

**SUBJECT:** Disposal of business records containing personal identifying information

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 8 ayes — Giddings, Elkins, Bohac, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

1 absent — Bailey

**WITNESSES:** None

**BACKGROUND:** Business and Commerce Code, sec. 35.48 (a) (1), defines "business record" as letters, words, sounds, or numbers, or their equivalents, recorded in the operation of a business by handwriting, typewriting, printing, photostat, photograph, magnetic impulse, mechanical or electronic recording, digitized optical image, or another form of data compilation.

**DIGEST:** CSHB 698 would amend Business and Commerce Code, sec. 35.48, to require a business, when it disposed of a business record that contained personal identifying information of a customer, to modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable. A business that did not dispose of a business record of a customer in the manner required would be liable for a civil penalty of up to \$1,000 for each record.

The bill would define "personal identifying information" to mean an individual's first name or initial and last name in combination with any one or more of the following:

- date of birth;
- social security number or other government-issued identification number;
- mother's maiden name;
- unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

- unique electronic identification number, address, or routing code;
- telecommunication access device, including debit and credit card information;
- financial institution account number or any other financial information; or
- telephone number.

A business that modified a record by shredding, erasing, or other means would not be liable for a civil penalty if the record were reconstructed, in whole or in part, through extraordinary means.

The bill would not require a business to modify a record if the business were required to retain the record under other law or if the record were historically significant, and if there were no potential for identity theft or fraud while the record was in the custody of the business, or if the record were transferred to a professionally managed historical repository.

The attorney general could bring an action against a business to obtain any other remedy, including injunctive relief, and to recover the civil penalty, costs, and reasonable attorney's fees.

The bill would take effect September 1, 2005, and would apply to the disposal of business records without regard to whether the records were created before, on, or after that date.

**SUPPORTERS  
SAY:**

CSHB 698 would require businesses that have personal identifying information of customers in their records to shred, erase, or modify them upon disposal and would authorize a civil penalty of up to \$1,000 per record. The bill would not interfere with business record-keeping or specify disposal methods but would require that when businesses got rid of records, they did so in a way that would make personal information unreadable or undecipherable. Businesses, like government and consumers, have a responsibility to be vigilant about identity theft.

According to a recent report by the Federal Trade Commission (FTC), 4.6 percent of Americans discovered that they were identity theft victims in 2003. This translates to nearly 10 million people. Identity theft losses that same year totaled \$5 billion for consumers and \$48 billion for businesses. Texas ranks fourth per capita among all states for identity theft. The FTC found that more than 25,000 Texans' identities were stolen in 2004.

Most identity thieves still get information through traditional, rather than electronic, means. Dumpster-diving is a prevalent method of acquiring personal information that leads to identify theft. In an age of information, we should stop allowing personal identifying data to be readily available to thieves, whether among trash or in a database. The bill would authorize the attorney general to seek injunctive relief, which would be an important way to halt infractions by businesses.

CSHB 698 would help rein in the staggering financial losses from identity theft for both businesses and consumers by mandating that businesses alter or modify records in a way that would make them undecipherable upon disposal. In creating the civil penalty, the bill would give businesses a strong incentive to comply and to teach their employees the importance of protecting sensitive information. The bill would encourage consumer trust and confidence by protecting personal identifying information. Consumers have a need to expect that their information will be protected, and this bill would be that vehicle.

**OPPONENTS  
SAY:**

Identity theft is a fast-rising crime, and the losses to consumers and business are staggering. While businesses have some duty to protect personal identifying information of customers, the scope of CSHB 698 would make it difficult for businesses to comply even though they agreed with the need to curb identity theft.

The bill could be particularly onerous for small businesses. Under this bill, every business in Texas would have to dispose of essentially every piece of paper in a way that made it unreadable or undecipherable. Paper shredders can be expensive and need frequent replacing, and contracting for a shredding service can be even more costly. Some businesses could discard records inexpensively by burning them, but not all cities and towns permit burning of trash. Even for "mom-and-pop" businesses that chose to cut up records or mark through information, the bill could be costly in terms of time commitment.

Under CSHB 698, a scrap of paper or a phone pad containing names and telephone numbers could be considered information that would have to be modified upon disposal. The state of Texas could be holding businesses responsible for destroying information that otherwise is public.

The current definition of a business record is broad and includes letters, words, or numbers. If those letters, words, or numbers contained or

formed personally identifying information, a business arguably could have several business records on one piece of paper. If a business threw out hundreds of pieces of paper without properly modifying the specified personal data, the business could be fined an enormous amount, conceivably hundreds of thousands of dollars. The potential for high fines could increase exponentially with violations involving digitized or electronic records.

While the bill would authorize the attorney general to seek injunctive relief, the language that the attorney general could obtain "any other remedy" is vague. It is not clear whether the bill covers restitution to victims, which could get especially costly.

**NOTES:**

The committee substitute varies from the bill as introduced by altering the definition of "personal identifying information" and stating that the bill would apply when a business disposed of records. The substitute also says a business acting in good faith would not be liable if the record were reconstructed through extraordinary means and would not be required to modify a record if the business were required to retain it under other law or if it were historically significant.