

SUBJECT: Allowing correction of collected information and creating privacy task force

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Wolens, Turner, Brimer, Counts, Craddick, Danburg, Hunter, Longoria, McCall, McClendon, Merritt

0 nays

4 absent — Bailey, Hilbert, D. Jones, Marchant

WITNESSES: For — Gary E. Clayton, Privacy Council, Inc.; Doug Toney, Texas Daily Newspaper Association and Texas Press Association; *Registered, but did not testify:* John Chism, Texas Association of Licensed Investigators; Lara Laneri Keel, Texas Association of Business and Chambers of Commerce; David Pinkus, Small Business United; Molly Schayot, Alliance for Responsible Information Practices; Rob Schneider, Consumers Union; Tom “Smitty” Smith, Public Citizen

Against — None

On — *Registered, but did not testify:* Rebecca Payne, Office of the Attorney General; Carolyn Purcell, Department of Information Resources

BACKGROUND: Government Code, sec. 552.023 states that an individual has a special right of access to information held about that individual by a governmental body that normally would be withheld from the public to protect the person’s privacy. Sec. 552.023(b), however, states that a governmental body may continue to deny access to that information for reasons other than privacy protection that are allowed under Chapter 552, which includes exemptions for current law enforcement investigations, ongoing litigation, and information relating to the administration of the body and not related to privacy, such as agency memoranda or audit working papers, or under other law.

Government Code, ch. 552 on open records, allows a governmental body to impose a fee to make a copy of any records held by the body or to impose a fee for personnel costs in locating and making available records held by the

body if those records are more than five years old, would fill six or more archival boxes, or more than five hours will be required to locate and assemble the materials. Governmental bodies with fewer than 16 employees have a lower threshold, in terms of age or bulk of the material requested, to impose charges.

DIGEST: HB 1922 would add Chapter 559 to Government Code, title 5, subtitle A to give citizens:

- ! the right to be informed about personal information collected by a state governmental body, unless that information may be withheld under sec. 552.023, and
- ! the right to correct that information free of charge.

The bill would require each state governmental body that collects information about an individual, either through paper forms or an electronic format, to prominently state on those forms or Internet site that the individual is entitled to receive and review the information that the body collects and to correct any information that is incorrect.

Each governmental body would be required to establish a reasonable procedure for correcting personal information and would be prohibited from imposing a charge on an individual to correct that information unless the provision conflicted with open records requirements in chapter 552. Governmental Internet sites that collect information about individuals who visit the site or the computer networks they use would be required to prominently post on that site what type of information was being collected.

HB 559 also would create a state privacy task force to research privacy issues and recommend legislation to protect personal information collected by state governmental bodies. The task force would be directed to:

- ! identify the types of personal information collected by state governmental bodies and determine how that information is used and disseminated;
- ! assess the impact of new technologies on the collection, use, and dissemination of this information;

- ! identify the benefits and detriments of sharing personal information among state governmental bodies;
- ! identify existing protections in state law and administrative rules against unwarranted disclosure of personal information;
- ! recommend steps to ensure that personal information transmitted electronically to, by, or from state governmental bodies is adequately encrypted and secure; and
- ! assess federal laws and practices relating to privacy and recommend legislation based on its findings, including legislation that would grant an individual the right to be notified if a state governmental body planned to sell personally identifiable information about the individual and to prohibit that sale.

The task force would be composed of 10 members, appointed equally by the lieutenant governor and the House speaker, who have a background in consumer issues, business issues, open records, and electronic business. The task force would be required to report its findings and recommendations to the lieutenant governor and the speaker by September 1, 2001. The task force would sunset on September 1, 2003, unless continued by the lieutenant governor and the speaker.

The bill would take effect September 1, 2001. Each state governmental body would have to be in compliance with Chapter 559 before January 1, 2001.

**SUPPORTERS
SAY:**

HB 1922 would give Texas citizens the knowledge they need to protect the personal information collected about them by the state government. Citizens should have the right to know what information is collected about them by state government, so they can make informed decisions as to how much information they are comfortable sharing with the government in exchange for provided services. Citizens also should have the right to receive and review this information and to make corrections to the information if it is incorrect. By enumerating these rights, HB 1922 would provide greater protection of personal information held by the government and empower citizens to manage this information.

HB 1922 also would create a task force to conduct a comprehensive review of privacy issues and provide the critical expertise necessary for the Legislature to determine what additional measures are needed to protect

citizens' personal information. The potential for privacy legislation to result in unintended consequences, to the detriment of business or open records, makes it imperative that the Legislature have a thorough understanding of all the issues involved before considering such legislation. By drawing on the expertise of individuals in industries and organizations with a vested interest in privacy issues, the task force would ensure that the Legislature has adequate background information to consider all of the ramifications of these issues. The bill would not dedicate any funds or staff to the task force, and state and legislative agencies would be required to assist the task force upon request. Other state task forces, such as the e-government task force, have been very successful without state funding.

HB 1922 would not burden any businesses that rely on information bought from state governmental bodies. The bill would not limit the sale of any information currently available for sale by the state. It merely would direct the task force to study this issue and make recommendations. The Legislature still would have to consider and approve any change in the law.

OPPONENTS
SAY:

The bill would require the privacy task force to recommend legislation requiring a state governmental body to notify an individual if it intended to sell personally-identifiable information about that individual and give that individual an opportunity to prohibit the sale. This could lead to an increased burden on businesses that rely on purchased information from the state, such as motor vehicle records. By creating a presumption that this specific legislation is necessary, the bill would direct the task force toward a particular remedy rather than allowing it to research the entire issue and make its own recommendations, as the other provisions would require. The task force should have the flexibility to determine how this important issue should be handled.

OTHER
OPPONENTS
SAY:

HB 1922 would not go far enough in protecting citizens' personal information. The bill would not require state governmental bodies to provide notice of which information the government is required to collect or how the personal information it collects is used and disseminated, nor would it allow citizens to prohibit the use of that information for purposes other than those for which it was originally collected. Without this additional information, the right to know what information was collected by the government would be meaningless, because citizens do not know how that information will be used

or which pieces of information they may withhold, nor do they have the right to prohibit downstream uses of that information. Citizens should have more power to control how their personal information is used.

NOTES:

The committee substitute added a provision to the original bill that would require the privacy task force to assess federal laws relating to privacy, as well as state government practices, and recommend legislation. The substitute also removed a provision that would have required the task force to educate and inform the public, focus public debate, and suggest personal privacy safeguards that would have to be followed within state government. It also decreased the number of members of the task force from 18 to 10.

A similar bill, SB 867 by Nelson, would create a joint interim privacy task force to analyze state and federal statutes and rules relating to privacy. The bill would require the task force to determine how these statutes and rules act to the benefit or detriment of individuals, government, and business and to study the advantages, disadvantages, and feasibility of requiring that personal information, which, in certain circumstances, could only be released with the prior consent of the individual. SB 867 passed the Senate on March 22 on the Local and Uncontested Calendar and was referred to the House State Affairs committee.

Several other bills have been filed this session that would regulate how the government collects, uses, and disseminates information about individuals. HB 2013 by McCall and SB 694 by Wentworth would make credit card, debit card, or access device numbers held by a governmental body confidential. HB 307 by Hupp and HB 673 by Miller would limit the dissemination of personal information contained in motor vehicle and driver's license records held by the Department of Public Safety, while HB 308 by Hupp would require the department to provide notice to an individual each time it sells that information. HB 799 by Gallego would limit the release of personal information contained in license records, motor vehicle records, and operator records held by governmental bodies. SB 866 by Nelson would require governmental bodies to provide written privacy policies, limit the release of certain personal information held by governmental bodies, limit the information that could be collected to only that information necessary to implement a program, confirm a person's identity, or accomplish another governmental purpose, and limit the length of

time that information could be held. HJR 15 by Hupp would add a constitutional amendment conferring a right to privacy.