

## BILL ANALYSIS

C.S.H.B. 3750  
By: Farrar  
Business & Industry  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

Most digital copy machines are capable of storing thousands of images and documents on their hard drives, and interested parties contend that the owner, lessee, or proprietary user of such a machine should be required to erase the machine's hard drive before terminating ownership, lease, or use of the machine to prevent stored documents, which may include personal and financial documents, from becoming vulnerable to potential misuse. C.S.H.B. 3750 seeks to require the destruction of, or arrangement for the destruction of, all records and images stored in a digital copy machine when that machine will no longer be retained by certain entities.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### ANALYSIS

C.S.H.B. 3750 amends the Business & Commerce Code, Local Government Code, and Government Code to require a business or nonprofit entity, a local government, and a state agency, respectively, to destroy, or arrange for the destruction of, all business records or records of the nonprofit entity, local government records, or state records, as applicable, stored on a copy machine before the entity terminates its ownership, lease, or use of the machine. The bill makes a business or nonprofit entity, local government, or state agency that violates the respective provisions liable to the state for a civil penalty not to exceed \$10,000 for each violation. The bill authorizes the attorney general or a county or district attorney to bring an action to recover the civil penalty.

### EFFECTIVE DATE

September 1, 2013.

### COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3750 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. The Business and Commerce Code is amended by adding Chapter 107 as follows:

CHAPTER 107. DIGITAL STORAGE OF COPY MACHINES

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 72, Business & Commerce Code, is amended by adding Section 72.005 to read as follows:

Sec. 72.005. DESTRUCTION OF BUSINESS RECORDS OR NONPROFIT

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13.116.707

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ENTITY RECORDS STORED ON COPY MACHINES REQUIRED.

Sec. 107.001. DEFINITIONS. In this chapter:

(1) "Business" means any corporation, company, partnership, firm, association, or other entity, and shall include a public entity.

(2) "Public entity" means the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

(3) "Records" means any material recorded or preserved by any means.

Sec. 107.002. DESTRUCTION OF DIGITAL COPIES. A business shall destroy, or arrange for the destruction of, all records stored on a digital copy machine, which is no longer to be retained by that business, by erasing or otherwise modifying those records to make the records unreadable, undecipherable, or nonreconstructable through generally available means.

Sec. 107.003. CIVIL PENALTY. A business that violates this chapter is subject to a civil penalty not to exceed \$10,000 for each violation.

Sec. 107.004. SUIT FOR CIVIL PENALTY. The attorney general or a county or district attorney may bring an action to recover a civil penalty imposed under Section. 107.003.

No equivalent provision.

(c) In this section, "records," with respect to a nonprofit entity, means any material recorded or preserved by any means.

(a) Notwithstanding Section 72.002 or any other law relating to the retention of records, a business or a nonprofit entity shall destroy, or arrange for the destruction of, all business records or records of the nonprofit entity stored on a copy machine before the business or nonprofit entity terminates its ownership, lease, or use of the machine.

(b) A business or nonprofit entity that violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed \$10,000 for each violation.

The attorney general or a county or district attorney may bring an action to recover the civil penalty imposed under this subsection.

SECTION 2. Chapter 202, Local Government Code, is amended by adding Section 202.010 to read as follows:

Sec. 202.010. DESTRUCTION OF RECORDS STORED ON COPY MACHINES REQUIRED. (a) A local government shall destroy, or arrange for the destruction of, all local government records stored on a copy machine before the local government terminates its ownership, lease, or use of the machine.

(b) A local government that violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed

\$10,000 for each violation. The attorney general or a county or district attorney may bring an action to recover the civil penalty imposed under this subsection.

No equivalent provision.

SECTION 3. Section 441.187, Government Code, is amended by adding Subsections (a-1) and (f) to read as follows:

(a-1) Notwithstanding Subsections (a), (b), (c), and (d), a state agency shall destroy, or arrange for the destruction of, all state records stored on a copy machine before the agency terminates its ownership, lease, or use of the machine.

(f) A state agency that violates Subsection (a-1) is liable to this state for a civil penalty in an amount not to exceed \$10,000 for each violation. The attorney general or a county or district attorney may bring an action to recover the civil penalty imposed under this subsection.

SECTION 2. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.