

- SUBJECT:** Making social security numbers confidential under certain circumstances
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 9 ayes — Marchant, Madden, B. Cook, J. Davis, Elkins, Gattis, Goodman, Lewis, Villarreal
- 0 nays
- WITNESSES:** For — Patricia Hayes, Independent Colleges and Universities of Texas; Luke Metzger, Texas Public Interest Research Group; Rob Schneider, Consumers Union; *(Registered, but did not testify)*: Scott Henson, ACLU of Texas; Kathy Mitchell, Consumers Union; Leah Rummel, Texas Association of Health Plans
- Against — None
- On — *(Registered, but did not testify)*: Jay Thompson, Texas Association of Life and Health Insurers
- BACKGROUND:** Chapter 552 of the Government Code contains public information statutes. Section 552.003 Code defines a governmental body as an entity created by the executive or legislative branch of state government, or one of various local governmental entities and special districts. The definition does not include the judiciary. Title 6 of the Civil Practice and Remedies Code contains miscellaneous provisions.
- DIGEST:** CSHB 1053 would add Chapter 145 to the Civil Practice and Remedies Code to protect the confidentiality of social security numbers. It would prohibit a person from:
- publicly displaying an individual's social security number;
 - requiring transmission of a social security number over the Internet unless using a secure connection or encryption;
 - requiring a social security number to access a website unless a password or other authentication device was also required for access;
 - printing a social security number on an access card; or

- printing a social security number on mailed materials, unless they were part of an application process, amending an account, or confirming the accuracy of the social security number itself.

The bill would specify that a social security number could be used for internal administrative purposes. It also would allow entities that used social security numbers before January 1, 2005, in a manner prohibited by the bill to continue using social security numbers in the same manner but, beginning January 1, 2006, they would have to notify annually the individuals whose social security numbers they used of their right to stop public use of their social security number. An entity that received a written request from an individual to stop using his or her social security number in a prohibited manner would have to comply, at no cost to the requestor, within 30 days of receipt and would be prohibited from denying products or services to the requestor.

The bill would not apply to a governmental body, as defined by sec. 552.003 of the Government Code. Neither would it apply to a person who used social security numbers as required by federal or state law, including state public information laws.

The bill would take effect January 1, 2005.

**SUPPORTERS
SAY:**

Although social security numbers originally were intended solely for the federal government to track workers' earnings and pay, they now are used for all manner of personal information, including bank accounts, health insurance, and academic records. This reality has made the crime of identity theft relatively easy to commit, and it is the fastest growing crime in the nation. A criminal in possession of someone's social security number can get credit cards, rent an apartment, write checks, or buy a car, all at the expense of the victim. On average, it takes a victim 2 years, \$800 out of pocket, and 175 hours to clear his or her record, in addition to the risk of being denied housing, loans, and jobs in the interim. Terrorists also have the incentive to commit identity theft for the purpose of creating false passports and opening bank accounts. This bill would protect consumers and reduce the risk of identity threat by restricting public availability of social security numbers.

This bill would not prohibit private entities from using social security

numbers. To the contrary, it would affirm their right to do so for internal purposes. It simply would prohibit the public display of social security numbers in certain specified ways. It would not take effect for nearly two years, giving all affected entities time to comply with it, and would grandfather entities that currently use social security numbers in ways that would be prohibited by this bill. In these ways, this bill would balance the privacy needs of consumers with the business needs of private corporations and organizations.

Private businesses have recognized that identity threat is a serious problem and that they could be liable for not protecting social security numbers, so they voluntarily are moving away from using them. Additionally, the state would have a difficult time holding companies strictly accountable to this law if they were not chartered under state law, so it is unlikely that a company would challenge the law as a restriction on interstate commerce. If this law were vulnerable to challenge, the private sector already would have challenged a similar California law in effect since 2001, which has not happened.

This bill would not prevent someone from sending a fax that contained a social security number, but it appropriately would cause the sender to be more cautious about who might be on the receiving end to ensure that an unauthorized person did not receive the transmission in a way that could be construed as public display of the social security number.

A planned floor amendment would exempt institutions of higher learning whose use of social security numbers was regulated by Education Code, Ch. 51, subch. Z, a section that would be enacted by the enactment of HB 1026 by Hupp. The amendment would provide that if Education Code, Ch. 51, subch. Z were not enacted, private and independent institutions of higher learning would have until September 1, 2007, to comply with the provisions of CSHB 1053.

**OPPONENTS
SAY:**

This bill would prohibit mailing documents printed with social security numbers unless state or federal law required it. However, institutions of higher learning regularly send transcripts that contain social security numbers by mail. Since no law requires them to do so, they would be prohibited from continuing this practice if CSHB 1053 became law. Universities' continued

ability to send transcripts through the mail is important to employers and other institutions of higher learning, and the bill should be amended to account for this reality.

Both private companies and units of the federal government have been required to comply with the similar law in California. If this bill becomes law and is similarly interpreted, it could be found to violate constitutional restrictions against state interference with interstate commerce laws.

This bill also could prohibit the transmission of faxes containing social security numbers. The sender usually cannot secure against an unauthorized person obtaining the fax on the receiving end, which could be construed as making a social security number publicly available. If the Legislature does not intend to prevent the faxing of documents containing a social security number, it should specify that intention in the bill so that companies who currently do so could proceed with confidence that they were not violating the law.

NOTES:

The committee substitute differs from the bill as introduced by deleting applicability to judicial branch entities, adding specificity to provisions governing documents sent by mail, beginning the grandfather clause at a later date, stating that the chapter would not apply to persons required by law to use social security numbers, and extending the effective date of bill.

HB 1015 by Miller, which would prohibit a governmental body from disclosing a person's social security number in certain circumstances, was reported favorably, as substituted, by the State Affairs Committee on April 10. HB 1026 by Hupp, which would regulate the use of social security numbers by institutions of higher education, was reported favorably, as substituted, by the Higher Education Committee on April 16. Among other provisions, SB 473 by Ellis contains language very similar to CSHB 1053. It passed the Senate by voice vote on March 26 and was reported favorably, as substituted, by the Business and Industry Committee on April 30.