 official duty of the agency to obtain a customer's or employee's  
20 personal information contained in a business record; or

21                   (2) a business or an officer, employee, or agent of the  
22 business to obtain a customer's or employee's personal information  
23 contained in a business record for:

24                   (A) testing the security procedures of the  
25 business for maintaining the confidentiality of a customer's or  
26 employee's personal information;

27                   (B) investigating an allegation of misconduct or

1 negligence on the part of an officer, employee, or agent of the  
2 business;

3 (C) recovering the personal information of a  
4 customer or employee of the business that was obtained or received  
5 by another person in the manner prohibited by Section 50.051; or

6 (D) analyzing customer records for a pattern of  
7 activity to identify fraud or identity theft.

8 Sec. 50.003. WAIVER OF CHAPTER PROHIBITED. A waiver of a  
9 provision of this chapter is void.

10 Sec. 50.004. EFFECT OF CHAPTER ON SUBPOENA OR COURT ORDER.  
11 This chapter does not prevent a person from obtaining personal  
12 information through a subpoena or court order.

13 [Sections 50.005-50.050 reserved for expansion]

14 SUBCHAPTER B. PROTECTION OF PERSONAL INFORMATION IN A BUSINESS  
15 RECORD FROM ACQUISITION THROUGH FRAUDULENT MEANS

16 Sec. 50.051. OBTAINING PERSONAL INFORMATION BY CERTAIN  
17 MEANS PROHIBITED. (a) A person may not obtain or attempt to  
18 obtain, or cause to be disclosed or attempt to cause to be  
19 disclosed, a customer's or employee's personal information  
20 contained in a business record by:

21 (1) making a false or fraudulent statement or  
22 representation to an officer, employee, agent, or customer of a  
23 business; or

24 (2) providing a document to an officer, employee, or  
25 agent of a business if the person knows that the document:

26 (A) is forged, counterfeit, lost, stolen, or  
27 fraudulently obtained; or

1                   (B) contains a false or fraudulent statement or  
2 representation.

3           (b) A person may not request that another person obtain a  
4 customer's or employee's personal information contained in a  
5 business record if the requesting person knows that the other  
6 person will obtain or attempt to obtain the information in a manner  
7 prohibited by Subsection (a).

8                   [Sections 50.052-50.100 reserved for expansion]

9                                   SUBCHAPTER C. ENFORCEMENT

10           Sec. 50.101. REMEDIES CUMULATIVE. The remedies provided in  
11 this subchapter are cumulative.

12           Sec. 50.102. PERSONAL INFORMATION OBTAINED IN VIOLATION OF  
13 THIS CHAPTER INADMISSIBLE. Any personal information that a person  
14 obtains in violation of this chapter is inadmissible as evidence in  
15 a judicial, administrative, legislative, or other proceeding  
16 unless the information is offered as proof in an action for a  
17 violation of this chapter.

18           Sec. 50.103. PRIVATE CAUSE OF ACTION. (a) A customer or  
19 employee of a business who is injured by a violation of this chapter  
20 may bring an action against a person for:

21                   (1) actual damages;

22                   (2) statutory damages as provided by Subsection (b);

23 and

24                   (3) an injunction against a violation or threatened  
25 violation of this chapter.

26           (b) If the trier of fact in an action brought under this  
27 section finds that the actions of the defendant were wilful,

1 intentional, or reckless, the injured person is entitled to  
2 statutory damages not to exceed \$3,000 for each violation. If the  
3 trier of fact finds that the actions of the defendant were not  
4 wilful, intentional, or reckless, the injured person is entitled to  
5 statutory damages not to exceed \$500 for each violation.

6 (c) A plaintiff who prevails in an action under this chapter  
7 is entitled to reasonable attorney's fees and costs.

8 SECTION 2. This Act takes effect September 1, 2007.