

By: Davis of Dallas

H.B. No. 3539

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the use of opt-out notices by businesses to obtain the consent of consumers to transfer or share their personal identifying information.

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

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 106 to read as follows:

CHAPTER 106. CONSENT FOR USE OF CONSUMER'S

IDENTIFYING INFORMATION

Sec. 106.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks to acquire or acquires goods or services for personal, family, or household purposes.

(2) "Financial institution" has the meaning assigned by Section 201.101, Finance Code.

(3) "Personal identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, or government-issued identification number;

(B) mother's maiden name;

(C) unique biometric data, including the individual's fingerprint, voiceprint, and retina or iris image;

(D) unique electronic identification number,

1 address, or routing code; and

2 (E) telecommunication access device.

3 (4) "Telecommunication access device" has the meaning
4 assigned by Section 32.51, Penal Code.

5 Sec. 106.002. CONSENT REQUIRED FOR PERSONAL IDENTIFYING
6 INFORMATION. A person engaged in business in this state, other than
7 a financial institution, may not share or sell or otherwise
8 transfer the personal identifying information of a consumer without
9 the consumer's consent.

10 Sec. 106.003. CONSENT NOT BASED SOLELY ON FAILURE TO
11 RESPOND TO OPT-OUT NOTICE. Consent under Section 106.002 may not be
12 based solely on the consumer's failure to respond to an opt-out
13 notice or other notification sent by the person seeking consent
14 that requires a positive response on the part of the consumer to
15 deny consent.

16 Sec. 106.004. EXCEPTION. This chapter does not apply to
17 personal identifying information shared or transferred in
18 compliance with:

19 (1) procedures established under federal or state law;
20 or

21 (2) a court order, including a subpoena.

22 Sec. 106.005. AGREEMENT NOT ENFORCEABLE. A contract or
23 other agreement based on the consent of a consumer that is obtained
24 in a manner that violates this chapter is void and unenforceable.

25 SECTION 2. Subtitle Z, Title 3, Finance Code, is amended by
26 adding Chapter 279 to read as follows:

1 CHAPTER 279. CONSENT FOR USE OF CONSUMER'S

2 IDENTIFYING INFORMATION

3 Sec. 279.001. DEFINITIONS. In this chapter:

4 (1) "Consumer" means an individual who seeks to
5 acquire or acquires goods or services for personal, family, or
6 household purposes.

7 (2) "Financial institution" has the meaning assigned
8 by Section 201.101.

9 (3) "Personal identifying information" means
10 information that alone or in conjunction with other information
11 identifies an individual, including an individual's:

12 (A) name, social security number, date of birth,
13 or government-issued identification number;

14 (B) mother's maiden name;

15 (C) unique biometric data, including the
16 individual's fingerprint, voiceprint, and retina or iris image;

17 (D) unique electronic identification number,
18 address, or routing code; and

19 (E) telecommunication access device.

20 (4) "Telecommunication access device" has the meaning
21 assigned by Section 32.51, Penal Code.

22 Sec. 279.002. CONSENT REQUIRED FOR PERSONAL IDENTIFYING
23 INFORMATION. A financial institution may not share or sell or
24 otherwise transfer the personal identifying information of a
25 consumer without the consumer's consent.

26 Sec. 279.003. CONSENT NOT BASED SOLELY ON FAILURE TO
27 RESPOND TO OPT-OUT NOTICE. Consent under Section 279.002 may not be

1 based solely on the consumer's failure to respond to an opt-out
2 notice or other notification sent by the financial institution
3 seeking consent that requires a positive response on the part of the
4 consumer to deny consent.

5 Sec. 279.004. EXCEPTION. This chapter does not apply to
6 personal identifying information shared or transferred in
7 compliance with:

8 (1) procedures established under federal or state law;

9 or

10 (2) a court order, including a subpoena.

11 Sec. 279.005. AGREEMENT NOT ENFORCEABLE. A contract or
12 other agreement based on the consent of a consumer that is obtained
13 in a manner that violates this chapter is void and unenforceable.

14 SECTION 3. This Act takes effect September 1, 2009.