87R25816 JXC-D

By:  Nichols, et al. S.B. No. 15

(King of Parker)

Substitute the following for S.B. No. 15:

By:  Ashby C.S.S.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Consumer Privacy Act Phase I; creating criminal offenses; increasing the punishment for an existing criminal offense.

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

SECTION 1.  This Act may be cited as the Texas Consumer Privacy Act Phase I.

SECTION 2.  Section 11.030, Parks and Wildlife Code, is amended by amending Subsections (a) and (c) and adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(a)  The name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department may not be disclosed, sold, rented, or traded except as authorized under this section or Section 12.0251.

(c)  The commission by rule shall adopt policies relating to:

(1)  the release of the customer information; and

(2)  the use of the customer information by the department[~~; and~~

[~~(3)  the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services~~].

(e-1)  The department may disclose statistical data and compilations of customer information described by Subsection (a) if the information does not reveal information identifying a specific department customer or a department customer's address, telephone number, social security number, or driver's license number.

(e-2)  The department may disclose customer information described by Subsection (a) only:

(1)  to another governmental body, including a law enforcement entity, as needed to carry out a governmental purpose;

(2)  if the customer that is the subject of the information consents in writing to the specific disclosure; or

(3)  if the information is:

(A)  part of a record that is considered to be a public record under Section 31.039; or

(B)  authorized to be disclosed under Section 31.0391.

(e-3)  This section does not authorize the department to disclose information the department is prohibited from disclosing by other law.

SECTION 3.  Section 204.011(a), Transportation Code, is amended to read as follows:

(a)  The [~~Except as provided by this section or a rule adopted by the commission under this section, the~~] department may not disclose to any person the name, address, telephone number, social security account number, driver's license number, bank account number, credit or debit card number, or charge account number of a person who:

(1)  is or has been a subscriber to "Texas Highways"; or

(2)  has purchased from the department a promotional item described by Section 204.009.

SECTION 4.  Section 548.601(a), Transportation Code, is amended to read as follows:

(a)  A person, including an inspector or an inspection station, commits an offense if the person:

(1)  submits information to the department's inspection database or issues a vehicle inspection report with knowledge that the submission or issuance is in violation of this chapter or rules adopted under this chapter;

(2)  falsely or fraudulently represents to the owner or operator of a vehicle that equipment inspected or required to be inspected must be repaired, adjusted, or replaced for the vehicle to pass an inspection;

(3)  misrepresents:

(A)  material information in an application in violation of Section 548.402 or 548.403; or

(B)  information filed with the department under this chapter or as required by department rule;

(4)  submits information to the department's inspection database or issues a vehicle inspection report:

(A)  without authorization to issue the report or submit the information; or

(B)  without inspecting the vehicle;

(5)  submits information to the department's inspection database indicating that a vehicle has passed the applicable inspections or issues a passing vehicle inspection report for a vehicle with knowledge that the vehicle has not been repaired, adjusted, or corrected after an inspection has shown a repair, adjustment, or correction to be necessary;

(6)  knowingly submits information to the department's inspection database or issues a vehicle inspection report:

(A)  for a vehicle without conducting an inspection of each item required to be inspected; or

(B)  for a vehicle that is missing an item required to be inspected or that has an item required to be inspected that is not in compliance with state law or department rules;

(7)  refuses to allow a vehicle's owner to have a qualified person of the owner's choice make a required repair, adjustment, or correction;

(8)  charges for an inspection an amount greater than the authorized fee;

(9)  discloses or sells information collected in relation to the vehicle inspection program under this chapter about a unique customer or a unique vehicle owner to a person other than the department or the person who is the subject of the information, including a customer or vehicle owner's name, address, or phone number; or

(10) [~~(9)~~]  performs an act prohibited by or fails to perform an act required by this chapter or a rule adopted under this chapter.

SECTION 5.  Section 730.003, Transportation Code, is amended by adding Subdivision (1-a) and amending Subdivision (6) to read as follows:

(1-a)  "Authorized recipient" means a person who is permitted to receive and use personal information from an agency in a manner authorized by this chapter.

(6)  "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, date of birth, driver identification number, name, address, but not the zip code, e-mail address, telephone number, and medical or disability information. The term does not include:

(A)  information on vehicle accidents, driving or equipment-related violations, or driver's license or registration status; or

(B)  information contained in an accident report prepared under:

(i)  Chapter 550; or

(ii)  former Section 601.004 before September 1, 2017.

SECTION 6.  Section 730.006, Transportation Code, is amended to read as follows:

Sec. 730.006.  REQUIRED DISCLOSURE WITH CONSENT. Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed to a requestor who:

(1)  is the subject of the information; or

(2)  demonstrates, in such form and manner as the agency requires, that the requestor has obtained the written consent of the person who is the subject of the information.

SECTION 7.  The heading to Section 730.007, Transportation Code, is amended to read as follows:

Sec. 730.007.  PERMITTED DISCLOSURES OF CERTAIN PERSONAL INFORMATION.

SECTION 8.  Section 730.007, Transportation Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (g) to read as follows:

(a)  Personal information obtained by an agency in connection with a motor vehicle record may be disclosed to any requestor by an agency if the requestor:

(1)  provides the requestor's name and address and any proof of that information required by the agency; and

(2)  represents that the use of the personal information will be strictly limited to:

(A)  use by:

(i)  a government agency, including any court or law enforcement agency, in carrying out its functions; or

(ii)  a private person or entity acting on behalf of a government agency in carrying out the functions of the agency;

(B)  use in connection with a matter of:

(i)  motor vehicle or motor vehicle operator safety;

(ii)  motor vehicle theft;

(iii)  motor vehicle product alterations, recalls, or advisories;

(iv)  performance monitoring of motor vehicles, motor vehicle parts, or motor vehicle dealers; or

(v)  [~~motor vehicle market research activities, including survey research; or~~

[~~(vi)~~]  removal of nonowner records from the original owner records of motor vehicle manufacturers;

(C)  use in the normal course of business by a legitimate business or an authorized agent of the business, but only:

(i)  to verify the accuracy of personal information submitted by the individual to the business or the agent of the business; and

(ii)  if the information is not correct, to obtain the correct information, for the sole purpose of preventing fraud by, pursuing a legal remedy against, or recovering on a debt or security interest against the individual;

(D)  use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court;

(E)  use in research or in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual;

(F)  use by an insurer, [~~or~~] insurance support organization, or [~~by a~~] self-insured entity, or an authorized agent of an insurer, insurance support organization, or self-insured entity [~~the entity~~], in connection with claims processing or investigation activities, antifraud activities, rating, or underwriting;

(G)  use in providing notice to an owner of a vehicle that was towed or impounded and is in the possession of a vehicle storage facility;

(H)  use by a licensed private investigator agency or licensed security service for a purpose permitted under this section;

(I)  use by an employer or an agent or insurer of the employer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. Chapter 313;

(J)  use in connection with the operation of a [~~private~~] toll transportation facility or another type of transportation project described by Section 370.003;

(K)  use by a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), for a purpose permitted under that Act;

(L)  use by a motor vehicle manufacturer, dealership, or distributor, or an agent of or provider of services to a motor vehicle manufacturer, dealership, or distributor, for motor vehicle market research activities, including survey research;

(M)  use in the ordinary course of business by a person or authorized agent of a person who:

(i)  holds a salvage vehicle dealer license issued under Chapter 2302, Occupations Code;

(ii)  holds an independent motor vehicle dealer or wholesale motor vehicle auction general distinguishing number issued under Chapter 503 of this code;

(iii)  holds a used automotive parts recycler license issued under Chapter 2309, Occupations Code; or

(iv)  is licensed by, registered with, or subject to regulatory oversight by the Texas Department of Motor Vehicles, the Texas Department of Banking, the Department of Savings and Mortgage Lending, the Credit Union Department, the Office of Consumer Credit Commissioner, the Texas Department of Insurance, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, or the National Credit Union Administration; or

(N)  use by an employer, principal, general contractor, nonprofit organization, charitable organization, or religious institution to obtain or verify information relating to a person who holds a driver's license or the driving history of a person who holds a driver's license if the person is employed by, works under a contract with, or volunteers for the employer, principal, contractor, organization, or institution [~~(L)  use for any other purpose specifically authorized by law that relates to the operation of a motor vehicle or to public safety~~].

(a-1)  Personal information obtained by the Texas Department of Motor Vehicles in connection with a motor vehicle record may be disclosed:

(1)  when referring potential violations to the Texas Office of Consumer Credit Commissioner, the Department of Public Safety, or the comptroller, if the personal information is necessary for carrying out regulatory functions; or

(2)  to the attorney general as part of a response by the Texas Department of Motor Vehicles to a subpoena or a discovery request, if the personal information is necessary for litigation purposes.

(g)  An agency may request that an authorized recipient or other person in possession of personal information disclosed for a use authorized by this section provide to the agency information sufficient for the agency to determine whether the authorized recipient or person has complied with this chapter, agency rules, or other law that applies to the disclosed personal information. The authorized recipient or person shall provide the requested information not later than the fifth business day after the date the agency submits the request unless the agency extends the deadline to provide a reasonable period to produce the requested information.

SECTION 9.  Chapter 730, Transportation Code, is amended by adding Sections 730.0121 and 730.0122 to read as follows:

Sec. 730.0121.  DELETION OF INFORMATION REQUIRED IF NOT AUTHORIZED RECIPIENT. An agency by rule shall require a requestor to delete from the requestor's records personal information received from the agency under this chapter if the requestor becomes aware that the requestor is not an authorized recipient of that information.

Sec. 730.0122.  CIVIL SUIT. (a) A person who discloses for compensation to a person who is not an authorized recipient personal information obtained by an agency in connection with a motor vehicle record is liable to the person who is the subject of the information for:

(1)  actual damages;

(2)  if the actual damages to the person are less than $2,500, an additional amount so that the total amount of damages equals $2,500; and

(3)  court costs incurred by the person who is the subject of the information in bringing the action.

(b)  A person whose personal information has been disclosed for compensation to a person who is not an authorized recipient may sue for:

(1)  the damages, costs, and fees authorized under Subsection (a);

(2)  injunctive relief; and

(3)  any other equitable remedy determined to be appropriate by the court.

(c)  A district court has exclusive original jurisdiction over a cause of action brought under this section.

SECTION 10.  Section 730.013, Transportation Code, is amended to read as follows:

Sec. 730.013.  [~~RESALE OR~~] REDISCLOSURE; OFFENSE. (a) An authorized recipient of personal information may not [~~resell or~~] redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b)  An authorized recipient of personal information may [~~resell or~~] redisclose the information, including redisclosure for compensation, only for a use permitted under Section 730.007.

(c)  An [~~Any~~] authorized recipient who [~~resells or~~] rediscloses personal information obtained from an agency shall be required by that agency to:

(1)  maintain for a period of not less than five years records as to any person or entity receiving that information and the permitted use for which it was obtained; and

(2)  provide copies of those records to the agency on request.

(c-1)  A person who receives personal information under Subsection (b) may not redisclose the personal information, including redisclosure for compensation, to a person who is not an authorized recipient.

(c-2)  An authorized recipient shall notify each person who receives personal information from the authorized recipient that the person may not redisclose the personal information to a person who is not an authorized recipient.

(d)  A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $100,000 [~~$25,000~~].

SECTION 11.  The heading to Section 730.014, Transportation Code, is amended to read as follows:

Sec. 730.014.  AGENCY RULES,[~~; ORGANIZATION OF~~] RECORDS, AND CONTRACTS.

SECTION 12.  Section 730.014, Transportation Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c)  An agency that provides a requestor access to personal information in motor vehicle records in bulk under a contract under Section 730.007 shall include in the contract:

(1)  a requirement that the requestor post a performance bond in an amount of not more than $1 million;

(2)  a prohibition on the sale or redisclosure of the personal information for the purpose of marketing extended vehicle warranties by telephone;

(3)  a requirement that the requestor provide proof of general liability and cyber-threat insurance coverage in an amount specified by the contracting agency that is:

(A)  at least $3 million; and

(B)  reasonably related to the risks associated with unauthorized access and use of the records;

(4)  a requirement that if a requestor experiences a breach of system security, as defined by Section 521.053, Business & Commerce Code, that includes data obtained under Section 730.007, the requestor must notify the agency of the breach not later than 48 hours after the discovery of the breach;

(5)  a requirement that the requestor include in each contract with a third party that receives the personal information from the requestor that the third party must comply with federal and state laws regarding the records;

(6)  a requirement that the requestor and any third party receiving the personal information from the requestor protect the personal information with appropriate and accepted industry standard security measures for the type of information and the known risks from unauthorized access and use of the information; and

(7)  a requirement that the requestor annually provide to the agency a report of all third parties to which the personal information was disclosed under this section and the purpose of the disclosure.

(d)  An agency that discloses any motor vehicle records in bulk under Section 730.007 shall include in the records at least two records that are created solely for the purpose of monitoring compliance with this chapter and detecting, by receipt of certain forms of communications or actions directed at the subjects of the created records, potential violations of this chapter or contract terms required by this section.

(e)  An agency that discloses motor vehicle records shall designate an employee to be responsible for:

(1)  monitoring compliance with this chapter and contract terms required by this section;

(2)  referring potential violations of this chapter to law enforcement agencies; and

(3)  making recommendations to the administrative head of the agency or the designee of the administrative head of the agency on the eligibility of a person under Section 730.016 to receive personal information.

(f)  This subsection does not affect any rights or remedies available under a contract or any other law. If an agency determines that a person has violated a term of a contract with the agency for the disclosure under this chapter of personal information obtained by the agency in connection with a motor vehicle record, the agency may:

(1)  cease disclosing personal information to that person; and

(2)  allow the person to remedy the violation and resume receiving personal information.

SECTION 13.  The heading to Section 730.016, Transportation Code, is amended to read as follows:

Sec. 730.016.  INELIGIBILITY OF CERTAIN PERSONS TO RECEIVE, RETAIN, OR REDISCLOSE PERSONAL INFORMATION; OFFENSE.

SECTION 14.  Section 730.016, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  A person who is convicted of an offense under this chapter, or who is determined in a civil action to be in violation of this chapter or [~~violates~~] a rule adopted by an agency relating to the terms or conditions for a release of personal information, including a rule adopted under Section 730.0121:

(1)  [~~to the person,~~] is ineligible to receive personal information under Section 730.007;

(2)  not later than one year after the date of conviction or the court's final determination under this subsection, shall delete from the person's records all personal information received under this chapter; and

(3)  may not redisclose personal information received under this chapter.

(c)  A person commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $100,000.

SECTION 15.  The following provisions are repealed:

(1)  Section 11.030(d), Parks and Wildlife Code; and

(2)  Sections 204.011(c) and (d), Transportation Code.

SECTION 16.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 17.  (a) Section 730.0121, Transportation Code, as added by this Act, applies to a person who received personal information under Chapter 730, Transportation Code, before the effective date of this Act, and is not an authorized recipient, as defined by Section 730.003(1-a), Transportation Code, as added by this Act, of that personal information under Chapter 730, Transportation Code, as amended by this Act.

(b)  Notwithstanding Subsection (a) of this section, an agency to which Section 730.0121, Transportation Code, as added by this Act, applies may not require a person who received personal information from the agency before the effective date of this Act and is not an authorized recipient, as defined by Section 730.003(1-a), Transportation Code, as added by this Act, of that information to delete the information before the first anniversary of the effective date of this Act.

SECTION 18.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.