

By: Elkins

H.B. No. 3222

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a business's duty to protect and safeguard sensitive
3 personal information contained in its customer records.

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

5 SECTION 1. Section 48.102, Business & Commerce Code, is
6 amended by amending Subsections (a) and (c) and adding Subsections
7 (a-1), (a-2), (a-3), (a-4), and (a-5) to read as follows:

8 (a) In this section, "breach of system security" has the
9 meaning assigned by Section 48.103, including the exception
10 provided by Section 48.103(a) for the good faith acquisition of
11 sensitive personal information by an employee or agent of the
12 person maintaining the information.

13 (a-1) A business shall implement and maintain reasonable
14 procedures, including taking any appropriate corrective action, to
15 protect and safeguard from unlawful use or disclosure any sensitive
16 personal information collected or maintained by the business in the
17 regular course of business.

18 (a-2) A business that collects sensitive personal
19 information in the regular course of business shall encrypt, in
20 conformity with current industry-standard encryption methods and
21 capabilities, any sensitive personal information contained in
22 customer records of the business that are maintained in a
23 computerized database.

24 (a-3) A person may bring an action against a business that

1 maintains computerized data that includes sensitive personal
2 information if, following any breach of system security of that
3 data, the person's sensitive personal information was acquired by
4 an unauthorized person or the person was otherwise injured by the
5 breach.

6 (a-4) A person who brings an action under Subsection (a-3)
7 may obtain, subject to Subsection (a-5), actual damages arising
8 from the violation.

9 (a-5) The court may increase the amount of an award of
10 actual damages in an action brought under this section to an amount
11 not to exceed three times the actual damages sustained if the court
12 finds that the business violated Subsection (a-2).

13 (c) This section does not apply to a financial institution
14 as defined by 15 U.S.C. Section 6809, except that a financial
15 institution who is injured following a breach of system security of
16 a business's computerized data may bring an action under Subsection
17 (a-3).

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