

By: Carona

S.B. No. 1911

A BILL TO BE ENTITLED

AN ACT

relating to protection of individual identifying information and  
consumer credit information from unauthorized use or disclosure.

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

SECTION 1. Section 20.034(a), Business & Commerce Code, is  
amended to read as follows:

(a) On written request sent by certified mail that includes  
proper identification provided by a consumer, a consumer reporting  
agency shall place a security freeze on a consumer's consumer file  
not later than the fifth business day after the date the agency  
receives the request. A security freeze remains in effect until the  
consumer requests that the security freeze be removed or  
temporarily lifted as provided by Section 20.037.

SECTION 2. Chapter 20, Business & Commerce Code, is amended  
by adding Section 20.0387 to read as follows:

Sec. 20.0387. EFFECT OF SECURITY FREEZE ON CONSUMER  
APPLICATION. If a person requests a consumer report and a security  
freeze is in effect for the consumer file involved in that report,  
the person may treat any application submitted by the consumer for  
an extension of credit or other purpose as incomplete if the  
consumer does not allow access to the consumer's report for that  
specific requester or period while the security freeze is in  
effect.

SECTION 3. Section 501.001, Business & Commerce Code, as

1 effective April 1, 2009, is amended by amending Subsection (a) and  
2 adding Subsection (g) to read as follows:

3 (a) A person, other than a government or a governmental  
4 subdivision or agency, may not:

5 (1) intentionally communicate or otherwise make  
6 available to the public an individual's social security number;

7 (2) display an individual's social security number on  
8 a card or other device required to access a product or service  
9 provided by the person;

10 (3) require an individual to transmit the individual's  
11 social security number over the Internet unless:

12 (1) the Internet connection is secure; or

13 (2) the social security number is encrypted;

14 (4) require an individual's social security number for  
15 access to an Internet website unless a password or unique personal  
16 identification number or other authentication device is also  
17 required for access; ~~or~~

18 (5) except as provided by Subsection (f), print an  
19 individual's social security number on any material sent by mail,  
20 unless state or federal law requires that social security number to  
21 be included in the material; or

22 (6) intentionally disclose an individual's social  
23 security number to another person without the individual's written  
24 consent, if the person making the disclosure knows or in the  
25 exercise of reasonable diligence should know that the person does  
26 not have a legitimate purpose for obtaining the individual's social  
27 security number.

1       (g) If an individual's social security number is permitted  
2 to be included in material sent by mail under Subsection (f), a  
3 person, other than a government or a governmental subdivision or  
4 agency, may not:

5           (1) print any part of the individual's social security  
6 number on a postcard or other mailer not requiring an envelope; or

7           (2) send the material including the individual's  
8 social security number by envelope if any part of the social  
9 security number is visible without opening the envelope.

10       SECTION 4. Section 521.052, Business & Commerce Code, as  
11 effective April 1, 2009, is amended by amending Subsections (a) and  
12 (b) and adding Subsection (b-1) to read as follows:

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

18       (b) Subject to Subsection (b-1), a [A] business shall  
19 destroy or arrange for the destruction of customer records  
20 containing sensitive personal information within the business's  
21 custody or control that are not to be retained by the business by:

22           (1) shredding;

23           (2) erasing; or

24           (3) otherwise modifying the sensitive personal  
25 information in the records to make the information unreadable or  
26 indecipherable through any means.

27       (b-1) A business, after exercising due diligence, may enter

1 into a contract with another business for the destruction of  
2 customer records described by Subsection (b). A business that  
3 exercises that contracting authority, after exercising due  
4 diligence, shall monitor the business that receives customer  
5 records for destruction to ensure that it destroys the sensitive  
6 personal information contained in the records in a manner  
7 consistent with this section. For purposes of this subsection,  
8 exercise of due diligence includes:

9           (1) reviewing an independent audit of the operations  
10 of the receiving business or the receiving business's compliance  
11 with this section;

12           (2) obtaining information about the receiving  
13 business from multiple references or other reliable sources;

14           (3) requiring that the receiving business be certified  
15 by a recognized trade association or similar association with a  
16 reputation for high standards of quality review;

17           (4) reviewing and evaluating the information security  
18 policies or procedures of the receiving business; and

19           (5) taking any other appropriate measure to determine  
20 the competency and integrity of the receiving business.

21           SECTION 5. Section 521.053, Business & Commerce Code, as  
22 effective April 1, 2009, is amended by amending Subsections (d),  
23 (e), and (h) and adding Subsection (e-1) to read as follows:

24           (d) A person may delay providing notice as required by  
25 Subsection (b) or (c) at the request of a law enforcement agency  
26 that determines that the notification will impede a criminal  
27 investigation or jeopardize national or homeland security. The

1 agency's request must be made in writing or contemporaneously  
2 documented by the person in writing and must include the names of  
3 the law enforcement officer making the request and the agency. The  
4 notification shall be made as soon as the law enforcement agency  
5 determines that the notification will not compromise the  
6 investigation or jeopardize national or homeland security.

7 (e) Subject to Subsection (e-1), a [A] person may give  
8 notice as required by Subsection (b) or (c) by providing:

9 (1) written notice;

10 (2) electronic notice, if the notice is provided in  
11 accordance with 15 U.S.C. Section 7001;

12 (2-a) telephonic notice directly to an affected  
13 person; or

14 (3) notice as provided by Subsection (f).

15 (e-1) The notice required by Subsection (b) or (c) must:

16 (1) be clear and, if in writing, conspicuous;

17 (2) include a general description of the incident;

18 (3) describe the type of sensitive personal  
19 information accessed and acquired;

20 (4) include a general description of the measures the  
21 business has taken to protect against a further breach of system  
22 security;

23 (5) include a telephone number that the affected  
24 person may call for further information and assistance; and

25 (6) include a statement advising the affected person  
26 to review account statements and access and monitor free credit  
27 reports available to the person.

1 (h) If a person is required by this section to notify at one  
2 time more than 1,000 [~~10,000~~] persons of a breach of system  
3 security, the person shall also notify each consumer reporting  
4 agency, as defined by 15 U.S.C. Section 1681a, that maintains files  
5 on consumers on a nationwide basis and the consumer protection  
6 division of the attorney general's office, of the timing,  
7 distribution, and content of the notices. The person shall provide  
8 the notice required by this subsection without unreasonable delay.

9 SECTION 6. Section 521.152, Business & Commerce Code, as  
10 effective April 1, 2009, is amended to read as follows:

11 Sec. 521.152. DECEPTIVE TRADE PRACTICE. (a) A violation  
12 of Section 521.051 or 521.052 is a deceptive trade practice  
13 actionable under Subchapter E, Chapter 17.

14 (b) Any damages assessed against a business for a violation  
15 of Section 521.052 resulting from the acts or omissions of the  
16 business's nonmanagerial employees may not be trebled unless the  
17 business was negligent in the training, supervision, or monitoring  
18 of those employees.

19 SECTION 7. Subchapter D, Chapter 521, Business & Commerce  
20 Code, as effective April 1, 2009, is amended by adding Section  
21 521.153 to read as follows:

22 Sec. 521.153. PRIVATE RIGHT OF ACTION. An individual  
23 injured by a violation of Section 521.053 may bring an action to  
24 recover damages.

25 SECTION 8. (a) The change in law made by this Act to Section  
26 20.034(a), Business & Commerce Code, applies only to a request for  
27 placement of a security freeze on a consumer file that is made on or

1 after the effective date of this Act. A request for placement of a  
2 security freeze on a consumer file that is made before the effective  
3 date of this Act is governed by the law in effect immediately before  
4 the effective date of this Act, and that law is continued in effect  
5 for that purpose.

6 (b) The changes in law made by this Act to Section 521.053,  
7 Business & Commerce Code, apply only to a breach of system security  
8 that occurs on or after the effective date of this Act. A breach of  
9 system security that occurs before the effective date of this Act is  
10 governed by the law in effect immediately before the effective date  
11 of this Act, and that law is continued in effect for that purpose.

12 (c) The changes in law made by this Act to Section 521.152,  
13 Business & Commerce Code, apply only to a violation that occurs on  
14 or after the effective date of this Act. A violation that occurred  
15 before the effective date of this Act is governed by the law in  
16 effect immediately before the effective date of this Act, and that  
17 law is continued in effect for that purpose.

18 (d) Section 521.153, Business & Commerce Code, as added by  
19 this Act, applies only to a violation that occurs on or after the  
20 effective date of this Act.

21 SECTION 9. This Act takes effect September 1, 2009.