

SUBJECT: Requiring businesses to adopt privacy policies for social security numbers

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Bohac, Martinez, Solomons, Vo, Zedler

0 nays

2 absent — Bailey, Taylor

WITNESSES: For — David Mintz, Texas Apartment Association; Tom “Smitty” Smith, Public Citizen

Against — Brenda Nation, American Council of Life Insurers; Mike Pollard, Texas Association of Life and Health Insurers

On — Karen Neeley, Independent Bankers Association of Texas

DIGEST: CSHB 1130 would prohibit requiring an individual to disclose a social security number in order to obtain goods and services or to enter into a business transaction unless the person requiring the social security number had a privacy policy, made the policy available, and maintained the confidentiality and security of the social security number.

Privacy polices adopted under CSHB 1130 would have to include:

- how the personal information is collected;
- how and when the information is used;
- how the information is protected;
- who has access to the information; and
- how the information is disposed.

CSHB 1130 would not apply to those required to maintain and disseminate privacy policies under the federal Gramm-Leach-Bliley Act or the Health Insurance Portability and Accountability Act of 1996, or to entities covered by rules adopted by the commissioner of insurance relating to insurance consumer health information privacy or insurance consumer financial information privacy, or to governmental bodies other than city-owned utilities.

Those violating CSHB 1130 would be liable to the state for civil penalties up to \$500 for each month in which a violation occurred. The penalty could not be imposed for more than one violation per month. The attorney general or the local prosecutor could bring suit to recover penalties. The attorney general also could file suit to stop a person from violating the requirements of the bill.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 1130 is necessary to ensure that consumers' social security numbers are adequately protected. Some companies or industries now require consumers to provide their social security numbers to do business with them. For example, apartments or utilities often request consumers' social security numbers so that they can perform credit checks before leasing apartments or turning on utilities. In some cases, these entities may not have a policy to protect the privacy of social security numbers or may not have a procedure for providing the policy to the consumers. Consumers should not be forced to reveal social security numbers for necessary activities, such as having their utilities turned on, without some assurances that their information will be protected.

CSHB 1130 would address this problem by requiring these businesses to develop privacy policies and make the policies available to consumers. This would allow consumers to make informed decisions about whether to release their social security numbers and would help them protect their personal information.

The prevalence of identity theft and the misuse of social security numbers make it essential that all businesses that use social security numbers, even small ones, create and maintain privacy policies. CSHB 1130 may prompt some businesses that do not need social security numbers but ask for them out of tradition to stop gathering this information.

CSHB 1130 would not burden businesses or significantly increase their costs. CSHB 1130 would set broad parameters for what consumers must be told but would not require a specific type of privacy policy and would leave the details of the policy to individual businesses. The bill would require that the policy say how information is protected but would not require a specific method of protection. Businesses could continue to protect information as they did before CSHB 1130 as long as they told

consumers about it and maintained the confidentiality and security of the numbers. Any cost to consumers would be minimal and gladly borne as the cost of knowing how their information is protected.

Any business that does not now have a privacy policy should adopt one and could do so easily. Most large businesses may already have these policies. For either large or small business that do not, several model privacy policies — even ones available on the Internet — could be used without excessive expense or effort. Once a policy was adopted, businesses simply would have to make it available to consumers, which easily could be done by mailing a copy to consumers upon request or posting a copy at the business office. Consumers are in the best position to know if they want a privacy policy, and under CSHB 1130, they could obtain it.

CSHB 1130 would exempt financial institutions and health care entities that already are required to have privacy policies under federal law and certain industries that are under the state insurance commissioner. The federal requirements for financial institutions include many kinds of entities, such as those that extend credit for automobiles and those that sell and issue insurance. The bill also would exempt governmental bodies operating under other statutory requirements.

The civil penalties in CSHB 1130 are necessary to give the requirement some teeth. The penalties are reasonable, and CSHB 1130 would limit them to a maximum of \$500 per month to ensure that a business that made an innocent mistake or did not know about the requirements in CSHB 1130 would not be penalized harshly.

**OPPONENTS
SAY:**

By imposing a new mandate on businesses, CSHB 1130 could increase business costs, which in the long run would be borne by consumers. These requirements could especially burden small, mom-and-pop businesses, for whom it might be especially unfair to have to pay a civil penalty for an honest oversight. It might be more reasonable for a first offense to merit a warning so that businesses are not penalized for a requirement they did not know about.

**OTHER
OPPONENTS
SAY:**

CSHB 1130 should require that businesses give consumers the privacy policy instead of simply making it available. Consumers may not know to ask about a policy or may forget to ask. Requiring businesses to give the

consumers a copy of the policy would better help consumers protect their private information.

NOTES:

The committee substitute added provisions exempting financial institutions, health care entities, and governmental bodies.

The companion bill, SB 754 by Ellis, has been referred to the Senate Business and Commerce Committee.