

SUBJECT: Requiring the destruction of documents stored on a copier hard drive

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Walle, Workman

0 nays

1 absent — Villalba

WITNESSES: For — Carson Silas, Illume Training, LLC; (*Registered, but did not testify*: Tim West)

Against — (*Registered, but did not testify*: Chris Howe; Wendy Reilly, TechAmerica)

DIGEST: The bill would require a business, nonprofit entity, local government, or state agency to destroy or arrange the destruction of all business records stored on a copy machine before the terminating ownership, lease, or use of the machine. Failure to do so would result in a civil penalty of \$10,000 or less for each violation, brought by the attorney general or county or district attorney.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY: Copy machines scan an image of the original document to make a copy and store the image in their hard drives. Copiers can hold as many as tens of thousands of documents on their hard drives, and fax machines can hold about 5,000. This information on a hard drive is easily accessible at minimal cost. This bill is intended to alert entities that may be copying sensitive information, including financial statements, Social Security numbers, addresses, personal health information, or privileged legal information of the serious security risk posed by failing to wipe a copy machine of its records.

Doctors who copy patient information or who fax information to another office may be in violation of HIPAA (Health Insurance Portability and Accountability Act) by failing to protect their patients' confidentiality. Law firms could be liable for leaking the information on clients and

breaching confidentiality. Businesses reliant on proprietary knowledge could inadvertently lose their most important assets.

The price of wiping a copier's memory is small compared with the massive losses that could occur through identity theft or other exploitation of sensitive information kept on a copy machine hard drive. Some copy machines already come with a hard drive overwrite feature, making the destruction of these documents simple. The size of the fine would act as a serious deterrent against noncompliance with this bill, important given the potential ramifications of failing to destroy the information kept on a copy machine.

OPPONENTS
SAY:

The penalty of \$10,000 created by this bill is excessive. The penalty would easily present a very significant problem to small businesses and nonprofit organizations, which may inadvertently make themselves liable to this large fine through not knowing that their copy machines retain this information.

If businesses were simply informed of the risks of the information kept on their copy machines, they would take action themselves to erase the information. There would be no need for a large fine.

The price for a copier technician varies, but is not cheap, costing a few hundred dollars. This could pose a serious burden on small entities unable to spare the cash.

OTHER
OPPONENTS
SAY:

The bill has good intentions, but other less drastic measures would suffice. Instead of levying such a prohibitive fine on those who fail to comply, the bill instead should have aimed to inform consumers that these copy machines can hold so many documents in their memory. A notification upon purchase of a copy machine or a mandatory decal would solve the problem in a less intrusive manner.