
**HOUSE COMMITTEE ON STATE AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2006**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
80TH TEXAS LEGISLATURE**

**DAVID SWINFORD
CHAIRMAN**

**CHIEF COMMITTEE CLERK
ALLISON SCOTT**



Committee On
State Affairs

November 20, 2006

David Swinford
Chairman

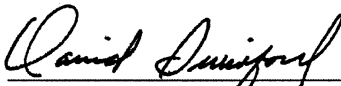
P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on State Affairs of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.


Respectfully submitted,



David Swinford



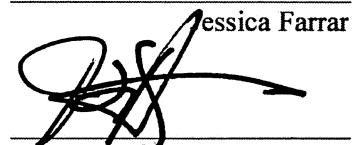
Byron Cook



Dan Gattis

Trey Martinez Fischer

Mike Villarreal



Jessica Farrar



James Keffer

Sid Miller



Martha Wong

TABLE OF CONTENTS

INTRODUCTION.....	7
INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS	8
CHARGE 1.....	9
Introduction.....	11
Texas Building & Procurement Commission.....	11
<i>Strategic Initiatives</i>	11
<i>Technological Developments</i>	13
<i>Legislative Considerations</i>	14
State Aircraft Pooling Board.....	16
Department of Information Resources	16
<i>Legislative Considerations</i>	17
Texas Residential Construction Commission	18
<i>Legislative Considerations Regarding the Property Code</i>	18
CHARGE 2.....	21
Background	23
<i>Adult Stem Cells and Umbilical Cord Blood Stem Cells</i>	24
<i>Embryonic Stem Cells</i>	25
<i>Embryonic-like Stem Cells</i>	28
Stem Cell Potential.....	29
Developments.....	31
<i>Science and Legislation</i>	31
<i>Economic and Academic Impact</i>	33
Recommendations	34
CHARGE 3.....	35
Background	37
<i>General Requirements for All Abortions</i>	37
<i>Ban Against All Third Trimester Abortions</i>	37
<i>Abortions Performed on Unemancipated Minors</i>	37
Overview of Texas Medical Board (TMB) Development of the Parental Consent Form.....	38
Recommendations	40
CHARGE 4.....	41
Instances in Texas	43
Background	45
<i>Areas of Concern</i>	45
<i>Laws Guiding Pharmacists' Drug Dispensing</i>	47
Discovery.....	50
Recommendations	52
CHARGE 5.....	53
Background	55
Types of Identity Theft.....	55
How Identity Theft Happens	55
Accessing Personal Data	56
<i>Legal Access to Personal Data</i>	56

<i>Illegal Access to Personal Data</i>	56
Effects of Identity Theft	57
Data Exposure versus Data Misuse.....	58
Recent High Profile Texas Cases	58
<i>Texas Guaranteed Student Loan Company</i>	58
<i>University of Texas at Austin, McCombs Business School</i>	59
Legislation on Identity Theft.....	59
<i>Federal Legislation</i>	59
<i>State Legislation</i>	61
Texas Attorney General's Passport Pilot Program	62
Notification issues	63
<i>Check Verification Services are not informed of ID theft</i>	63
<i>Law Enforcement</i>	63
<i>State Entities Exempt From Business-to-Consumer Notification of Data Exposure</i>	64
<i>Consumer Security Freezes</i>	64
Statute of Limitations	64
Official Texas Identification Documents: Identity Theft	64
<i>Driver's License Identity Theft</i>	64
<i>Birth Certificate Access</i>	65
Record Retention & Disposal.....	65
Recommendations	65
<i>Charge 2: APPENDIX A - Identity Theft Graphs and Statistics</i>	66
<i>Charge 2: APPENDIX B - Analysis of Certain Identity Theft Legislation</i>	72
CHARGE 6.....	85
Tobacco Settlement.....	87
State's Tobacco Use Goals	87
Agency Efforts.....	88
<i>Texas Department of State Health Services</i>	88
<i>Texas Education Agency</i>	92
<i>Comptroller's Office</i>	93
<i>Office of the Attorney General</i>	95
Recommendations	96
ADDENDUM.....	99
Representative Byron Cook	
LETTER OF DISSENT.....	103
Representative Jessica Farrar	
Representative Trey Martinez Fischer	
Representative Mike Villarreal	

INTRODUCTION

At the beginning of the 79th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on State Affairs: David Swinford, Chairman; Sid Miller, Vice-Chairman; Jessica Farrar; James Keffer; Mike Villarreal; Trey Martinez Fischer; Byron Cook; Dan Gattis; and Martha Wong, Members.

On October 19, 2005, Speaker Craddick issued five interim charges to the House Committee on State Affairs. An additional interim charge was added on December 7, 2005.

This report outlines the committee's research regarding each interim charge in three parts. First, a brief background is provided regarding the charge being studied. Second, information collected through committee hearings and research is summarized. Third, the committee states its recommendations, if any, regarding each interim charge; however, the committee does not offer specific legislative proposals at this time.

The committee recognizes that many issues before it have multiple solutions and legislation needed to address these issues must be the products of compromise and negotiation that simply are beyond the scope of an interim committee's work. Interim committee hearings do not provide sufficient opportunities for interested parties and the public to participate in the formulation of legislation and offer their perspectives on the issues, as they can during a full legislative hearing process.

The issues explored in this report will be important matters for the 80th Legislature to consider during the upcoming session, and this committee expects to address legislation related to these issues. Every effort has been made to ensure that the information presented in this report is accurate as of September 1, 2006. The committee intends this report to be used as a reference for Members, staff, and interested parties when these issues are discussed during the 80th Legislature.

Finally, the committee would like to thank the state agencies and others who assisted the committee by supplying valuable information for the preparation of this report. The committee would also like to thank all of the witnesses who took the time to participate in the hearings.

HOUSE COMMITTEE ON STATE AFFAIRS

INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

- CHARGE 1. Monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or stream line agency functions to produce long-term financial benefits to the state and better efficiency of the agencies.
- CHARGE 2. Examine scientific advances made on stem cell research.
- CHARGE 3. Monitor rule making of parental consent for the performance of an abortion.
- CHARGE 4. Review and consider all issues involved with a pharmacist refusal to dispense a drug.
- CHARGE 5. Study the problem of identity theft, and recommend any legislative changes needed to combat the problem. (Joint Interim Charge with the House Committee on Business and Industry)
- CHARGE 6. Examine the compliance of cigarette manufacturing companies with the 1998 Tobacco Settlement with reference to sales to minors, and the progress toward meeting the state's tobacco use goals and the cost of tobacco use to the state. (Joint Interim Charge with the House Committee on Public Health)

CHARGE 1. Monitor agencies and programs under the committee's jurisdiction, including identifying possible ways to merge or stream line agency functions to produce long-term financial benefits to the state and better efficiency of the agencies.

Introduction

The House Committee on State Affairs shall have jurisdiction over all matters pertaining to the following state agencies: the Council of State Governments, the National Conference of State Legislatures, the Governor's Office, the Texas Building and Procurement Commission, the State Aircraft Pooling Board, the Department of Information Resources, the Inaugural Endowment Fund Committee, and the Texas Residential Construction Commission.¹

Texas Building & Procurement Commission (TBPC)

Mission

The mission of the Texas Building & Procurement Commission is to lead the State of Texas procurement and contracting communities with enhanced services, innovative systems and best practices to further encourage competition and operational efficiency for the benefit of state agencies, local government entities, and the vendor community.

Forecasts and Trends

In order for the TBPC to support any increase in state spending and to leverage its buying power to ensure the lowest possible prices for the state, there must be an organized and centralized procurement operation. As the state's current procurement process exists, it will not be able to handle the increase in state spending in the most efficient manner. The TBPC believes that the State of Texas needs to modernize its procurement system and implement a statewide strategic procurement operation. The TBPC has analyzed the procurement division processes, systems, and client needs and has outlined strategic initiatives that will improve the division's services to the state.

Strategic Initiatives

Procurement Portal Development

The TBPC recommends developing an online procurement portal for buyers, contract managers, and vendors that will centralize all purchasing activities via one simple login. The procurement portal will provide information for each entity in the procurement process on how to conduct its procurement functions. Currently, functions of the procurement process are housed in different systems and linked through the internet. The portal will centralize the Central Masters Bidders List, the cooperative purchasing program, bid opportunities, Historically Underutilized Business vendor information, and will control the purchase order process. Not only will the portal simplify the procurement process for the procurement and contracting community, but it will eliminate excessive paperwork and burdensome procedures for the TBPC procurement division. The centralized procurement portal is necessary in order for the state to effectively handle any increase in state spending.

¹ Texas. House of Representatives. *Rules and Precedents of the Texas House*. January 2005. 79th Legislature.

Online Term Contracts Shopping Environment

Currently, in order for a state agency to purchase off a state term contract, the agency must access a complicated webpage with term contract numbers and codes; none of the commodities are alphabetized and there exists no search engine to simplify the purchasing process. The TBPC proposes an easier way to purchase from state contracts: a large-scale search engine that will simplify the buying process. Essentially, the buyer will enter the commodity or service that he or she is looking for on a state term contract, and items within the state's term contract will appear on the screen, much like a consumer purchasing site (Amazon, eBay, etc.). The term contract purchasing site will be located on the one-stop portal site described above.

Procurement and Contracting Centralized Data Warehouse

As the agency charged with statewide procurement and contracting policy, the TBPC recommends collecting all State of Texas procurement and contract information in a centralized database at the TBPC. Information within the data warehouse will include contract spend data for purchases made from open market requests, spot purchases from credit cards, and delegated purchases of other agencies which will be uploaded routinely by each agency. The data maintained in the centralized data warehouse will have to be mapped to the current comp object codes at the Comptroller's Office. This will enable the state to effectively analyze state spending and accurately assess the costs and pricing for state purchases. With this pricing information available, the state will be able to leverage its buying power, maximize its procurement resources by minimizing the number of contracts, and therefore ensure the best value for the state.

Quality Assurance and Agency Customer Service Rating

Currently the TBPC does not have a mechanism to consistently capture vital vendor performance feedback. Through the implementation of the procurement portal mentioned above, the TBPC will simplify the process by which it gathers this vital performance information. For purchase orders that are processed through contracts awarded by the TBPC, we will require the purchasing entity to enter both vendor performance data and the TBPC customer service data in a user-friendly format. We will establish a purchase order close-out process which will entail a five-question-pop-up window to obtain vendor performance and the TBPC customer service data.

Clarify State of Texas Contract Management Best Practices

Based on recent feedback, inquiries, and comments from the State of Texas contracting community, the TBPC needs to better define the functions of contract managers and train state agencies on the importance of identifying and implementing best practices for contract management. Improved contract management across state agencies will instill a cost-conscience contract administration and standardize the contracting process.

Historically Underutilized Business (HUB) System Enhancements

The TBPC is currently conducting a disparity study using a private consulting firm. The intent of

the study is to determine if a disparity currently exists between small, minority-owned businesses and other businesses throughout the state. The study will provide information for both the TBPC and the Legislature in regards to any modifications that need to be made in order to improve the HUB program.

Technological Developments

To ensure that the TBPC will be able to meet the challenges of the future and realize the maximum potential for savings and efficiencies, the TBPC needs to transform the information technology operation into an infrastructure that is modern and advanced and a strategy that is more proactive, innovative, and efficient.

Current Assessment

The Commission is currently exploring a wide range of initiatives aimed at increasing the quality of information provided to the TBPC management and the state. Currently, commissioners and executive management do not have requisite access to information to drive the innovative business decisions necessary to achieve greater statewide procurement cost savings and advance procurement and contracting practices. Furthermore, the TBPC's customers, including state agencies, local governments and school districts, do not have access to systems that allow them to effectively use our procurement and contracting services and resources.

With the exception of the Facilities Construction and Space Management and the Facilities Management Divisions, the TBPC has a patchwork of databases and applications that support its core functions. This patchwork system is very resource intensive when preparing reports and analyzing data and the lack of interoperability of the TBPC systems produces a frustrating and cumbersome environment for the end users of the systems. End users need a more aesthetically pleasing, intelligible and responsive system that welcomes them and creates a desire to use the system.

The technology currently in place to deliver statewide procurement and contracting services is somewhat self-defeating. On the one hand, the TBPC endeavors to market our services and contracts to other state and local governmental entities to increase our volume and purchasing power while offering the client access to lower prices. On the other hand, the TBPC is supporting this activity with technology applications that the customers do not want to use and often do not know how to use. For example, over 1600 Co-Op members are manually faxing in their requests and every state agency uses a non-automated process of submitting their procurement requests, each of which are unique from one another.

Aside from our need to consolidate purchasing volume and strategies and deliver good customer service, the TBPC management needs complete and accurate information in a centralized location to accurately track the progress of agency goals and to conduct the spend analyses and studies mentioned under the strategic initiatives. Similarly, staff needs a reliable centralized system that will allow efficient daily operations. Accordingly, our IT systems need an overhaul

in order to provide the TBPC the business intelligence data and centralized reporting capabilities it requires and to deliver the quality of service the State of Texas deserves.

A comprehensive information technology and business process analysis needs to be done to identify the most advantageous and cost-effective solutions. This review should be conducted by a professional information technology consulting firm that is objective, independent and not in the business of selling or marketing IT merchandise. The TBPC should undertake this review in partnership with the Department of Information Resources in Fiscal Year 2007.

Legislative Considerations

Agency Restructure

An analysis of the DIR's operations and the TBPC's operations clearly demonstrates a level of duplicative operational processes when it comes to purchasing, contracting, and vendor management. The tactical functions of the TBPC and the DIR compliment one another and would allow each to leverage its strengths. Realigning these procurement functions and combining the two agencies will provide the innovation and vision necessary to standardize the State of Texas procurement practices and deliver the strategic initiatives outlined earlier. The realignment proposal consists of an agency strictly for facilities, and another agency that focuses on procurement and contracting functions and support services for the state.

The Department of Procurement and Information Resources

The "Department of Procurement and Information Resources" would include all statewide procurement functions (CMBL/CISV, Co-Op, vendor performance, quality assurance), HUB, Training and Certification, Office of Vehicle Fleet Management, Quick Copy, Texas Council on Purchasing from People with Disabilities, the DIR's current operations, a strategic procurement initiative, and the Contract Advisory Team solicitation review lead. This agency will still secure statewide contracts for state agencies and Co-Ops to use, conduct non-delegated purchases on behalf of state agencies, and provide all procurement and contracting support services.

Both the DIR and the TBPC have launched strategic procurement initiatives, however it's on a scale that is limited, which minimizes the contract consolidation effectiveness of the plan. The synergies with this proposal are an important element to focus on. In terms of operational efficiency, the merging of these entities will clearly deliver standardization of procurement and contract practices. The alliance of these two agencies would have a strong impact on the consolidation of contract and procurement data required to fully launch a strategic procurement initiative. In an effort to gain access to the relevant data for a successful strategic procurement initiative, the newly formed agency requests a reassessment of procurement statutory exemptions and delegations for all agencies.

The value to the State of Texas in delivering procurement services via this method lies in bringing two exceptionally strong, innovative, and operationally sound agencies together to deliver the strategic initiatives outlined earlier. The suggestion by the TBPC to assess agency

restructuring to leverage synergy is one that should be explored thoroughly, discussed at great lengths, and ultimately considered a valuable solution.

Texas Facilities Commission

Texas Facilities Commission is a working title for a proposed new agency which would deal exclusively with state facilities. The Texas Facilities Commission would consist of the Facilities Construction and Space Management (FCSM) Division, Facilities Management Division (FMD), Leasing, Mail Services and Surplus as well as current administrative support, and would be exempt from procurement oversight of the new agency. This agency will still manage all building service and maintenance, building construction, statewide leasing, mail operations and surplus property management.

The need for separate agency status begins with the dollars involved in construction, operations, and maintenance. The TBPC managed 25 million square feet of leased and owned facilities for 50,000 employees at a cost of \$193 million last year. This does not include the cost of the construction managed by the TBPC on behalf of client agencies. Such expenditures suggest that these activities justify being attended by a clearly focused and identifiable group.

The mission of the current FCSM and FMD divisions is to plan, provide, and manage facilities to house the operations of state government. Currently, these functions are among other activities under the umbrella of the TBPC which do not directly relate to facilities. This sometimes results in the availability of facilities-related services going unrecognized or ignored by potential client agencies, notwithstanding their statutory obligation to make use of such services.

In order to be recognized and utilized in accordance with long-standing legislative intent, facilities-related services need a stand-alone identity; an address; a presence.

The need for a separate entity to deliver facilities services seems clear, considering the unique and specialized nature of the functions, the magnitude of the budget, liability and complexity of the tasks. Creating a comprehensive and dedicated facilities agency would also provide a more easily recognized base for the generation of standards of practice with broader state-wide application, such as the Uniform General Conditions and the Facilities Master Plan now generated by FCSM, as well as for new initiatives in such areas as energy conservation and sustainable construction.

Such an entity could be organized and managed in a way more specific to the unique nature of its activities and avoid administrative imperatives more broadly designed to accommodate other activities. Moreover, it would allow appointment of a commission, more heavily comprised of individuals experienced in the activities of the new agency and allow those individuals to focus on facilities related issues without the added requirements of many other programs. In summary, the operation of maintaining the state's physical plant, serving as the state's leasing agent and tenant representative, providing the state's space planning services and managing the state's construction, renovation and major maintenance projects does not lend itself to residing in an agency with many other priorities.

The core activities of the current facilities group and the proposed TFC are:

- Space management (including Leasing and Acquisition)
- Construction (including all related activities, such as design, etc.)
- Operations (administrative and technical-engineering level)
- Maintenance (custodial and technical–mechanics level)

The above list does not represent an organization chart, but merely an indication of the core functions upon which organizational responses and ancillary activities are developed. Together, these core activities form the basis for identifying a stand-alone agency.

Abolish the Office of Vehicle Fleet Management (OVFM)

The Office of Vehicle Fleet Management assists state agencies, institutions of higher education and executive levels of state government by providing fleet management services to maintain an efficient and effective statewide vehicle fleet. OVFM should shift its focus from regulation and oversight to the provision of fleet support services. Agencies use vehicles to meet their strategic mission. Consequently, agencies should know how best to use these assets to support their mission and how many vehicles they need. This shift would eliminate the need for a specific office or department dedicated to fleet management regulation. The provision of vehicle-related contracts should be provided by the statewide procurement office.

State Aircraft Pooling Board

H.B. 2702 of the 79th Regular Legislature abolished the State Aircraft Pooling Board transferring all powers, duties, obligations, rights, contracts, bonds, appropriations, records, and real or personal property of the Board to the Texas Department of Transportation.

Department of Information Resources (DIR)

Main Functions²

The DIR is responsible for the effective planning, implementation, and management of a statewide technology infrastructure that supports agency business operations. The DIR is also responsible for a cooperative contracts program that enables government entities to efficiently pool their purchasing power to drive down costs. The program provides an effective procurement channel to thousands of public sector entities across Texas. The DIR's role as the provider of choice for state and local governments outside of Texas has also grown.

Another key function is the adoption of statewide technology rules and standards, and the development of guidelines and practices that contribute to effective enterprise management of information and communications technology. Additionally, the DIR is responsible for ensuring

² Texas. Department of Information Resources. *Overview of Agency Scope and Functions*. Updated September 7, 2006. Accessed September 21, 2006. http://www.dir.state.tx.us/dir_overview/index.htm

that agencies and universities are informed of technology trends and methods for securing information assets, that the state's electronic government portal (TexasOnline) performs flawlessly, that statewide telecommunication operations are reliable and efficient, and that the Texas Legislature stays informed on information technology issues.

Legislative Considerations

Executive Member Designation

Under current law, six state agencies serve as ex officio members of the DIR board of directors. The agencies alternate in groups of three serving two years terms on the board. The agencies and their representatives named in the law are:

- The Commissioner of Workers' Compensation
- The Executive Commissioner of the Health and Human Services Commission
- The Executive Director of the Texas Department of Transportation
- The Commissioner of Education
- The Executive Director of the Texas Department of Criminal Justice, and
- The Executive Director of the Texas Parks and Wildlife Department.

The law also states that an ex officio member may designate the information resources manager of the member's agency to serve in the member's place.

It has been suggested that legislation be written to allow the ex officio member to designate another executive of the member's agency to serve in the member's place.

As the governing body for the DIR, the DIR board of directors has policymaking authority. The ex officio members have policymaking authority for their respective agencies, and carry that perspective and role with them to the DIR board. This statutory change will ensure that the ex officio agency is represented by a representative with the same authority as the original ex officio member of the board.

Texas Commissioner of Insurance

As noted above, one of the ex officio members of the DIR board of directors is the Commissioner of Workers' Compensation. In the 2005 regular legislative session, the Texas Workers' Compensation Commission was made part of the Texas Department of Insurance (TDI).

It has been suggested that legislation be written to change the ex officio member of the DIR board from the Commissioner of Workers' Compensation to the Commissioner of Insurance.

Each of the ex officio members of the DIR board is the head of an agency. Since the Commissioner of Workers' Compensation now leads a division of the TDI, the ex officio member of the DIR's board should be the Commissioner of Insurance. If the executive member

designation recommendation above is adopted, the Commissioner of Insurance would be allowed to designate the Commissioner of Workers' Compensation as the agency's ex officio representative to the DIR board.

Contributions During Emergency Situations

During the response to hurricanes Katrina and Rita in 2005, some technology companies wanted to make contributions to the state to assist in the response. For example, Microsoft was willing to provide software to assist in finding and tracking New Orleans residents that evacuated the area. Because the DIR does not have the legal ability to accept such gifts, more complicated arrangements had to be made for Microsoft to provide that assistance.

It has been suggested that legislation be written to allow the DIR board to accept gifts in a public meeting on behalf of the State. This recommendation - allowing the DIR executive director to accept gifts on behalf of the board in emergency situations, with the requirement that the board be informed of the gift no later than the next board meeting - allows for emergency situations, the condition under which most gifts are likely to be given.

Texas Residential Construction Commission (TRCC)

Responsibilities³

The Texas Residential Construction Commission promotes quality construction for Texans by effectively and efficiently performing its statutory functions. Principally, the TRCC is responsible for:

- Maintaining the state's minimum warranties and performance standards for residential construction
- Overseeing the state inspection process when a post-construction defect is alleged
- Assisting consumers with complaints about residential builders and remodelers
- Educating Texas consumers and the residential construction industry
- Registering residential construction projects
- Registering residential builders and remodelers
- Administering the Star Builder program for certain builders and remodelers
- Enforcing statutory and regulatory requirements for registered builders and remodelers

Legislative Considerations Regarding the Property Code

Technical Fixes

Amend Section 401.003(c) to remove the term "political subdivision" to ensure consistency with the Attorney General Opinion that a person cannot avoid registration with the TRCC by

³ Texas. Residential Construction Commission. *On The Level*. As of August 31, 2006. Accessed October 1, 2006. http://www.trcc.state.tx.us/Publications/resources/09292006_OnTheLevel_4th_Quarter_06.pdf

registering with a municipality.

In Section 416.008(d), clarify the authority for the hearings officer to grant a motion for continuance filed by the TRCC even if the applicant does not consent.

In Chapter 418, clarify the TRCC's authority to take administrative action simultaneously against the builder/remodeler and the agent, individually, and to make the agent and the builder/remodeler jointly and severally responsible for any amounts due to the TRCC (Office of the Attorney General Request).

In Chapter 418, clarify the authority of the TRCC to seek reimbursement of Sponsored Inspection and Dispute Resolution Process fees and failed payments in addition to the amount of the administrative penalty.

Expand the authority explicitly granted in Section 418.001(6) to allow for administrative action against an applicant or a registrant for failure to make good on payment to the TRCC to include all forms of payment.

Remove the phrase "In a contested case involving disciplinary action" from Section 419.001 to eliminate the potentially circular reference to Section 418.001(7).

In Section 430.001 and others, update the code references to read "currently adopted."

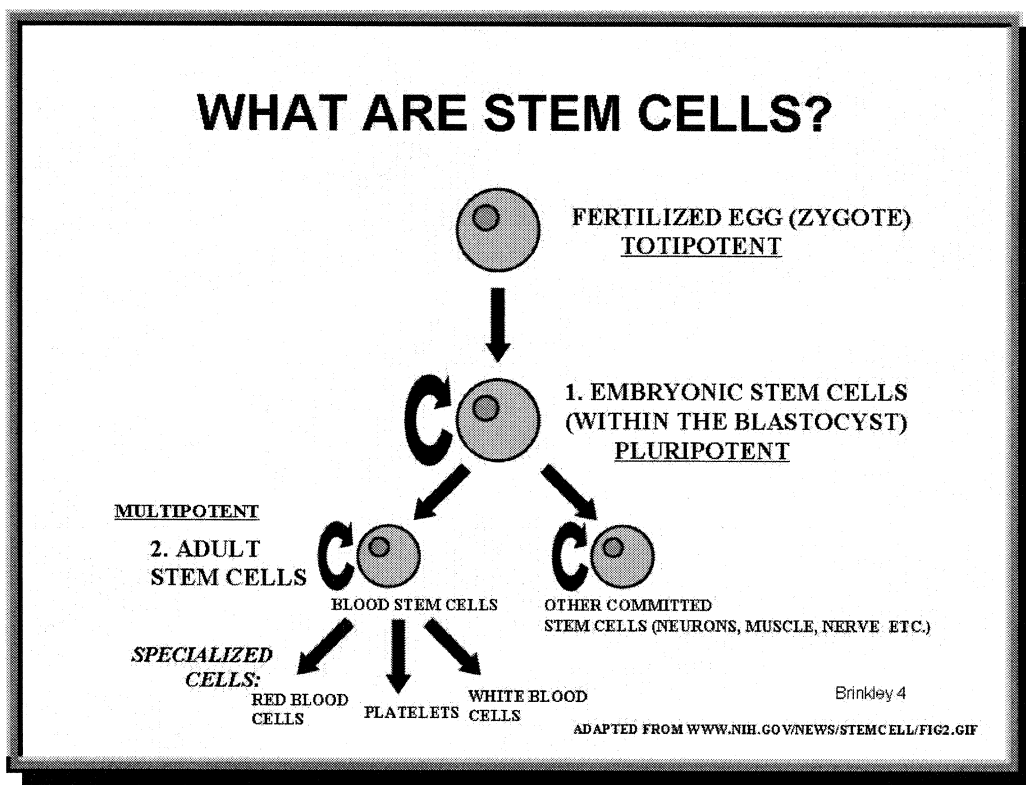
Amend the term builder in Section 430.001(f) to clarify the relationship that may arise with a developer or marketing company selling a home to the initial homeowner.

CHARGE 2. Examine scientific advances made on stem cell research.

Background

A totipotent cell has the capacity to form an entire organism. Human development begins when a sperm fertilizes an egg and creates a single totipotent cell. In the first hours after fertilization, this cell divides into identical totipotent cells. Approximately four days after fertilization and after several cycles of cell division, these totipotent cells begin to specialize.⁴

A zygote is the cell formed by the union of a male sex cell (a sperm) and a female sex cell (an ovum or egg).⁵ Once that single cell starts dividing it is known as an embryo which includes the early stages of growth and differentiation from fertilization to, in humans, the beginning of the third month of pregnancy. After that point in time, the developing organism is referred to as a fetus.⁶



Figure⁷

Totipotent is as opposed to pluripotent and multipotent. Totipotent cells have total potential. They specialize into pluripotent cells that can give rise to most, but not all, of the tissues necessary for fetal development. Pluripotent cells undergo further specialization into multipotent

⁴ MedTerms Dictionary. *Definition of Totipotent*. [MedicineNet.com](http://www.medterms.com/script/main/art.asp?articlekey=18261). Accessed October 5, 2006.
<http://www.medterms.com/script/main/art.asp?articlekey=18261>

⁵ MedTerms Dictionary. *Definition of Zygote*. [MedicineNet.com](http://www.medterms.com/script/main/art.asp?articlekey=6074). Accessed October 5, 2006.
<http://www.medterms.com/script/main/art.asp?articlekey=6074>

⁶ MedTerms Dictionary. *Definition of Embryo*. [MedicineNet.com](http://www.medterms.com/script/main/art.asp?articlekey=3225). Accessed October 5, 2006.
<http://www.medterms.com/script/main/art.asp?articlekey=3225>

⁷ Brinkley, William, Dr. Baylor College of Medicine. Provided in testimony Before the House Committee on State Affairs. September 26, 2006.

cells that are committed to give rise to cells that have a particular function. For example, multipotent blood stem cells give rise to the red cells, white cells, and platelets in the blood.⁸

Stem cells can be derived from three general sources: specialized tissue such as umbilical cord blood, embryos, and embryo-like cells. Regardless of the source, stem cells will be one of two types, adult or embryonic.

Adult Stem Cells and Umbilical Cord Blood Stem Cells

Adult stem cells are committed, tissue specific cells. Rather than typically giving rise to all of the cells of the body, these cells are capable of giving rise only to the cells of a specific tissue or organ. There are believed to be 20 or more different types of adult stem cells that are potentially amenable to manipulation.⁹

However, there are some models of bone marrow transplantation in rats with damaged livers in which the liver partially re-grows with cells that are derived from transplanted bone marrow. Similar studies can be done showing that many different cell types can be derived from each other. It appears that heart cells can be grown from bone marrow cells, that bone marrow cells can be grown from stem cells derived from muscle, and that brain stem cells can turn into almost anything.¹⁰

Great strides have been made recently in demonstrating the ability of adult stem cells to acquire embryonic stem cell-like capabilities.¹¹ Adult stem cells from tissues outside the bone marrow, have improved motor and sensory function in more than 60 spinal cord injury patients,¹² allowed researchers to grow bladders from children's own cells¹³, caused remission of Parkinson's symptoms for 5 years or more¹⁴, and repaired corneas.¹⁵

Specially approved by the Texas Legislature and unique in the states, the Texas Cord Blood Bank - managed by South Texas Blood and Tissue Center - is a source of ethnically diverse, life-saving umbilical cord blood. Cord blood is the blood that is left over in the placenta (afterbirth) when a baby is born. This blood, which is normally discarded, was used by the infant to transport

⁸ Lill, Michael, MD. *Stem Cells... What Are They?* Ed. Frederick Hecht, MD. Revised April 15, 2002. [MedicineNet.com](http://www.medicinenet.com/script/main/art.asp?articlekey=19093). Accessed October 5, 2006. <http://www.medicinenet.com/script/main/art.asp?articlekey=19093>

⁹ Ibid. (footnote 8)

¹⁰ Ibid. (footnote 8)

¹¹ Bohlin, Ray, Dr. Probe Ministries. Testimony Before the House Committee on State Affairs. September 26, 2006.

¹² Nuckols, Beverly, MD. Texas Alliance for Life. Testimony Before the House Committee on State Affairs. September 26, 2006. (as ref: Lima, Carlos, et. al. "Olfactory Mucosa Autografts in Human Spinal Cord Injury: A Pilot Clinical Study." *The Journal of Spinal Cord Medicine*, 2006, Vol 29, Number 3:191-203.)

¹³ Ibid. (footnote 12 - as ref: "First Bladders Grown in Lab Transplanted: Breakthrough Shows Promise for Other Human Organs," Rick Weiss, *The Washington Post*, April 4, 2006 <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/03/AR2006040301387.html> (Accessed September 13, 2006))

¹⁴ Ibid. (footnote 12 - as ref: Lévesque M and Neuman T, "Autologous transplantation of adult human neural stem cells and differentiated dopaminergic neurons for Parkinson disease: 1-year postoperative clinical and functional metabolic result", American Association of Neurological Surgeons annual meeting, Abstract #702; 8 April 2002.)

¹⁵ Ibid. (footnote 12 - as ref: Schwab IR et al. "Successful transplantation of bioengineered tissue replacements in patients with ocular surface disease." *Cornea* 19 (2000): 421-426.)

nourishment from mother to baby. If donated the rich blood-making cells can be used, like bone marrow transplants, to treat children and adults with certain cancers and otherwise fatal blood disorders.¹⁶

Some of the diseases currently treated with cord blood include:¹⁷

- Leukemia and other blood cancers
- Aplastic anemias
- Lymphoma
- Deficiencies of the immune system
- Genetic disorders such as sickle cell anemia

Adult stem cells, such as blood-forming stem cells in bone marrow, are currently the only type of stem cell commonly used to treat human diseases.¹⁸

Embryonic Stem Cells

Although embryonic stem cells are thought to offer potential cures and therapies for many devastating diseases, research using them is still in the early stages.¹⁹

Sexual Reproduction

Human embryonic stem cells can be harvested from an embryo five days after fertilization. The inner cell mass is removed from the outer layer of cells forming the blastocyst and can be cultured in a Petri dish.

When embryonic stem cells are grown indefinitely in a Petri dish where they divide again and again, an embryonic stem cell line is established.²⁰

However, one must necessarily destroy the embryo, which under the appropriate conditions could develop into a new human being, to harvest the embryonic stem cells.²¹

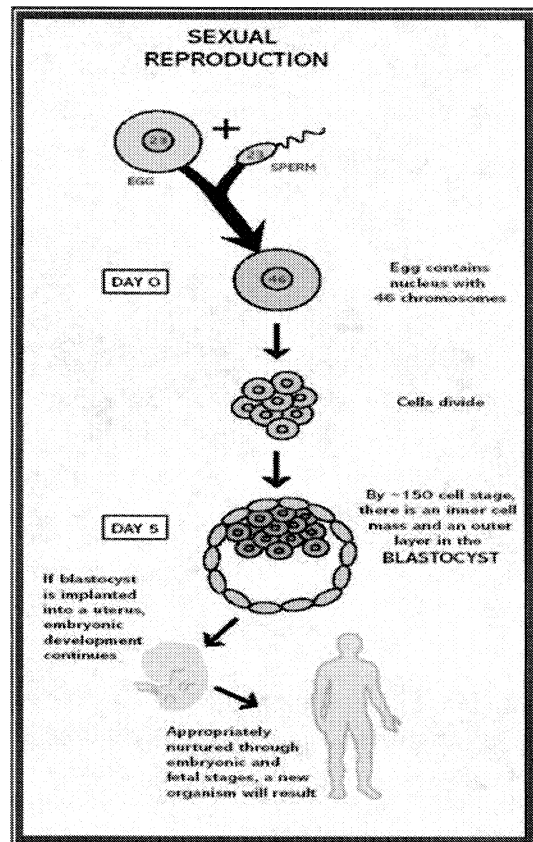


Figure: Provided in Dr. William Brinkley's Testimony

¹⁶ Fisk, Mary Beth. Self and Texas Cord Blood Bank. Testimony Before the House Committee on State Affairs. September 26, 2006. (as ref: Texas Cord Blood Bank. *Fact Sheet*. January 5, 2005.)

¹⁷ Ibid. (footnote 16)

¹⁸ United States. National Institutes of Health. *FAQ: Stem Cell Information*. Modified June 1, 2006. Accessed August 28, 2006. <http://stemcells.nih.gov/StemCells/Templates/StemCellContentPage.aspx?NRMODE=Published&NRNODEGUID=%7bA604DCCE-2E5F-4395-8954-FCE1C05BECED%7d&NRORIGINALURL=%2ffaq%2easp&NRCACHEHINT=NoModifyGuest#excited>

¹⁹ Ibid. (footnote 18)

²⁰ Ibid. (footnote 8)

²¹ Ibid. (footnote 11)

In Vitro Fertilization Surplus

In vitro fertilization is a laboratory procedure in which sperm are placed with an unfertilized egg in a Petri dish to achieve fertilization. The embryo is then transferred into the uterus to begin a pregnancy or cryopreserved (frozen) for future use. *In vitro* fertilization was originally devised to permit women with damaged or absent Fallopian tubes to have a baby. Normally a mature egg is released from the ovary (ovulated), then enters the Fallopian tube, and waits in the neck of the tube for a sperm to fertilize it. With defective Fallopian tubes, this is not possible. The first *in vitro* fertilized baby, Louise Joy Brown, was born in England in 1978.²²

According to a RAND-SART research team, as of April 11, 2002 there were 396,526 frozen embryos in the United States. Since storage began in the late 1970s, patients have designated about 11,000 embryos for research purposes. From the 11,000 embryos, perhaps 275 embryonic stem cells lines could be established. The process of *in vitro* fertilization often produces more embryos than can be used at one time. In the United States, patients who produce extra embryos are responsible for determining what to do with them and may make them available for research.²³

Prenatal Extraction

Prenatal extraction, or an embryo biopsy, is similar to a medical procedure conducted in a limited number of *in vitro* fertilization situations to determine the pre-implantation genetic diagnosis. A small number of cells, generally one or two, are removed from the embryo without harming the embryo. The removed cells are used to generate embryonic stem cells. But whether the extracted cell(s) could develop into a new embryo is an unanswered question facing this method of obtaining embryonic stem cells.

More research is being conducted to determine the long-term safety and potential risk factors surrounding embryos that undergo this procedure.²⁴

The biotechnology company, Advanced Cell Technology, Inc., claimed to use a technique similar to pre-implantation genetic diagnosis prior to implantation [to create embryonic stem cell lines without destroying an embryo]. However, the experiment did, in fact, rely on the destruction of embryos. More than 16 embryos were thawed and nurtured to the 8 to 10 cell stage. 91 cells were removed from the 16 embryos which grew well. These 91 cells yielded only 2 stem cell lines, for a 2% efficiency rate. It also became clear that the researchers found that it was necessary to grow the cells in a bath containing the rest of the original embryos.²⁵

²² MedTerms Dictionary. *Definition of In vitro fertilization*. [MedicineNet.com](http://www.medterms.com/script/main/art.asp?articlekey=7298). Accessed October 10, 2006. <http://www.medterms.com/script/main/art.asp?articlekey=7298>

²³ *How Many Frozen Human Embryos Are Available for Research?* 2003. [RAND Law & Health Research Brief](#). RB-9038. (as ref: *Cryopreserved Embryos in the United States and Their Availability for Research*. Hoffman, DI, et. al. May 2003. *Fertility and Sterility* 79 (5): 1063-1069.)

²⁴ *Ibid.* (footnote 11)

²⁵ *Ibid.* (footnote 12)

Using *In Vitro* Fertilized Embryos for Research

Pro ²⁶	Con ^{27,28}
<p>The statement of the General Assembly [of the Presbyterian Church] says, in part: <i>Prohibition of the derivation of stem cells from embryos would elevate the showing of respect to human embryos above that of helping persons whose pain and suffering might be alleviated. Embryos resulting from infertility treatment to be used for such research must be limited to those embryos that do not have a chance of growing into personhood because the woman has decided to discontinue further treatments and they are not available for donation to another woman for personal or medical reasons, or because a donor is no longer available. Again, the sale or commercialization of embryonic tissue should be legally prohibited... With careful regulation, we affirm the use of human stem cell tissue for research that may result in the restoring of health to those suffering from serious illness. [213th General Assembly (2001), Presbyterian Church (USA)]</i></p> <p>“Snowflake babies” (adopted <i>in vitro</i> fertilized embryos) are not happening in sufficient numbers to make that an objection to utilizing these embryos, which will be destroyed when their usefulness for infertility treatment is over. These embryos represent a potential human life only when they are implanted in a womb.</p> <p>Where each side claims justification from the same concern is in burden of proof. One side argues that we should not take a chance on ending a human embryo's life because a person might be present. If there is any chance that a person may be present, that person should receive every protection. Proponents of using embryos appeal to the burden of proof as well. They say that there are undeniably people dying of Parkinson's, Alzheimer's, diabetes, and other diseases. Their lives may well be saved by embryonic stem cells. How can we let these people who are unmistakably people, die to protect an individual cell that, even if implanted, may or may not turn out someday to become a person? We should not kill people to benefit others, but we should also not let people die to protect human tissue, even though they do have great potential.</p> <p>From a theological, ethical, and biblical standpoint, it is my conviction that the destruction of embryos which might otherwise be used for research leading to the successful treatment of a host of serious illnesses and conditions is insupportable.</p>	<p>It should be stated first of all that the practice of creating extra embryos that will not be implanted in the womb, embryos that have no chance of maturing, is irresponsible and immoral. You cannot ask for proprietorship over [extra embryos] so that you can bring about their deaths. Once you accept responsibility for them it would be your obligation to help them to mature and be born.</p> <p>Some suggest that since so many [<i>in vitro</i>] embryos will die because either they are intentionally discarded or they will die eventually in frozen storage; why not put them to use by helping to cure someone who is already alive? Basically, this declares the frozen doomed embryo without value since it will die anyway. So, why not restore some dignity by destroying it for someone else's use? But this logic puts anyone awaiting death at risk. They are going to die, so why not harvest their organs?</p> <p>[In embryonic stem cell research,] one chooses between the lives of embryos and the benefits that might come from research on those embryos. In the case of innocent human beings after birth, when the right to life conflicts with other values, the right to life regularly prevails. We do not kill innocent human beings even for such valuable things as medical knowledge. If we are to be consistent we should extend the same protection to unborn human beings.</p> <p>Human life should be protected by law. This brings us to the important question of when the human person begins to exist. According to the best evidence, each person begins to exist when the zygote begins to exist which will eventually become an adult human being... From everything that we can observe, a cloned embryo or an embryo produced by <i>in vitro</i> fertilization is the same kind of being as an embryo in the womb. The difference is in their location, not in their nature. If we are to respect life consistently we should protect human life from the moment of conception, that is, of fertilization of the ovum (egg) by the sperm.</p> <p>The embryo is genetically distinct from the mother. It has a unique genetic constitution that never existed before and will never exist again. The human embryo is a developing organism (human). This is a simple biological fact.</p>

²⁶ Poe, Bill, Rev. Pastor/Theologian. Testimony Before the House Committee on State Affairs. September 26, 2006.

²⁷ Gallagher, John, Rev. Texas Catholic Conference of Bishops. Testimony Before the House Committee on State Affairs. September 26, 2006.

²⁸ Ibid. (footnote 11)

Embryonic-like Stem Cells

Somatic Cell Nuclear Transfer

Cloning can refer to the technique of producing a genetically identical copy of an organism by replacing the nucleus of an unfertilized ovum (egg) with the nucleus of a body cell from the organism.²⁹

No human embryonic stem cell line has been derived from the technique that has been called by constantly changing names including "cloning," "Somatic Cell Nuclear Transfer," "Nuclear Transfer," "Nuclear Transplant," "NT" "patient-specific stem cells," "unfertilized blastocysts" and "skin cell research."³⁰

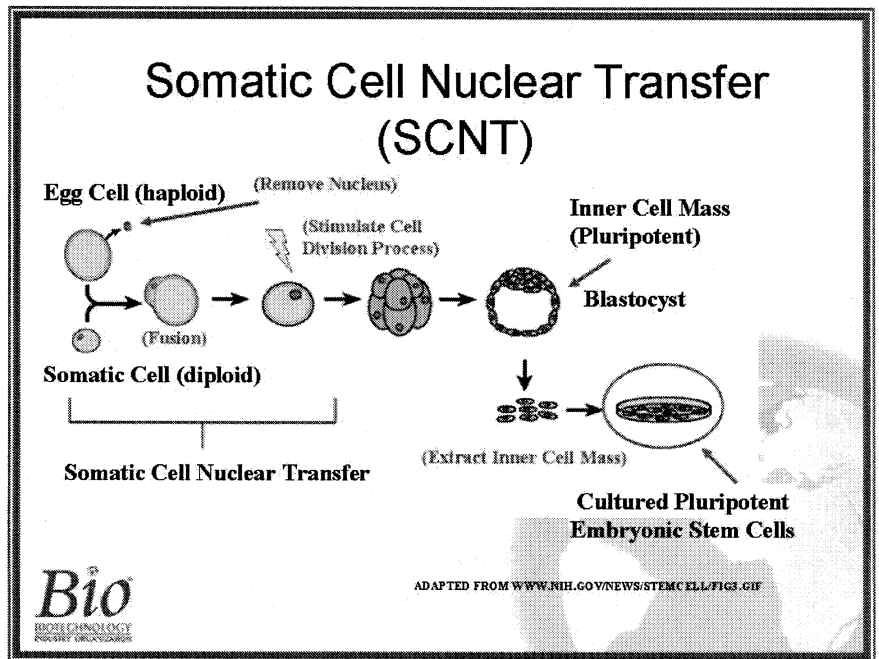


Figure: Provided in Patrick Kelly's Testimony

Moreover, if the technique uses eggs, creates an embryo by replacing the original DNA in the egg and yields embryonic stem cells, it is the same cloning technology that the International Society for Stem Cell Research describes in this way:

*The nucleus of the egg cell is replaced with the nucleus of another cell from the body and the egg cell is allowed to grow for about 4-5 days and develop to the blastocyst stage. The inner cell mass of the blastocyst is then removed and used for the creation of an embryonic stem cell line that has the genetic makeup of the donated nucleus.*³¹

And,

*If the new egg is then implanted into the womb of an animal, an individual will be born that is a clone. The clone has the identical genetic material as the somatic cell, which supplied the nucleus that carries the genetic material. This procedure is very inefficient and was first developed for agricultural purposes. However, in human medicine, this technique can be used to isolate embryonic stem cells from eggs that have undergone nuclear transfer.*³²

²⁹ MedTerm Dictionary. *Definition of Cloning*. [MedicineNet.com](http://www.medterms.com/script/main/art.asp?articlekey=2756). Accessed October 10, 2006. <http://www.medterms.com/script/main/art.asp?articlekey=2756>

³⁰ Ibid. (footnote 12)

³¹ Ibid. (footnote 12 - as ref: "Where do stem cells come from? Frequently Asked Questions," International Society for Stem Cell Research website. <http://www.isscr.org/science/faq.htm> (Accessed September 13, 2006))

³² Ibid. (footnote 12 - as ref: "Glossary of Stem Cell Terms", International Society for Stem Cell Research website. <http://www.isscr.org/glossary/index.htm>)

In addition, further research with animal reproductive clones is showing that virtually all cloned animals have some genetic defect. Ian Wilmut the creator of Dolly, the first cloned sheep, basically says that all clones suffer from some genetic defect.³³

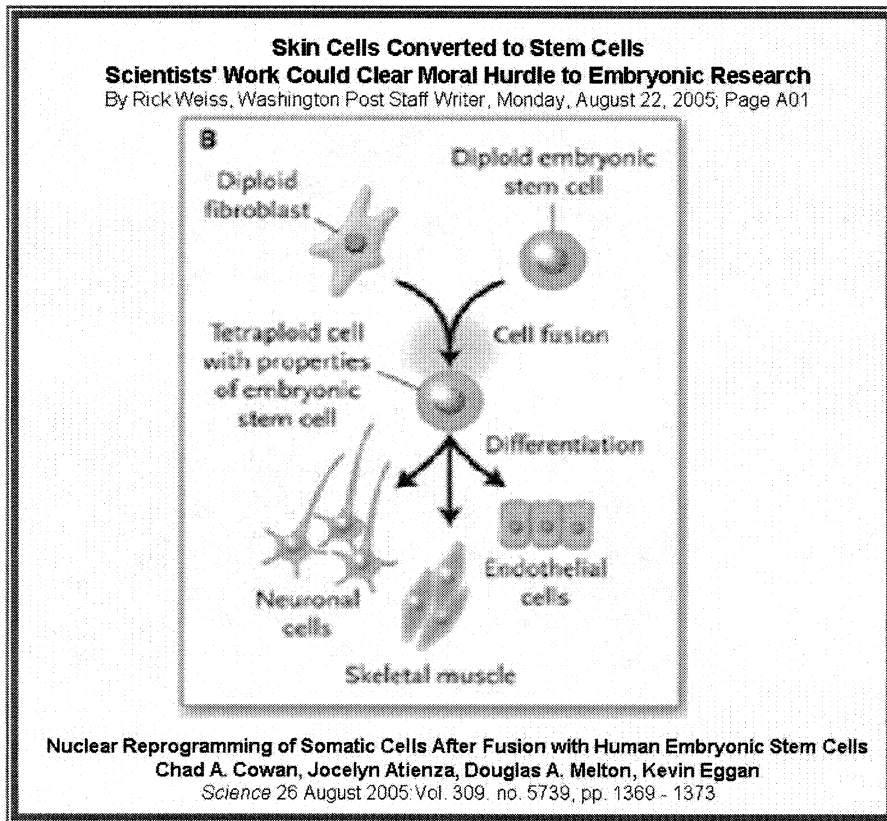


Figure: Provided in Dr. William Brinkley's Testimony

Hybrid Cells

Researchers fused adult skin cells with embryonic stem cells in such a way that the genes of the embryonic cells reset the genetic clock of the adult cells, turning them back to their embryonic form. The hybrid cells contain two sets of DNA, or genes, one from the reprogrammed adult cell and one from the embryonic "starter" cell. In tracking disease development, researchers will be able to determine how the adult cells differentiate into diseased cells and tissues.³⁴

Stem Cell Potential

Stem cells have potential in many different areas of health and medical research. To start with, studying stem cells will help us to understand how they transform into the dazzling array of specialized cells that make us what we are. Some of the most serious medical conditions, such as cancer and birth defects, are due to problems that occur somewhere in this process. A better understanding of normal cell development will allow us to understand and perhaps correct the errors that cause these medical conditions.³⁵

Another potential application of stem cells is making cells and tissues for therapies. Today, donated organs and tissues are often used to replace those that are diseased or destroyed. Unfortunately, the number of people needing a transplant far exceeds the number of organs available for transplantation. Pluripotent stem cells offer the possibility of a renewable source of

³³ Ibid. (footnote 11)
³⁴ Ibid. (footnote 7)
³⁵ Ibid. (footnote 18)

replacement cells and tissues to treat a myriad of diseases, conditions, and disabilities including Parkinson's and Alzheimer's diseases, spinal cord injury, stroke, burns, heart disease, diabetes, osteoarthritis and rheumatoid arthritis.³⁶

Chronic diseases like Roni's Kostmann's, Type 1 and 2 Diabetes, Parkinson's disease, spinal cord injury and all of the other diseases that we hope to treat with stem cells are complicated, multi-factorial problems, and we aren't likely to "cure" any of them until we discover the underlying disease process and how to correct it. Treatments with stem cells alone will, at best, lessen or reverse some symptoms and effects.³⁷

Summary of Molly Wright's Testimony³⁸

Molly Wright is a juvenile diabetic. Her story is not unlike that of the thousands of juvenile diabetics in Texas. Since January 3, 2001, she has given herself over 5,000 shots – mostly in the stomach and hip. Her date – January 3, 2001 – is a date every diabetic will have – the date that changed their life forever.

Molly didn't get diabetes from eating sugar or being over weight. For some reason her body attacked her pancreas. Now she needs insulin, without it she would die. Insulin is not a cure, it is her life support. She says she would not want to trade lives with anyone. All she wants to be is herself, without diabetes. She often wonders if it will be embryonic stem cells that hold the key. Or adult stem cells like cord blood? Or if our top scientists at the National Institutes of Health will be right when they claim that cures will likely come from a combination of embryonic and adult stem cells? Or, will it be something the researchers haven't even thought about? She believes medical advances will not take place in the state of Texas if research is limited.

Summary of Renee Walker's Testimony³⁹

Renee Walker was diagnosed with multiple sclerosis at the age of 36 (16 years ago). Her position is that adult stem cells and the umbilical cord blood stem cells offer great promise for cures and treatments available for the many disabled Americans. She is grievously distraught over the thought that our country would even consider creating human life to harvest and clone human cells in order to find solutions. She believes that to even create one human life to "try and see" if it would work is unacceptable.

She claims that the pharmaceutical companies have hypnotized our disabled Americans living with these dreaded diseases into believing that their hope for relief from suffering and dieing is by killing unborn children. She believes there is no shame in being disabled. She has met and knows hundreds of disabled Americans who are in fact suffering, but have no less purpose than those persons with good health.

³⁶ Ibid. (footnote 18)

³⁷ Ibid. (footnote 12)

³⁸ Wright, Molly. Self and Juvenile Diabetes Research Foundation. Testimony Before the House Committee on State Affairs. September 26, 2006.

³⁹ Walker, Renee. Self. Testimony Before the House Committee on State Affairs. September 26, 2006.

Losing her career, which she loved so much, and living with secondary progressive multiple sclerosis for 16 years has been very, very difficult for her. She honestly admits that when she was flat on her back, in bed, for the first three years after being diagnosed she didn't want to live anymore. But to change her life by killing an embryo is reprehensible to her.

Summary of Julie Scheinthal's Testimony⁴⁰

Julie Scheinthal was diagnosed with multiple sclerosis in April of 1993. At first she thought that maybe the baby she was carrying was lying on a nerve. Her concern was for her pregnancy... After [the baby] was delivered [the doctors] were able to run the test that confirmed that she had multiple sclerosis. She knows that this disease has affected her family, but her hope is that they will only experience multiple sclerosis through her... She hopes her children do not inherit the disease.

She believes there are wonderful possibilities with stem cell research. Maybe her husband, Steve, can go off the heart medications that have kept him healthy while also giving him serious side effects with his kidneys. She asks what more do people in her position have to go through before researchers can try something that scientists and doctors feel can change the future?

Developments

Science and Legislation

In 1995, the Dickey amendment was attached to the U.S. Health and Human Services budget to prevent federal money from being used for research where stem cells are derived from the destruction of embryos.⁴¹

The first adult mammal cloned was Dolly the Sheep in 1997.⁴² The same year, California became the first state to ban cloning "for the purpose of, or to implant, the resulting product to initiate a pregnancy that could result in

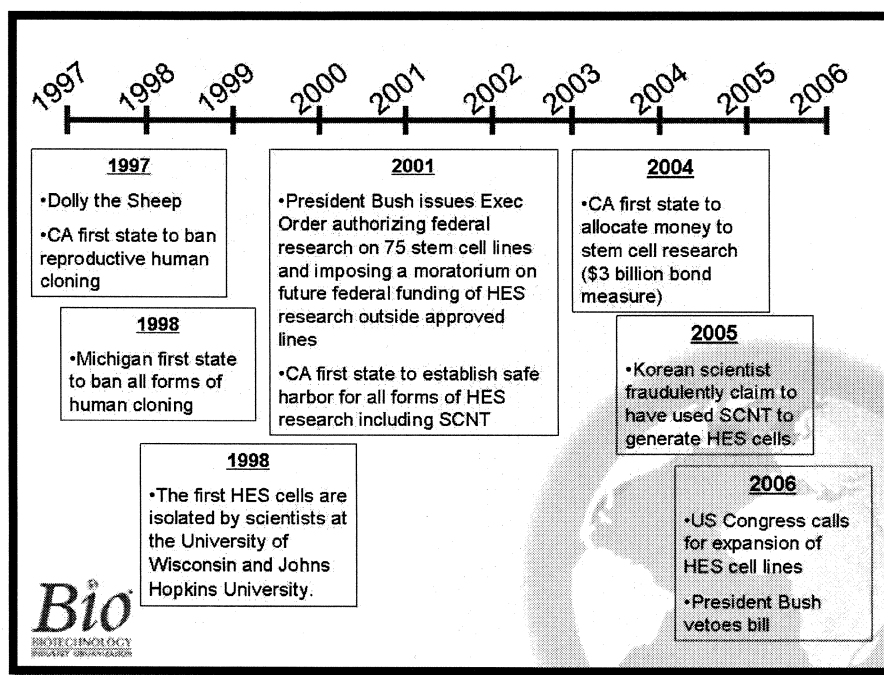


Figure: Provided in Patrick Kelly's Testimony (HES - human embryonic stem & SCNT - somatic cell nuclear transfer)

⁴⁰ Scheinthal, Julie. Self. Testimony Before the House Committee on State Affairs. September 26, 2006.

⁴¹ Ibid. (footnote 7)

⁴² Ibid. (footnote 29)

the birth of a human being."⁴³

In 1998, the state of Michigan creates a civil penalty of \$10 million for the act of producing a human embryo using somatic cell nuclear transfer.⁴⁴

On August 9, 2001, President Bush approved federal funding for human embryonic stem cell research.⁴⁵ Today there are only 21 viable embryonic stem cell lines available for federally funded research.⁴⁶

The state of California enacted a safe harbor for stem cell research involving the derivation and use of stems cells from any source in 2002.⁴⁷

On May 24, 2005, the U.S. House passed H.B. 810 to ease the restrictions for research on stem cells from embryos that would otherwise be discarded by fertility clinics.⁴⁸

On July 18, 2006, by a vote of 63-37, the U.S. Senate approved H.B. 810.⁴⁹

On July 19, 2006, Bush vetoed the stem cell legislation (H.B. 810). Gallop Poll showed that 64 percent of Americans opposed the veto.⁵⁰

Late in 2006, Wisconsin State Journal reporter

David Wahlberg interviewed University of Wisconsin - Madison scientist James Thomson, the first to grow stem cells, regarding stem cell research. During the interview, Dr. Thomson answered questions concerning the research being conducted in the U.S. compared to abroad:

Reproductive Ban	Reproductive & Therapeutic Ban	Safe Harbor + Funding for HES Research
California	Michigan	California (\$3B)
Missouri	Iowa	New Jersey (\$9M)
Virginia	Arkansas	Conn. (\$100M)
Rhode Island	North Dakota	Maryland (\$15M)
New Jersey	South Dakota	Illinois** (\$10M)
Maryland	Indiana	
Massachusetts	Arizona*	
Connecticut		

(*) Bans the use of public monies for all forms of human cloning.
 (**) Governor signed \$10m executive order to promote stem cell research in the state.




Figure: Provided in Patrick Kelly's Testimony

⁴³ Kelly, Patrick. Biotechnology Industry Organization. Testimony Before the House Committee on State Affairs. September 26, 2006.

⁴⁴ Ibid. (footnote 43)

⁴⁵ Ibid. (footnote 7)

⁴⁶ Gibbs, Nancy. *Stem Cells: The Hope and the Hype*. *Time Magazine*. August 7, 2006. pp. 41-47.

⁴⁷ Ibid. (footnote 43)

⁴⁸ Ibid. (footnote 7)

⁴⁹ Ibid. (footnote 7)

⁵⁰ Ibid. (footnote 7)

"I'd still say the highest quality [of] publications have come out of the United States. Britain has had very liberal legislation and they're kind of kicking in. But their research dollars aren't as high as here. But it's going to be California against the rest of the world with [\$3 billion appropriated for research]. I think Singapore might ultimately make important contributions. But they haven't done a whole lot yet. Certainly they've published some things, but most of the significant research has been dominated by the United States. There's exceptions to that. It's not absolute. Certainly Britain's making a lot more, and Israel's published a lot and Singapore has published. But I would think that ten years from now, if the dollars flow as they're currently set, California will be the dominant researcher in this area."⁵¹

Economic and Academic Impact

The bioscience industry impacts a variety of markets that are product and service oriented including agriculture, pharmaceuticals, medical equipment, hospitals, and research and testing. In the U.S., the industry employees roughly 1.2 million and accounts for an additional 5.8 million jobs created in the economy.⁵² The bioscience sector within Texas alone employs over 75,400 people in 2,994 companies.⁵³

The high-skill and high-wage occupations found in the bioscience industry, which is projected to grow faster than the overall U.S. employment growth rate, have the potential to improve health care, lead renewable sources of energy, build cleaner environments and develop healthier foods.⁵⁴

Academically, the University of Colorado received a \$6 million gift to create a Regenerative Medicine and Stem Cell Biology Program, and hired top Baylor College of Medicine biologist Dennis Roop away from Texas to head the program. Roop is convinced it will "make Colorado a world leader in this new and exciting and promising field of medicine."⁵⁵

All human embryonic stem cells are patented by the Wisconsin Alumni Research Foundation (University of Wisconsin). The use of embryonic stem cells will require licensing and royalty fees which will go to Wisconsin. The patents have been called the "number one hindrance to stem cell research outside of the government," by the former head of the National Institutes of Health.⁵⁶

⁵¹ Ibid. (footnote 12 - as ref: Ali, Anjuman, ed. *Read, hear stem cell pioneer James Thomson's views on research*. Wisconsin State Journal. September 25, 2006. Accessed September 26, 2006.)

⁵² Ibid. (footnote 43)

⁵³ Ibid. (footnote 7 - as ref: Texas. Office of the Governor. *Texas Biotechnology Industry Report*. March 2006. Economic Development & Tourism Division.)

⁵⁴ Ibid. (footnote 43)

⁵⁵ Ibid. (footnote 7)

⁵⁶ Ibid. (footnote 12 - as ref: Somers, Terri. "Foundation's stem cell patents impede research, scientists say." SignonSanDiego.com July 30, 2006. <http://www.signonsandiego.com/news/science/20060730-9999-1n30stems.html> "Under the patents, a researcher in the United States who uses embryonic stem cells in any way must pay a licensing fee to WARF, the university's licensing arm. "Outside of the (U.S.) government, the No. 1 hindrance to

Recommendations

It is the committee's recommendation to continue monitoring the scientific advances being made on stem cell research. In recognizing the ethical decision regarding embryonic and embryonic-like stem cell research, each Member of the Texas Legislature needs to choose for themselves based on the moral, religious, and economic factors, their position on the issue and what action they deem necessary. Furthermore, the committee recommends that the Texas Legislature support and pursue additional funding sources for research on adult stem cells.

stem cell research is the WARF patents because of how they try to enforce their licenses," said Mahendra Rao, the former head of the National Institutes of Health's stem cell efforts.")

CHARGE 3. Monitor rule making of parental consent for the performance of an abortion.

Background

The regulation of abortion in Texas is shared by several different regulatory agencies as designated by statute. These agencies are charged with enforcing the statutory requirements and developing the necessary rules, procedures, and forms as directed by the Legislature. Abortion regulation breaks down into three general areas: general requirements for all abortions, ban against all third trimester abortions and abortions performed on unemancipated minors.

General Requirements for All Abortions

The key regulatory statute that sets out requirements for all abortions is Chapter 171 of the Health & Safety Code. These requirements are under the jurisdiction of the Texas Department of Health Services.

Chapter 171 does the following:

- Defines abortion;
- Limits providers to only physicians licensed in Texas;
- Establishes that the abortion must be performed in an ambulatory surgical center or hospital licensed to perform abortions if the gestational age of the fetus is over 16 weeks;
- Ensures that each patient must provide her voluntary and informed consent to the procedure after being provided complete and specific information;
- Ensures that each patient is made aware of and provided access to additional information in the booklet entitled *A Woman's Right to Know* that is made available by the Texas Department of State Health Services; and
- Establishes the penalties for intentional violations.

In addition, Chapter 245 of the Health & Safety Code provides detailed information on standards, inspections, and reporting requirements of abortion facilities.

Ban Against All Third Trimester Abortions

As set out in Chapter 170 of the Health & Safety Code and Chapter 164.052 of the Medical Practice Act, it is against the law to perform an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy with a few allowable exceptions. The Texas Department of State Health Services promulgates the "Third Trimester Induced Abortion Certification Form" and the Texas Medical Board enforces the regulation against physician licensees.

Abortions Performed on Unemancipated Minors

Senate Bill 419, which was passed during the 79th Regular Session, includes a new provision in the Medical Practice Act that requires physicians to obtain the written consent of a parent, managing conservator, or legal guardian before performing an abortion on an unemancipated minor with two exceptions: court order or identified medical emergency that meets the statutory definition and requirements.

This legislation charges the Texas Medical Board to adopt the forms for physicians to use to obtain this consent and establishes the required retention period for the physician to keep the signed consent in the patient's medical records.

Overview of Texas Medical Board (TMB) Development of the Parental Consent Form

As the sunset bill for TMB, S.B. 419 was passed in May 2005 with an effective date of September 1, 2005. In the development of the rule and form related to parental consent for an unemancipated minor, TMB has involved many stakeholders and sought their input early in the rule-making process through communications with individual stakeholders, and the use of focus groups, resource groups and stakeholder groups.

Summer 2005 – TMB Sought Input:

- What does the legislation authorize?
- How does this requirement fit together with other abortion regulatory requirements?
- S.B. 419 does not speak to the requirements to be included in the form ... what is the intent of the Legislature regarding the scope of the form?

Agency Input:

- Communication with the bill sponsors. (Senator Nelson and Rep. Solomon).
- Communication with other interested legislators (Rep. King and Rep. Harnett).
- Communication with key stakeholder groups (Texas Right to Life and Whole Women's Health & Family Planning Association).
- Communication with officials at Texas Department of State Health Services

Medical Board Input:

- Education and training on abortion regulations.
- Direction to staff regarding interim form, process to seek stakeholder input, and initial draft of rule and form.

September & October 2005 – Work on Initial Development of Rule and Form:

- Put interim form up on TMB website.
- Develop first draft and circulate to key stakeholders for comments.
- Present first draft to Medical Board with report on comments received; Medical Board directs staff regarding a proposed rule and form.

November 2005 – Proposed Rule and Form.

- Finalize first draft and circulate draft of proposed rule and form to Governor's Office, bill sponsors, interested legislators (Reps. Dukes, King, Miller, and Smith), and nine key stakeholder groups.

-
- Review proposed rule and form with TMB Rules Enforcement Workgroup and receive Workgroup recommendations.

December 2005 – Medical Board presented with proposed rule and form and comments and feedback. Medical Board takes action to adopt the proposed rule and form with some changes for publication in the Texas Register.

January 2006 – Proposed rule and form published in the Texas Register.

February 2006 – Medical Board action regarding published rule and form:

- Medical Board reviewed all written comments and a summary of key issues received from over 35 elected officials, physicians, individuals and groups.
- Medical Board heard public comments for approximately two hours that included testimony from legislators, staff of legislators, physicians, and representatives of groups on both sides of the issues.
- Medical Board heard the following concerns:
 - Language is too complicated and at a too high reading level.
 - Not clear what requires approval by patient and what by parent.
 - Not enough protection to ensure that the person giving parental consent is the person they claim to be.
 - Form must not exceed the statutory authority.
 - Rule and form should accommodate those parents (or legal guardian) accompanying patient and those that do not.
 - Not clear that parent does not need to be at clinic to give parental consent.
 - Information on anesthesia risks is incorrect and incomplete.
- Medical Board took action to pull down the rule and form as published and directed staff to make specific changes for a revised proposed rule and form to be presented at the next Board meeting.

April 2006 – Medical Board presented with revised proposed rule and form and took action to approve the revised proposed rule and form for publication in the Texas Register.

April 2006 - Current proposed rule and form published in the Texas Register.

June 2006 –Medical Board action regarding published rule and form:

- Medical Board reviewed all written comments from elected officials, physicians, individuals and groups.
- Medical Board heard public comments for approximately one hour that included testimony from or on behalf of two legislators and Planned Parenthood of Texas.
- Medical Board took action to withdraw the rule and form as published and directed staff to make specific changes for a revised proposed rule and form to be presented at the next Board meeting. The Medical Board

directed that the following changes be made to the rule and form as previously published:

- Require notarization of the parental consent form in all cases
- Make reference to “A Women’s Right to Know” booklet and “A Woman’s Right to Know” resource directory.

June 23, 2006 – Proposed rule and form republished in Texas Register.

August 25, 2006 – Medical Board reviewed all written comments and hears public testimony regarding the current rule and form as published in June. Medical Board made non-substantive changes and adopted the rule and form.

September 2006 – Adopted rule and form published in Texas Register.

Recommendations

The committee recommends that the issue continue to be monitored by requiring the Texas Medical Board and all other state agencies and interest groups concerning parental consent for the performance of an abortion to continue reporting updates to the Texas Legislature on the implementation and effects of the law.

CHARGE 4. Review and consider all issues involved with a pharmacist refusal to dispense a drug.

Instances in Texas

In 2004, the state of Texas witnessed three situations where a pharmacist refused to dispense a drug that gained significant media coverage. In all three events the pharmacist or pharmacists involved based their refusal on their own moral or ethical objections. The events include a series of issues surrounding the relationship between a pharmacist and a patient such as convenience (accessibility and isolated/rural locations), employment, drug function/purpose (birth control, emergency contraception, definitions of abortion and beginning of life), woman's rights, individually owned and incorporated pharmacies, physician's authority and relationship with patient, and others. The following situations in Texas illustrate the significance of each issue.

Fabens, Texas - (July 24, 2004)

Idalia Moran, who is staying temporarily in Fabens with her mother, said she was shocked when she tried to obtain birth control pills on Saturday at the Medicine Shoppe, the only private pharmacy in the small town east of El Paso.⁵⁷ It's the only place where residents can locally fill their [medical] prescriptions.⁵⁸

"A person at the counter told me that the pharmacist wasn't going to sell them to me because it was against his religion," Moran said. "I had to go to Walgreens in El Paso to get them."

Steve Mosher, the pharmacist who owns the Medicine Shoppe in Fabens, claims, "I'm a Christian, and I believe that abortion is taking the life of an innocent human being." Because birth control pills could keep a fertilized egg from implanting, he opposes them too. "...That's the same thing as abortion..."⁵⁹ I've lost a lot of business because of my conviction. I fill some prescriptions for the pill, as long as it is used for menopause or other medical reasons besides birth control. I don't carry [emergency contraception] or anything like that... Some people are even blaming me for teen pregnancies in Fabens."⁶⁰

North Ridgeland Hills, Texas - (March 25, 2004)

Julee Lacey, a married first-grade teacher with two children, went to a CVS drug store in North Richland Hills, a suburb of Forth Worth, whenever she needed to fill a prescription. But on March 25, 2004, the pharmacist on duty refused to fill Lacey's prescription for birth control pills, informing her that she did not "personally believe in birth control." When Lacey's husband went back to the CVS shortly thereafter to try again, the pharmacist told him, according to the Associated Press, that birth control "was not right."⁶¹

⁵⁷ Valdez, Diana Washington. *Fabens Pharmacist Won't Fill Orders for Birth Control Pills*. July 29, 2004. El Paso Times. Accessed July 28, 2006.

⁵⁸ Fairbank, Katie. *Waging a Moral Battle from Behind the Counter*. The Dallas Morning News. NARAL Pro-Choice Texas. Modified May 17, 2006. Accessed July 28, 2006.

<http://www.prochoicetexas.org/s04politicalupdates/press/200504242.shtml>

⁵⁹ Ibid. (footnote 58)

⁶⁰ Ibid. (footnote 57)

⁶¹ Loewentheil, Kara. *Refused at the Counter*. October 20, 2004. Planned Parenthood Federation of America, Inc. Accessed July 26, 2006. <http://www.plannedparenthood.org/news-articles-press/politics-policy-issues/counter->

As she was driving home from CVS after being denied, Lacey got angry. "It was not right to deny me my medication that was prescribed to me by my licensed doctor," she said. "I really couldn't believe that [the pharmacist] had the right to withhold my medication from me."⁶²

Despite criticism from reproductive health organizations, including Planned Parenthood Federation of America, CVS declined to fire the pharmacist. A company representative told Channel 5 in Dallas that referring a customer to another pharmacist or store was an acceptable response to a conflict over filling a prescription.⁶³

But Kirsten Arnold, chief counsel for the Texas Pharmacy Board, disagreed. "The pharmacist has an obligation and responsibility to treat their patients," she told the Amarillo Globe-News. "There's nothing in the law that says a pharmacist can refuse to fill a prescription on ethical grounds."⁶⁴

Lacey filed a complaint with the Texas Board of Pharmacy after her prescription was refused in March.⁶⁵

Denton, Texas - (January 23, 2004)

Eckerd Corporation, the owner of the Eckerd Pharmacy chain, has fired three pharmacists six days after they refused to fill prescriptions for emergency contraception. Gene Herr, one of the pharmacists, said that his refusal to fill the prescription was based on religious convictions. Herr said, "I went in the back room and briefly prayed about it."⁶⁶

Although he had declined five or six times in the past to fill such prescriptions, it was the first time he had been handed one for a rape victim, he said.⁶⁷ Herr went back to the counter and explained that if the rape victim had conceived, [emergency contraception] "would take the child's life, and I can't fill it."⁶⁸

"Pharmacists aren't vending machines," said Herr. "We have morals, we are human beings as well, [and] we have beliefs. I mean, everyone wants to live consistently with their own beliefs..."⁶⁹ I don't think it's fair that I be forced to participate in a chain of events that results in the taking of a life," Herr said. "I feel like what Eckerd wanted me to do [was] forcing me to do

refusal-6486.htm

⁶² Tapper, Jake, and Jack Date. *Can Pharmacists Withhold Birth Control?* April 6, 2004. ABC News. Accessed July 26, 2006. <http://abcnews.go.com/WNT/print?id=131591>

⁶³ Ibid. (footnote 61)

⁶⁴ Ibid. (footnote 61)

⁶⁵ Jones, Charisse. *Druggists refuse to give out pill*. November 10, 2004. USA Today. Accessed July 26, 2006. http://www.usatoday.com/news/nation/2004-11-08-druggists-pill_x.htm

⁶⁶ *Texas Pharmacists Fired by Eckerd Corporation for Ethical Stand on Morning After Pill*. February 12, 2004. LifeSiteNews.com. Accessed July 26, 2004. <http://lifesite.net/ldn/2004/feb/04020407.html>

⁶⁷ Austin, Liz. *Firings In Morning-After Pill Flap*. February 12, 2004. CBS News. Accessed July 25, 2006. <http://www.cbsnews.com/stories/2004/02/12/health/printable599902.shtml>

⁶⁸ Ibid. (footnote 62)

⁶⁹ Ibid. (footnote 62)

something that I see is wrong."⁷⁰

Joan Gallagher, spokesman for Eckerd said the company employment manual says pharmacists are not allowed to opt out of filling a prescription for religious, moral or ethical reasons. Herr was not aware of the company policy until he was fired.⁷¹

Background

Debate evolves from refusal clauses, or conscience clauses, that developed after the U.S. Supreme Court's 1973 *Roe v. Wade* decision. The clauses allow physicians and other health care providers to refuse to perform or assist in an abortion.⁷² The issue re-emerged in the 1990s, says Adam Sonfield of the Alan Guttmacher Institute, which researches reproductive issues.⁷³

Sonfield says medical workers, insurers and employers increasingly want the right to refuse certain services because of medical developments, such as emergency contraception, embryonic stem cell research and assisted suicide.⁷⁴

Currently, the State of Texas has defined abortion as the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.⁷⁵

Additionally, the Food and Drug Administration and American College of Obstetrics and Gynecology have defined pregnancy as beginning at the moment a fertilized egg is implanting in the uterine wall. But many conservatives believe pregnancy - and therefore life - begins at the moment of fertilization, up to a week before implantation. Since emergency contraception and other hormonal contraceptives [could possibly have an] effect after fertilization, they see these medications as ending human life.⁷⁶

Areas of Concern

Birth Control, Emergency Contraception, and Abortifacients

As two of the situations occurring in Texas involved birth control pills and one situation dealt with emergency contraception, the morning-after pill, it is important to distinguish between the two forms of birth control. Additionally, birth control pills and emergency contraception should not be confused with abortifacients.

Birth control pills and emergency contraception are both made of hormones that prevent

⁷⁰ Associated Press. *Denial of Rape Victim's Pills Raises Debate*. February 24, 2004. [MSNBC.com](http://www.msnbc.com). Accessed July 25, 2006. <http://www.msnbc.msn.com/id/4359430/print/1/displaymode/1098/>

⁷¹ Ibid. (footnote 66)

⁷² *Trends and Transitions: Right to Refuse vs. Easy Access*. September 2005. [State Legislatures](#). p.7.

⁷³ Ibid. (footnote 65)

⁷⁴ Ibid. (footnote 65)

⁷⁵ Texas Health & Safety Code, Section 171.002 (2003)

⁷⁶ Ibid. (footnote 62)

ovulation or reduce the chances of fertilization. There are two types of birth control pills. The first is a combination between two hormones - estrogen and progestin. The second type consists only of one hormone, progestin. Emergency contraception is similar to birth control pills, however, is a higher dose of the hormones and consists of only two pills, one to be taken within 72 hours of intercourse and the second to be taken 12 hours after the first pill is taken.^{77,78} Nevertheless, when fertilization is not prevented, hormonal birth control methods commonly cause the expulsion of an embryo prior to implantation by changing the lining of the uterus so that it will not accept an embryo and by changing the way the fertilized ovum travels down the fallopian tube.⁷⁹

Pharmacists do not dispense abortifacients. A physician must dispense an abortifacient. The abortifacient RU-486 (mifepristone) is actually a chemical that causes an abortion by interfering with the function of the placenta, starving the fetus to death.⁸⁰

Ritalin (Methylphenidate)

In 2004, a Dallas pharmacist refused to fill a child's prescription for Ritalin.⁸¹ The pharmacist did not believe children should take the medication.⁸²

Methylphenidate, a central nervous system stimulant, is used as part of a treatment program for attention deficit hyperactivity disorder and narcolepsy. It works by changing the amounts of certain natural substances in the brain.⁸³

Adderall is made by Shire Pharmaceuticals; Ritalin by Novartis Pharmaceuticals Corp.; Concerta by Johnson & Johnson; Methylin by Mallinckrodt Pharmaceuticals; and Metadate by UCB. Various other companies make generic versions of Ritalin.⁸⁴

Looking back, in January of 1996, the U.S. Food and Drug Administration took steps to alert the health care community that an animal study of Ritalin had produced a "weak signal" that the drug may have the potential to cause cancer.⁸⁵

⁷⁷ United States. Food and Drug Administration. *What Kind of Birth Control Is Right for You?* Updated June 5, 2006. Accessed July 28, 2006. <http://www.fda.gov/opacom/lowlit/brthcon.html>

⁷⁸ United States. Food and Drug Administration *Birth Control Guide*, Updated February 4, 2004. Accessed July 28, 2006. <http://www.fda.gov/fdac/features/1997/babytabl.html>

⁷⁹ *What to Know About Birth Control Drugs*. Westside Pregnancy Resource Center. Accessed July 28, 2006. <http://www.wprc.org/11.21.0.0.1.0.phtml>

⁸⁰ Williams, M, compiled. *Emergency Contraception or Abortion?* Westside Pregnancy Resource Center. Accessed July 28, 2006. <http://www.wprc.org/11.21.0.0.1.0.phtml>

⁸¹ Ibid. (footnote 58)

⁸² Planned Parenthood of North Texas. *Legislative Update: Refusal Clauses Threaten Access to Prescriptions*. 2004. http://72.14.203.104/search?q=cache:kYUxeSj96p4J:www.ppnt.org/content/ppntadmin/2004_Winter_Legup.pdf+ritalin+refusal+pharmacist+2004&hl=en&gl=us&ct=clnk&cd=3

⁸³ United States. National Institute of Health. *Drug Information: Methylphenidate*. Revised April 26, 2006. Medline Plus. Accessed July 28, 2006. <http://www.nlm.nih.gov/medlineplus/druginfo/uspdi/202361.html>

⁸⁴ Associated Press. *Feds Recommend Warnings on ADHD Drugs*. February 9, 2006 CBS News. Accessed August 29, 2006. <http://www.cbsnews.com/stories/2006/02/09/ap/health/printableD8FLRPIO0.shtml>

⁸⁵ United States. Food and Drug Administration. *Ritalin Studies*. January 12, 1996. Accessed August 26, 2006.

In 2005, a study of 12 children on Ritalin found every one experienced a significant increase in their level of chromosome abnormalities - occurrences associated with increased risks of cancer and other adverse health effects. "Assuming it holds up, this study doesn't mean these kids are going to get cancer, but it does mean they're exposed to an additional risk factor," said Marvin Legator, a professor of environmental toxicology at the University of Texas Medical Branch at Galveston and the study's principal investigator and senior author. "Smoking doesn't mean you'll get cancer. It's a risk factor." Additionally, on February 9, 2005, the Canadian government suspended sales of Adderall amid reports of 20 deaths of patients, including 12 children, taking the drug between 1999 and 2003.⁸⁶

Other Health Care Providers, Staff and Areas of Concern

Some anesthesiologists refuse to assist in sterilization procedures. Respiratory therapists sometimes object to removing ventilators from terminally ill patients. Gynecologists around the country may decline to prescribe birth control pills. Some doctors reject requests for Viagra from unmarried men.⁸⁷

Regarding other areas of concern, one example would be a pharmacist who refuses to dispense AIDS drugs because the pharmacist believes homosexuality is a sin.⁸⁸ If "right to die" laws or "assisted suicide" were to be discussed in Texas, would pharmacists be required to participate in these practices? Additionally, some [pharmacists] are confiscating prescriptions so that patients can not have [prescriptions] filled elsewhere.⁸⁹ Also, inventory selections are having an impact such as those at Wal-Mart Inc., one of the nation's largest pharmaceutical chains, which does not stock emergency contraceptives.⁹⁰

Laws Guiding Pharmacists' Drug Dispensing

Texas Controlled Substances Act and Texas Dangerous Drug Act

Under Sections 481.074, *Prescriptions*, and 483.021, *Determination by Pharmacist on Request to Dispense Drug*, a pharmacist must determine the validity of a practitioner-issued prescription. The pharmacist may not dispense a dangerous drug if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.⁹¹

<http://www.fda.gov/bbs/topics/ANSWERS/ANS00705.html>

⁸⁶ Ackerman, Todd. *Small Study Ties Ritalin to Higher Cancer Risk*. February 25, 2005. [The Houston Chronicle](#). Accessed August 26, 2006.

<http://search.chron.com/chronicle/archiveSearch.do;jsessionid=ayY5yMFO9nF4VX4qH5>

⁸⁷ Stein, Rob. *A Crisis of Conscience*. July 24-30, 2006. [The Washington Post National Weekly Edition](#).

⁸⁸ Ukens, Carol. *Confrontation at the Counter*. July 26, 2004. [Drug Topics](#). Accessed July 26, 2006.

<http://www.drugtopics.com/drugtopics/content/printContentPopup.jsp?id=107992>

⁸⁹ Bailey, Scott W. *Drug-Prescription Debate Reaching Legislative Proportions*. [San Antonio Business Journal](#).

Updated December 18, 2005. [MSNBC.com](#). Accessed July 26, 2006. <http://msnbc.msn.com/id/10527691/>

⁹⁰ Ibid. (footnote 58)

⁹¹ Texas Health & Safety Code, Sections 481.047 (1998) and 483.021 (1998)

Texas Pharmacy Act

Under Sections 562.056 and 562.111, *Practitioner-Patient Relationship Required*, a pharmacist is responsible for the pharmacist's actions and the actions of the pharmacy agents and employees. A pharmacist and the pharmacy may not dispense a prescription drug if the pharmacist or an agent or employee of the pharmacy knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship. However, a pharmacist may dispense a prescription when a valid practitioner-patient relationship is not present in an emergency.⁹²

Texas Board of Pharmacy Rules

Under Rule 281.7, *Grounds for Discipline for a Pharmacist License*, a pharmacist may be disciplined if the pharmacist dispenses a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice dispenses a controlled substance or dangerous drug when the pharmacist knows or reasonably should know that the controlled substance or dangerous drug is not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose.

Federal Code of Federal Regulations

Under Section 1306.04, *Purpose of issue of prescription*, a prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Employment Guidelines

The basic rule in Texas is the "employment at will" doctrine: absent an express agreement to the contrary, either party in an employment relationship may end the relationship or change the terms and conditions of employment at any time for any reason, or even for no particular reason at all, with or without notice.⁹³

⁹² Texas Occupations Code, Sections 562.056 (2005) and 562.111 (2005)

⁹³ Texas. Workforce Commission. *Wrongful Discharge*. Accessed August 26, 2006.
http://www.twc.state.tx.us/news/eft/wrongful_discharge.html

There are several exceptions, both statutory and court-made:⁹⁴

- Statutory exceptions
 - State and federal employment discrimination statutes: a discharge may not be based upon a person's race, color, religion, gender, age, national origin, disability, or citizenship, and many states add veteran status and sexual orientation to the list
 - Protected activity (something the law entitles an employee to do without fear of retaliation)
 - Bringing suspected wrongdoing to the attention of competent government authorities (state and federal whistle blowing statutes)
 - Filing various types of claims (OSHA, federal wage and hour, workers' compensation, employment discrimination, etc.)
 - Military duty
 - Jury duty
 - Voting
 - Engaging in union activity
- Common law exceptions (i.e., exceptions found in court decisions)
 - Public policy: it is illegal to discharge an employee for refusing to commit a criminal act
 - Contractual - if a discharge would violate an express employment agreement, it would be a wrongful discharge; includes collective bargaining agreements
- In a recent Texas case, a court ruled against a company that had failed to enforce its anti-nepotism policy for 17 years and then suddenly fired an employee who was known all that time to have violated the policy.
- Remedies for wrongful discharge can include reinstatement, back and future pay, promotion, punitive damages, and an injunction against future illegal conduct. In addition to compensating the employee, the employer can also be made to pay attorney's fees, expert witness fees, and court costs.

As such, an employee pharmacist is obligated to comply with the employer's policies and procedures, even if the employee finds the employer's business practices to be in violation of the employee's religious beliefs.

Furthermore, established in 1999, Chapter 103 of the Texas Occupations Code allows a physician, nurse, staff member, or employee of a hospital or other health care facility to object to directly or indirectly performing or participating in an abortion procedure. The rights to object as well as the willingness to perform both come with the protection of not being discriminated against by the hospital, health care facility, or educational institution.

Regarding pharmacists, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin. A discriminatory practice includes employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals

⁹⁴ Ibid. (footnote 93)

with disabilities.⁹⁵ Although an employer may not discriminate against an employee because of the employee's religion, the employer's business does not have to suffer undue hardship to accommodate the employee's religious beliefs.⁹⁶

Discovery

American Pharmacists Association (APhA)

The APhA recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure [the] patient's access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal. --APhA 1998 Policy

APhA's policy supports the ability of a pharmacist to opt out of dispensing a prescription or providing a service for personal reasons and also supports the establishment of systems so that the patient's access to appropriate health care is not disrupted. In sum, APhA's policy supports a pharmacist 'stepping away' from participating but not 'stepping in the way' of the patient accessing the therapy.⁹⁷

Under APhA's policy, several factors must be considered in order to address both the pharmacist's right and the patient's right. These factors include but are not limited to those displayed in the following table.

Regardless of how each factor is addressed, the underlying concept is similar to the situation where a medication is simply out of stock on any given day, if the pharmacist is unable to dispense the prescription, then the patient must be made aware of the options available to them to fulfill his or her medication needs.⁹⁸

⁹⁵ United States. Equal Employment Opportunity Commission. *Discriminatory Practices*. Accessed August 26, 2006. http://www.eeoc.gov/abouteeo/overview_practices.html

⁹⁶ American Pharmacists Association. *1997-98 Policy Committee Report: Pharmacist Conscience Clause*. Accessed October 26, 2004. <http://www.aphanet.org/lead/committee2.html>

⁹⁷ MacLean, Linda Garrelts, RPh, CDE. Testimony of the American Pharmacists Association Before the Small Business Committee of the U.S. House of Representatives. Hearing on Freedom of Conscience for Small Pharmacies. July 25, 2005. Accessed October 26, 2004. <http://www.aphanet.org/AM/Template.cfm?Section=Search§ion=July6&template=/CM/ContentDisplay.cfm&ContentFileID=640>

⁹⁸ Ibid. (footnote 97)

Factors Affecting APhA's Policy⁹⁹	
<u>Pharmacist</u>	
Must choose where to practice	<ul style="list-style-type: none"> • Obligated to comply with employer's policies and procedures.¹⁰⁰ • State laws or regulations may require that valid prescriptions or policies be filled.
<u>Pharmacy</u>	
Staffing	<ul style="list-style-type: none"> • Making sure that another pharmacist in the same pharmacy can dispense the prescription.
Inventory	<ul style="list-style-type: none"> • Deciding which drugs to stock.
<u>Physicians</u>	
Directory of pharmacist providers	<ul style="list-style-type: none"> • Referring patients to pharmacies that are sure to carry specific drugs.
Dispense product	<ul style="list-style-type: none"> • Taking the responsibility of dispensing specific drugs to ensure patient receives prescription.

However, the prominent argument to APhA's policy is that having a pharmacist who morally objects to filling a prescription be required to still help the patient fill the prescription will nonetheless violate the pharmacist's morals.

Differences Between Pharmacists and Other Professions

A physician may choose to work or not to work in a practice setting that participates in abortion or euthanasia. To a lesser degree, a nurse may also choose a practice setting that participates in, or does not participate in, such practices. While a pharmacist may be involved in a specialty practice in various practice settings, the typical employee pharmacist in a community or hospital setting may not have such options. A pharmacist dispenses medication that is ordered by a physician, either by a prescription or a medication order, therefore the pharmacist's activity is directed by the physician. A pharmacy owner may choose to avoid situations of personal and professional conflict by choosing to not stock abortifacient drugs. However, an employee pharmacist may not have the ability to make such decisions. Further, as oral contraceptives may now be prescribed for post-coital contraception, and drugs with other indications are used for physician-assisted suicide, the decision to not stock "controversial" drugs becomes more difficult.¹⁰¹

On the other hand, a conscience clause may be endowing a small group of Americans with a special class of new legal rights and privileges regarding moral/religious issues - based essentially on their education - while denying those same rights to others. These others may include an ordinary convenience store cashier who sells condoms of which he/she morally

⁹⁹ Ibid. (footnote 97)

¹⁰⁰ Ibid. (footnote 96)

¹⁰¹ Ibid. (footnote 96)

disapproves or a supermarket, gas station, or convenient store cashier who sells cigarettes that he/she personally considers additive and poisonous and therefore deeply immoral on ethical and religious grounds.¹⁰²

Recent Developments

The U.S. Food and Drug Administration approved over-the-counter sales of the emergency contraceptive, Plan B, on August 24, 2006. Persons, both male and female, over the age of 18 must present photo identification to purchase the drug.¹⁰³ According to a U.S. Food and Drug Administration press release, when used as directed, Plan B effectively and safely prevents pregnancy. Females under the age of 18 will need a prescription in order to obtain the drug.¹⁰⁴

Recommendations

In considering the issues involved with a pharmacist refusal to dispense a drug, it is important to remember that the profession exists to help patients access medications that will help them, and that means going beyond a "lawful" prescription.¹⁰⁵

- A prescription calling for a 10-fold overdose is "lawful," but likely fatal to the patient.
- A prescription calling for the antibiotic amoxicillin for a patient allergic to penicillin is "lawful," but again, potentially fatal to the patient.
- A prescription calling for an oral contraceptive for a patient with a history of thromboembolic disease is "lawful," but may result in patient harm.

While pharmacists should have the right to refuse dispensing a drug, pharmacists do not have the right to refuse a patient who is legally seeking that drug, unless the legal prescription is harmfully prescribed as the examples above illustrate. Therefore, it is the recommendation of the committee to grant a pharmacist the right to refuse to dispense a drug based on his or her moral or ethical beliefs, but requiring the pharmacist to present the patient with an alternative pharmacist or store that will fill the prescription.

¹⁰² Belisarius, John. *The Appalling Elitism Behind the Pharmacists' "Right of Conscience" Campaign*. April 25, 2005. *The Emerging Democratic Majority*. Accessed July 31, 2006. <http://www.emergingdemocraticmajorityweblog.com/donkeyrising/archives/001161.php>

¹⁰³ Harris, Gardiner. *F.D.A. Approves Broader Access to Next-Day Pill*. August 24, 2006. *The New York Times*. Accessed August 25, 2006. <http://www.nytimes.com/2006/08/25/health/25fda.html...>

¹⁰⁴ United States. Food and Drug Administration. *FDA Approves Over-the-Counter Access for Plan B for Women 18 and Older; Prescription Remains Required for Those 17 and Under*. August 24, 2005. Press Release. Accessed August 29, 2006. <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html>

¹⁰⁵ Ibid. (footnote 97)

CHARGE 5. Study the problem of identity theft, and recommend any legislative changes needed to combat the problem. (Joint Interim Charge with the House Committee on Business and Industry)

Background

Identity theft is a growing problem in the United States, and in Texas in particular. In 2004, 9.3 million Americans were reportedly victims of identity theft, resulting in costs over \$52.6 billion.¹⁰⁶ Texas ranks fourth of the 50 states for the highest number of complaints filed per 100,000 citizens.¹⁰⁷ "The Houston area and the Dallas-Fort Worth Metroplex ranked fourth and fifth nationally, among cities, for identity theft complaints per 100,000 inhabitants."¹⁰⁸

In 2003, almost 10 million Americans discovered they were the victim of some sort of identity theft within the previous year.¹⁰⁹ The total cost of this crime approaches \$50 billion per year, with the average loss from the misuse of personal information being \$4,800. While many victims do not have to pay out-of-pocket expenses, the average out-of-pocket expense is \$500. Victims on average spent 30 hours straightening out their problems with identity theft, with some victims spending upwards of 60 hours.¹¹⁰ (See APPENDIX A.)

Types of Identity Theft

Identity theft falls into the following categories:

- Use of an existing credit card or bank account
- Opening a new credit card or bank account
- Other fraud, including misuse of the victim's identity when charged with a crime, in renting an apartment or home, when obtaining employment, and other misuses.

By far, creation of a new account or other fraud are the most detrimental offenses. Usually these offenses are less quickly discovered, criminals are able to exploit the data for longer, time spent by victims dealing with the identity theft is longer, losses are higher than other forms of identity theft, and out-of-pocket expenses are more frequent.¹¹¹ Those who are victims of new accounts or other frauds are also more likely to have credit card problems, be harassed by a creditor, have a loan rejected, or even be the subject of a criminal investigation.¹¹² (See APPENDIX A.)

How Identity Theft Happens

Identity theft happens when sensitive information is acquired by persons who exploit it. Generally, the information is released in one of the following ways:

¹⁰⁶ Crime Victims' Institute, *Identity Theft Report*, June 14, 2006.

¹⁰⁷ Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends In Texas, January 1 - December 31, 2005*, Washington DC, January 25, 2006, Figure 4a.

¹⁰⁸ Crime Victims' Institute, *Identity Theft Report*, June 14, 2006.

¹⁰⁹ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, p. 4.

¹¹⁰ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, p. 6.

¹¹¹ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, pp. 24-26, 41-46.

¹¹² Federal Trade Commission, *Identity Theft Survey Report*, September 2003, pp. 47-48.

-
- **Data collection.** Consumers fail to adequately safeguard their information and may give out unnecessary personal information to others.
 - **Data safeguarding.** Legitimately collected data must be safeguarded adequately to ensure that it is not misused. Physical protections such as locks are used, and computerized data is often encrypted with a password protection.
 - **Data disposal.** Companies must make sure that records are not available to the general public when they are disposed of. For example, a company should not dispose of paper records without first shredding the documents.

In general, most problems seem to occur with data safeguarding, when data is accessed illegally.¹¹³

Accessing Personal Data

Personal data can be accessed legally or illegally. Sometimes data accessed legally can be used in an illegal manner, while other times the data is used for legitimate purposes, such as law enforcement.

Legal Access to Personal Data

Personal data can be accessed legally. Examples of this are public records and publicly available information. Public records include birth and death records, property records, tax lien records, motor vehicle registrations, voter registrations, licensing records, and court records. Publicly available information is found in places accessible to the general public, such as a phone book or the internet.¹¹⁴

The availability of this data is a problem mainly due to the increasing prevalence of information resellers. Before computers were widespread, public records were difficult to obtain, and often involved a physical trip to the site of the record. Information resellers, on the other hand, gather a variety of publicly available information about individuals, and then offer that information to subscribers in an easily searchable database. The ease of accessing the private information makes it more likely that the information will indeed be accessed.¹¹⁵

Illegal Access to Personal Data

Most of these data collection methods do not involve complex computer hacking or specialized skills. The following are common methods of data collection:

¹¹³ Leslie Pettijohn, Consumer Credit Commissioner, Testimony Before the Business and Industry Committee and the State Affairs Committee, April 25, 2006.

¹¹⁴ United States Government Accountability Office, *Report to Congressional Committees: Personal Information, Agency and Reseller Adherence to Key Privacy Principles*, April 2006, p.8.

¹¹⁵ United States Government Accountability Office, *Report to Congressional Committees: Personal Information, Agency and Reseller Adherence to Key Privacy Principles*, April 2006, p.7.

-
- **Pretexting**: Pretexters call a business posing as the consumer and ask for personal information.
 - **Phishing**: Thieves create a webpage that masquerades as the home page of a legitimate business. E-mails are sent out directing potential victims to the fake website where victims unwittingly provide identifying information.
 - **Old Computers**: It is easy to pull personal information off the hard drives of discarded computers.
 - **Stealing company data**: One attack by hackers, company insiders, or thieves of equipment can access databases where personal information is stored.
 - **Spyware**: A software program that can be used for legitimate purposes to tailor advertising to a consumer's tastes, but can also be used to raid the user's hard drive.
 - **Skimming**: Criminals can use handheld magnetic card readers to gain information from debit or credit cards. Criminals have also rigged automatic teller machines to read the magnetic strips.¹¹⁶ Skimming can easily happen when a consumer gives his or her credit card to a restaurant to pay a tab or to a bartender to keep open a tab because the credit card is out of the consumer's possession for an extended period of time.¹¹⁷
 - **Mail Theft**: Criminals can steal bank statements, credit card offers, new checks, and tax information.
 - **Dumpster Diving**: Criminals rummage through trash to gain sensitive information.
 - **Physical Theft**: Wallets or purses can be stolen from the individual, or sensitive documents could be stolen from the person's house.
 - **Change of Address Form**: A criminal may fill out a change of address form to divert mail to another location. The customer then does not receive the statements in the mail and may take longer to discover the theft.¹¹⁸

When information is not hacked through sophisticated means, human error is often to blame. Pretexting is highly effective because a phone representative will often feel sorry for the "consumer" and hand out information contrary to company policy.

It should be noted that one fourth of the respondents in the 2003 Federal Trade Commission study who had been the victim of financial fraud knew the victim: in half of these instances the offender was a friend, relative, or neighbor.¹¹⁹

Effects of Identity Theft

A thief can use personal information in a variety of ways:

- changing the billing address on a victim's credit card account, so that the thief can run up charges on the credit card account without the consumer's knowledge

¹¹⁶ Office of the Consumer Credit Commissioner, *Legislative Report: Reviewing Identity Theft and Senate Bill 473*, December 30, 2004.

¹¹⁷ Helen Chernikoff, "Warning: Hands off, ID thieves," *Austin American-Statesman*, July 15, 2005.

¹¹⁸ Federal Trade Commission, *About Identity Theft*, www.consumer.gov/idtheft/con_about.htm.

¹¹⁹ Dean Foust, "ID Theft: More Hype Than Harm," *Business Week*, July 3, 2006.

-
- opening new credit cards in the victim's name
 - taking out loans in the victim's name
 - establishing utility service in the victim's name
 - opening bank accounts in the victim's name and writing bad checks
 - counterfeiting checks in the victim's name
 - filing for bankruptcy in the victim's name
 - obtaining an identification card, such as a driver's license, in the victim's name
 - getting a job or filing fraudulent tax returns under a stolen identity
 - giving the victim's name to the police during an arrest, causing a warrant to be issued in the victim's name if the thief does not show up for a court date¹²⁰

It can be very expensive and time-consuming to recover from an identity theft. Victims of identity theft can have difficulty for years in obtaining loans due to credit destroyed by an identity thief. Also bearing the brunt of expenses are banks, which refund to consumers funds that are fraudulently obtained by identity thieves. Likewise, check verification services cover amounts in fraudulent checks if the subscriber business has purchased that insurance.

Data Exposure versus Data Misuse

An issue that is both comforting and troubling is the lack of "follow through" by criminals following a data exposure. There have been several high profile data loss cases in which the data was never accessed or used fraudulently. Often, the victim of the data exposure immediately notifies his or her bank or credit card company, making it difficult for a would-be criminal. Also, even if the data falls into the wrong hands, often it is encrypted and is difficult to access.¹²¹ While it is beneficial that many security breaches do not lead to identity theft, it would be better to minimize data exposure.

Recent High Profile Texas Cases

Texas Guaranteed Student Loan Company

On May 24, 2006, Texas Guaranteed Student Loan Corporation had a piece of equipment disappear, on which was stored personal information (names and social security numbers) for 1.3 million people. In many cases, the accounts in question had been closed more than a decade ago. The lost device was password-protected, but the information was not encrypted.¹²²

Although the records do not seem to have been accessed, such a case brings up concerns about how data should be safeguarded.¹²³

¹²⁰ Federal Trade Commission, *About Identity Theft*, www.consumer.gov/idtheft/con_about.htm.

¹²¹ Dean Foust, "ID Theft: More Hype Than Harm," *Business Week*, July 3, 2006.

¹²² A student loan company does not have a duty under the Gramm-Leach-Bliley statute to encrypt a customer database on a laptop computer that fell into the wrong hands. Eric Sinrod, "The Technology Trade," *Modern Practice* at www.findlaw.com, February 21, 2006.

¹²³ Pete Slover, "Loan Records Vanish," *Dallas Morning News*, June 2, 2006.

University of Texas at Austin, McCombs Business School

In April, 2006, electronic records of nearly 200,000 people were accessed illegally at the University of Texas' McCombs School of Business. Information accessed included names, biographical information, and social security numbers. The data had been accessed by a hacker in the Far East. The school accepted responsibility and took action to alert those whose information had been exposed.¹²⁴

Legislation on Identity Theft

Federal Legislation

The Federal Fair and Accurate Credit Transactions Act (FACTA)

The Fair and Accurate Credit Transactions Act (FACTA) is a federal statute that was signed into law on December 3, 2003, to "help reduce identity theft and help victims recover."¹²⁵ FACTA amends the federal Fair Credit Reporting Act (FCRA) and requires:

- "Credit bureaus to provide free annual credit reports to consumers who request them.
- "Credit reporting agencies to stop reporting, or to block allegedly fraudulent information resulting from identity theft when the consumer submits an identity theft report.
- "Debt collectors who learn that information in a consumer report is the result of identity theft or fraud notify the consumer's creditor or consumer reporting agency.
- "Creditors or businesses to provide any consumer who requests them the records of the fraudulent accounts or related transactions associated with the consumer's files.
- "Credit and debit card numbers to be truncated.
- "The creation of a national fraud alert system that allows consumers who reasonably believe they are the victims of identity theft, or who are military personnel on active duty away from home, to place an alert on their credit files. The alert warns potential creditors to be cautious when granting credit in that consumer's name."¹²⁶

The Gramm-Leach-Bliley Act (GLBA)

The Gramm-Leach-Bliley Act (GLBA) imposes privacy and security obligations on financial institutions. Financial institutions are prohibited from disclosing non-public personal information, with certain exceptions, without giving the consumer notice and an opportunity to opt out. Financial institutions are also required to implement appropriate safeguards to protect the integrity of the personal information received from customers.¹²⁷

¹²⁴ Ralph K.M. Haurwitz, "UT Breach: 200,000 put at risk of ID theft," *Austin American-Statesman*, April 24, 2006.

¹²⁵ Office of the Consumer Credit Commissioner, *Legislative Report: Reviewing Identity Theft and Senate Bill 473*, December 30, 2004, p. 7.

¹²⁶ Office of the Consumer Credit Commissioner, *Legislative Report: Reviewing Identity Theft and Senate Bill 473*, December 30, 2004, pp. 7-8.

¹²⁷ *Prepared Statement of The Federal Trade Commission on Identity Theft and Social Security Numbers Before the Subcommittee on Social Security of the House Committee on Ways and Means*, Washington DC, March 30, 2006,

Section 5 of the Federal Trade Commission Act

Under this section, the Commission can prosecute "unfair or deceptive acts in or affecting commerce." This statute has allowed the Commission to challenge practices related to identity theft, including the failure to safeguard sensitive information.¹²⁸

The Driver's Privacy Protection Act (DPPA)

The Driver's Privacy Protection Act (DPPA) prohibits a state's department of motor vehicles from disclosing personal information in motor vehicle records, with certain exceptions.¹²⁹

The Real ID Act

The Real ID Act regulates security features on drivers' licenses and what documentation must be shown to obtain one. States remain in control of issuing and manufacturing licenses and prosecuting offenses related to tampering with these licenses. Although states are not required to comply, after May 11, 2008, Real ID-compliant licenses must be shown in order to board an airplane or enter a federal building.¹³⁰

Although the cards are tamper-resistant, there are still privacy implications that can arise. The first is that the cards must be readable by machine, which may give thieves the ability to read the cards illicitly. The second is that in order to implement the provisions of this act, the states may have to create a 50-state database, a one-stop shop for thieves.¹³¹

This law should not affect Texas' ability to prosecute drivers' license forgeries under state law. If a forged Real ID license is used to board an airplane or enter a federal building, however, it is a federal offense.¹³²

The Health Information Portability and Accountability Act (HIPAA)

The Health Information Portability and Accountability Act (HIPAA) prohibits disclosure of a consumer's medical information without prior consent, with certain exceptions.¹³³

pp. 5-8.

¹²⁸ *Prepared Statement of The Federal Trade Commission on Identity Theft and Social Security Numbers Before the Subcommittee on Social Security of the House Committee on Ways and Means*, Washington DC, March 30, 2006, pp. 8-9.

¹²⁹ *Prepared Statement of The Federal Trade Commission on Identity Theft and Social Security Numbers Before the Subcommittee on Social Security of the House Committee on Ways and Means*, Washington DC, March 30, 2006, p.10.

¹³⁰ *Real ID Act of 2005 Driver's License Title Summary*, National Conference of State Legislatures, www.ncsl.org.

¹³¹ Anita Ramasastry, "Why the 'Real ID' Act is a real mess," *CNN.com*, August 12, 2005.

¹³² Texas Department of Public Safety, *Impact Analysis of the Real ID Act (handout and presentation)*, July 25, 2006.

¹³³ *Prepared Statement of The Federal Trade Commission on Identity Theft and Social Security Numbers Before the Subcommittee on Social Security of the House Committee on Ways and Means*, Washington DC, March 30, 2006, p.10.

Effect of Federal Preemption

Although the federal laws have addressed certain identity theft issues, many areas remain open for regulation. Congress is currently considering several bills that may preempt Texas laws, including those related to security breach notification and credit freezes.¹³⁴

The federal laws have not addressed the regulation of social security numbers as it applies to entities other than consumer reporting agencies. Currently, the social security number is used as a personal identifier for many things, including on a voter registration card. It would be beneficial to legislate to limit the use of social security numbers.

State Legislation

Senate Bill 473, 78th Legislature

During the 78th Session, the Texas Legislature passed Senate Bill 473 to assist consumers in preventing and detecting identity theft.

S.B. 473 contains the following major provisions:

- Restricts when and how a consumer's social security number may or may not be used.
- Allows consumers to place an alert on a credit file, and requires prospective creditors to contact the person with an alert on file before extending credit.
- Allows consumers to freeze or block their files with credit reporting agencies.¹³⁵

Shortly thereafter, the Federal Fair and Accurate Credit Transactions Act was passed, which mirrors and preempts some, but not all, of the provisions in S.B. 473.

Texas Legislation, 79th Legislature

The 79th Legislature cracked down on identity theft by passing a variety of bills to prevent the dissemination of personal information. ¹³⁶ H.B. 1130 requires businesses that required disclosure of a social security number to adopt and enforce a privacy policy regarding that social security number. S.B. 122 requires businesses to protect sensitive personal information and personal identifying information. It requires notification of consumers when businesses experience a breach in security, regardless of whether the information has been improperly used. However, notification can be delayed if a law enforcement agency determines that the notification will compromise an investigation.¹³⁷ H.B. 698 requires a business to dispose of both

¹³⁴ Kavan Peterson, "States Failing to Secure Personal Data," *Stateline.org*, July 12, 2006.

¹³⁵ Office of the Consumer Credit Commissioner, *Legislative Report: Reviewing Identity Theft and Senate Bill 473*, December 30, 2004, p. 8.

¹³⁶ John Podvin & Irene Kosturakis, "Identity Theft," from the seminar *Identity Theft: How To Protect Your Practice And Your Clients*, State Bar of Texas Webcast, May 10, 2006.

¹³⁷ Dave Lieber, "Law allows delay in notifying customers of security breach," Fort Worth Star-Telegram, May 21, 2006.

print and electronic records containing personal identifying information.

In total, at least five bills were passed dealing with various forms of identity theft. These bills contain many duplicative or conflicting provisions. It would be beneficial for Texas codes to be internally consistent, but in doing so, the legislature must make sure not to create a conflict with federal laws.¹³⁸ (See APPENDIX B.)

In addition, many pieces of legislation are passed which have privacy implications which are not highlighted by the legislature. When making laws for the good of the citizens of Texas, legislators need to be aware of the risks that the legislation may pose to the privacy interests of Texas residents.

Texas Attorney General's Passport Pilot Program

During the 79th Legislature, Regular Session, House Business & Industry Committee Chair Helen Giddings filed H.B. 1032, which would have instructed the Attorney General to create a program that assists identity theft victims in correcting credit histories and dealing with law enforcement. A key feature of this program was the issuance of a "passport" to prove a victim's identity and to prove that the victim was a victim of identity theft. This measure was never passed due to cost concerns.

In response to legislation passed during the 79th Legislature concerning identity theft, following the model set forth by H.B. 1032, the Attorney General secured a grant of \$115,000 to implement and develop the Identity Theft Verification Passport Program in order to assist victims of identity theft.

The program supplies victims of identity theft with a state-verified "passport" which may be presented to law enforcement and creditors to prove that the person is a victim of identity theft. Having proof of identity theft will help the victim navigate the legal system and get his or her life back together.

The victim will also receive the Identity Theft Victim's Kit, which contains instructions on whom to contact, an application for a court order declaring the applicant to be a victim of identity theft, and a certificate of enrollment in the program.¹³⁹

The program is currently being launched in the southeasternmost counties in Texas, with the goal that other counties will be invited to join the program if the program proves valuable. Eventually, all counties in Texas should participate. Expansion will begin in and around the major Texas cities where identity theft is more of a problem, and radiate out from each city until all of Texas participates.¹⁴⁰

¹³⁸ Office of the Consumer Credit Commissioner, *Testimony Before the Business and Industry Committee and State Affairs Committee*, April 25, 2006.

¹³⁹ Office of the Attorney General, *Identity Theft Passport Program (Pilot Project)*, February 2006, pp. 3-5.

¹⁴⁰ Office of the Attorney General, *Identity Theft Passport Program (Pilot Project)*, February 2006, pp. 6-8.

Notification issues

Check Verification Services are not informed of ID theft

Currently, when an identity theft victim notifies the bank of a misuse of identity, the bank is not required to notify any other entities. Check verification companies should be notified, because, while not all merchants use these companies, most major chains and mainstream stores do use check verification companies.

Because check verification services are not notified of identity theft, the service will initially approve forged checks. It can take several weeks for a check verification service to receive notification from the merchant that the check was dishonored by the bank. This delay likely results in losses for check verification services; most check verification services offer a service to the merchant that guarantees the amount of the check if the check verification service approves the transaction. Under some circumstances, merchants who have check verification services will bear the loss if the merchant does not purchase the check guarantee service. Merchants who do not have check verification services, such as small merchants or those in rural areas, will bear losses as well.

The losses to check verification companies are completely preventable with timely notification. Despite this, many check verification services refuse to accept from the consumer a report that the consumer's identity has been stolen. This may be due to the check verification companies having purchased insurance to absorb their losses.

Other states have voluntary databases set up for identity theft. However, these databases are incomplete because they are voluntary, and only allow law enforcement and banking institutions to access them, which does not solve the problem of notification of check verification services.

Law Enforcement

In 61% of cases of identity theft, the victim did not notify law enforcement of the theft.¹⁴¹ In order to combat identity theft, it is important for police to have accurate data to track trends and apprehend wrongdoers.

The Crime Victims' Institute made the following suggestions for legislation:

- Require law enforcement to take a police report when requested. A law has been passed on this issue in California.
- Require financial institutions, credit card companies, and law enforcement to report identity theft to a national clearinghouse, such as the Federal Trade Commission.

¹⁴¹ Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends, January 1- December 31, 2005*, Washington D.C., January 25, 2006, Figure 10.

-
- Encourage the establishment of specialized identity theft divisions within law enforcement agencies.¹⁴²

State Entities Exempt From Business-to-Consumer Notification of Data Exposure

Currently, a business that experiences a security breach that exposes a consumer's personal information must notify that consumer.¹⁴³ However, in Texas, the notification requirement does not apply to government agencies.¹⁴⁴

Consumer Security Freezes

In Texas, along with four other states, consumers can place a security freeze on their credit with the major credit reporting agencies only if they are victims of identity theft. Twenty states allow a security freeze to be placed regardless of whether the person is a victim of identity theft.¹⁴⁵

Statute of Limitations

Currently, the statute of limitations is 3 years for prosecuting identity theft crimes. It has been proposed that the statute of limitations be extended to 10 years.¹⁴⁶

Some victims of identity theft may not discover the theft for longer than three years. Sometimes, the identity theft is only discovered when a consumer is turned down for a loan and discovers discrepancies on his or her credit report. According to the Federal Trade Commission, 12% of identity theft victims discover the theft four or more years after it occurred.

Official Texas Identification Documents: Identity Theft

Driver's License Identity Theft

Currently identity theft regarding a driver's license can only be prosecuted under the Transportation Code, rather than under the Penal Code provision for tampering with a government record. The Penal Code provision has harsher penalties, and forgers of driver's licenses should not be able to slip through this loophole.¹⁴⁷

¹⁴² Crime Victims' Institute, *Identity Theft Report*, June, 2006, pp. 4, 9.

¹⁴³ Senate Bill 122, 79th Legislature, Regular Session, 2005.

¹⁴⁴ Kavan Peterson, "States Failing to Secure Personal Data," *Stateline.org*, July 12, 2006.

¹⁴⁵ A consumer may freeze his or her credit only if he or she is a victim of identity theft in the following five states: Hawaii, Kansas, South Dakota, Texas, and Washington. A consumer may freeze his or her credit, regardless of whether he or she is a victim of identity theft, in the following twenty states: California, Colorado, Connecticut, Delaware, Florida, Illinois, Kentucky, Louisiana, Maine, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Utah, Vermont, and Wisconsin. Marcia Coyle, "Into the Breach," *National Law Journal*, August 7, 2006.

¹⁴⁶ Dallas County District Attorney's Office, North Texas Identity Theft Task Force, Testimony Before the Business and Industry Committee and State Affairs Committee, April 25, 2006.

¹⁴⁷ Dallas County District Attorney's Office, North Texas Identity Theft Task Force, Testimony Before the Business and Industry Committee and State Affairs Committee, April 25, 2006.

Birth Certificate Access

Currently, the public can obtain a birth record of any person after the 75th anniversary of the date of birth.¹⁴⁸ Previously this law allowed a birth record to be obtained after the 50th anniversary of birth, but that was extended to 75 years in 2003.¹⁴⁹

Record Retention & Disposal

The federal and state governments require that certain records, such as loan data, be kept for a statutorily required amount of time before those records can be destroyed. However, there are no provisions that require destruction of records. Many institutions have voluntarily instituted schedules for destruction and disposal of records.

Recommendations

- 1) Write legislation requiring a bank, if it receives notification of an identity theft, to offer the consumer the service of the bank notifying check verification services. A reasonable fee may be charged if no other solution can be found.
- 2) Increase the statute of limitations to 5 or 6 years for identity theft crimes.
- 3) Amend the Transportation and Penal Codes to allow driver's license forgeries to be prosecuted under either the Penal Code or the Transportation Code.
- 4) Require that records containing sensitive information be purged after a certain amount of time, provided that this law does not conflict with federal or state laws regarding record retention.
- 5) Require check verification services to accept a consumer's report that he or she has been a victim of identity theft, with appropriate documentation to support the claim.
- 6) Limit the use of social security numbers for identification purposes.
- 7) Examine ways to make legislators aware of the privacy impacts of the legislation being considered in committee and on the floor.
- 8) Revise Texas legislation regarding identity theft to make it internally consistent.

¹⁴⁸ Texas Government Code, Section 552.115(a)(1).

¹⁴⁹ Senate Bill 861, 78th Legislature, Regular Session, 2003.

Charge 2: APPENDIX A - Identity Theft Graphs and Statistics

Discovered That You Were a Victim in the Last Year	
New Accounts & Other Fraud ³	1.5 %
Misuse of Existing Non-Credit Card Account or Account Number	0.7 %
Misuse of Existing Credit Card or Credit Card Number	2.4 %
Total Victims	4.6 %
Discovered That You Were a Victim in the Last Five Years	
New Accounts and Other Fraud	4.7 %
Misuse of Existing Non-Credit Card Account or Account Number	2.0 %
Misuse of Existing Credit Card or Credit Card Number	6.0 %
Total Victims	12.7 %

Figure 1: Incidence of Identity Theft in 2003, By Type of Misuse¹⁵⁰

	New Accounts & Other Frauds	Misuse of Existing Accounts (Both Credit Card & Non-Credit Card)	All ID Theft
Victims in the Last Year			
Percent of Population	1.5 %	Credit Card – 2.4 % Non Credit Card – 0.7 %	4.6 %
Number of Persons ²	3.23 million	6.68 million	9.91 million
Loss to Businesses, inc. Financial Institutions			
Average Per Victim ¹	\$10,200	\$2,100	\$4,800
Total	\$32.9 billion	\$14.0 billion	\$47.6 billion
Loss to Victims			
Average Per Victim	\$1,180	\$160	\$500
Total	\$3.8 billion	\$1.1 billion	\$5.0 billion
Hours Victims Spent Resolving Their Problems			
Average Per Victim	60 hours	15 hours	30 hours
Total	194 million hours	100 million hours	297 million hours

Figure 2: Costs of Identity Theft in 2003.¹⁵¹

¹⁵⁰ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table 1, p. 5.

¹⁵¹ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table 2, p. 7.

How Victims' Information is Misused¹

January 1 – December 31, 2005

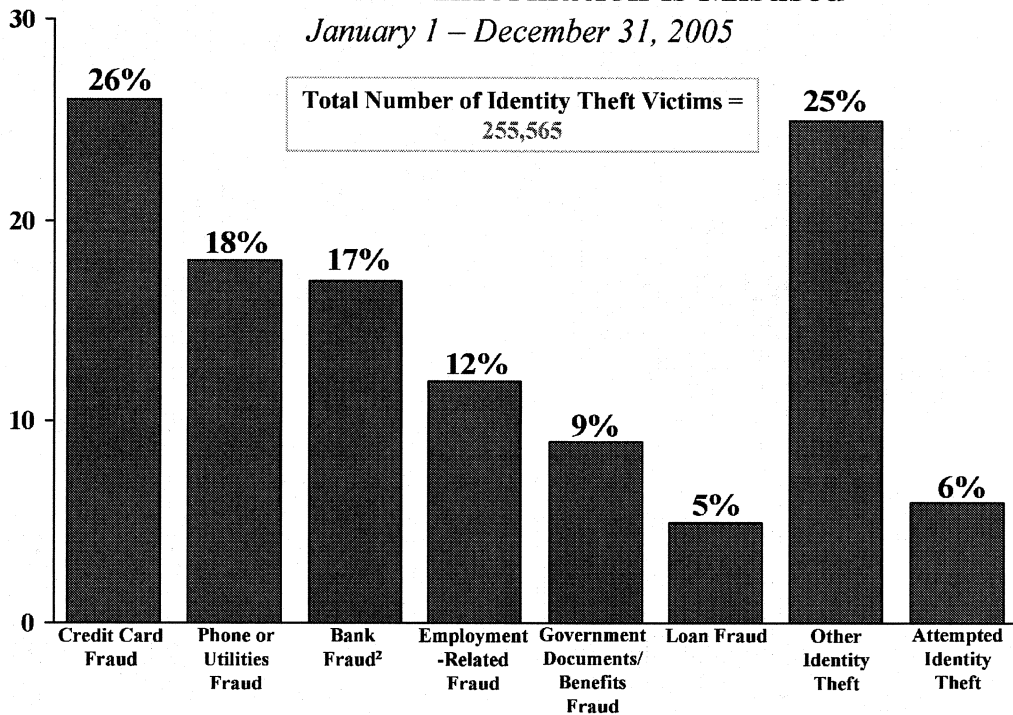


Figure 3: How Identity Theft Victims' Information is Misused¹⁵²

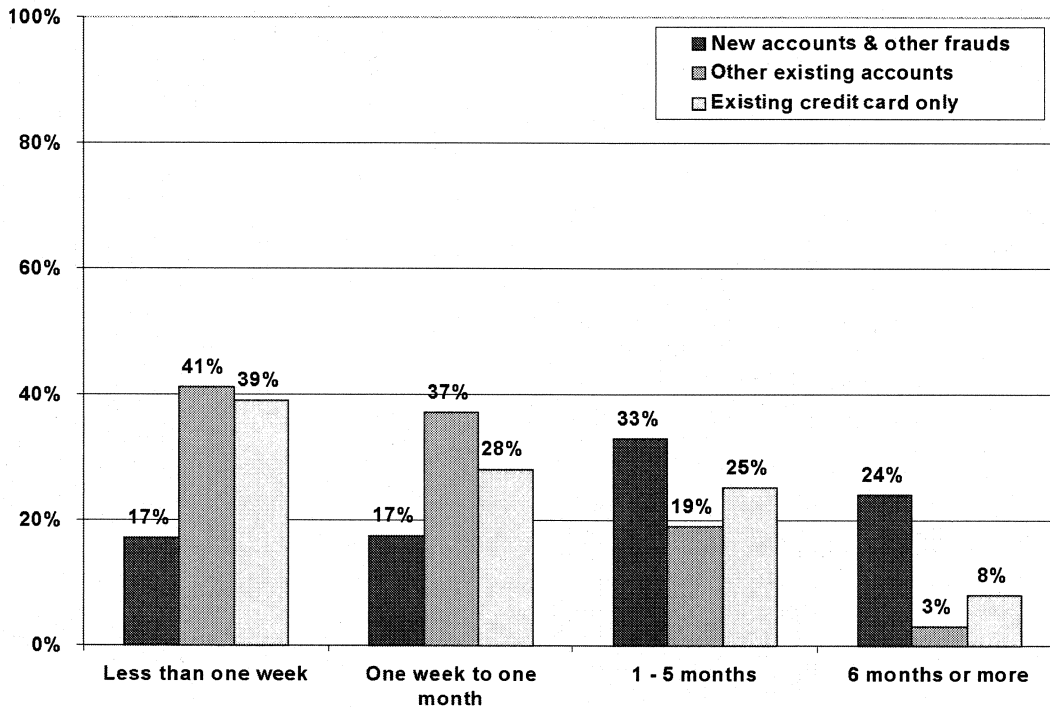


Figure 4: Length of Time for Identity Theft Victim to Discover Misuse of Personal Information.¹⁵³

¹⁵² Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends, January 1- December 31, 2005*, Washington D.C., January 25, 2006, Figure 4.

¹⁵³ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q7, p. 20.

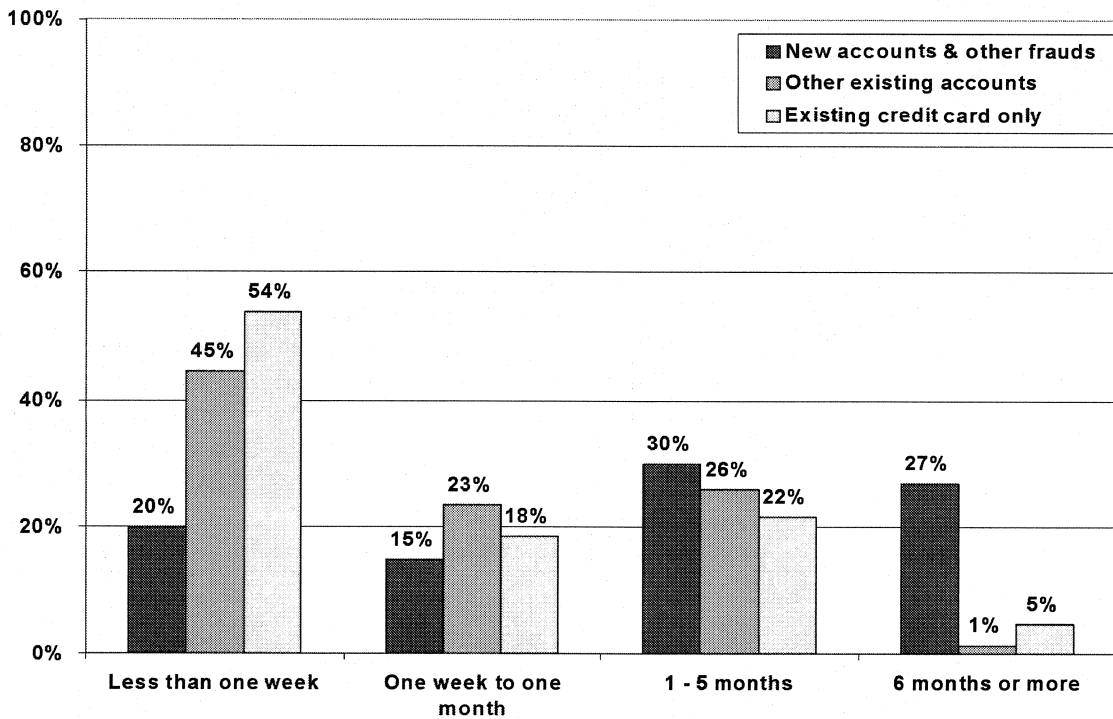


Figure 5: Period of Misuse of Identity Theft Victim's Information.¹⁵⁴

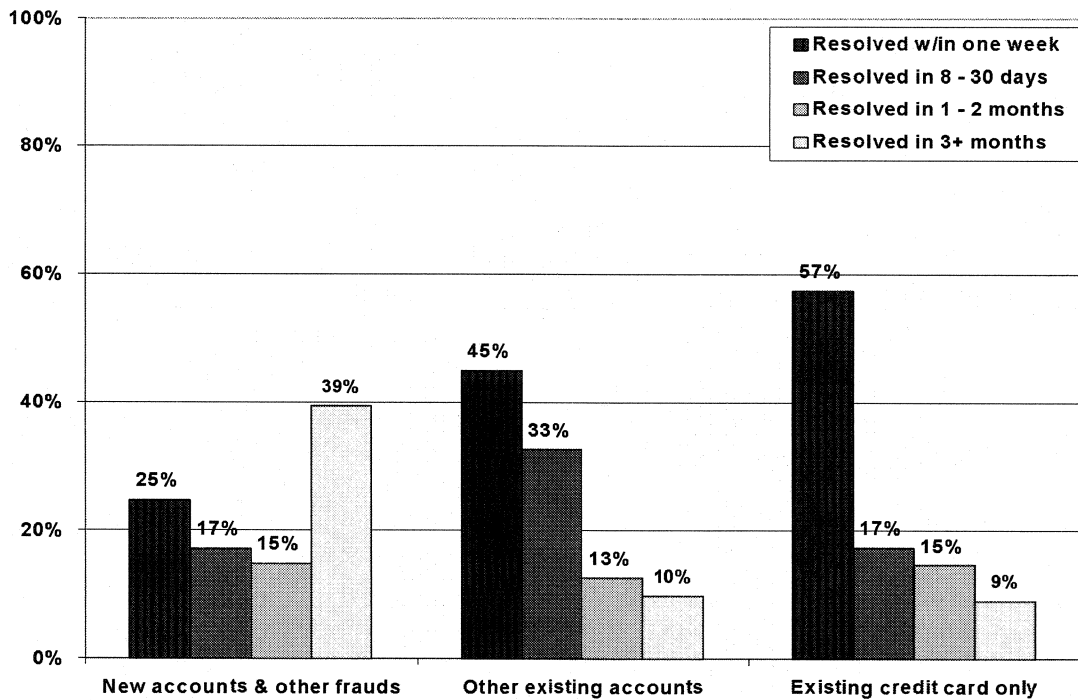


Figure 6: Time Until Resolution of Identity Theft Problems.¹⁵⁵

¹⁵⁴ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q10, p. 24.

¹⁵⁵ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q11/Q12, p. 26.

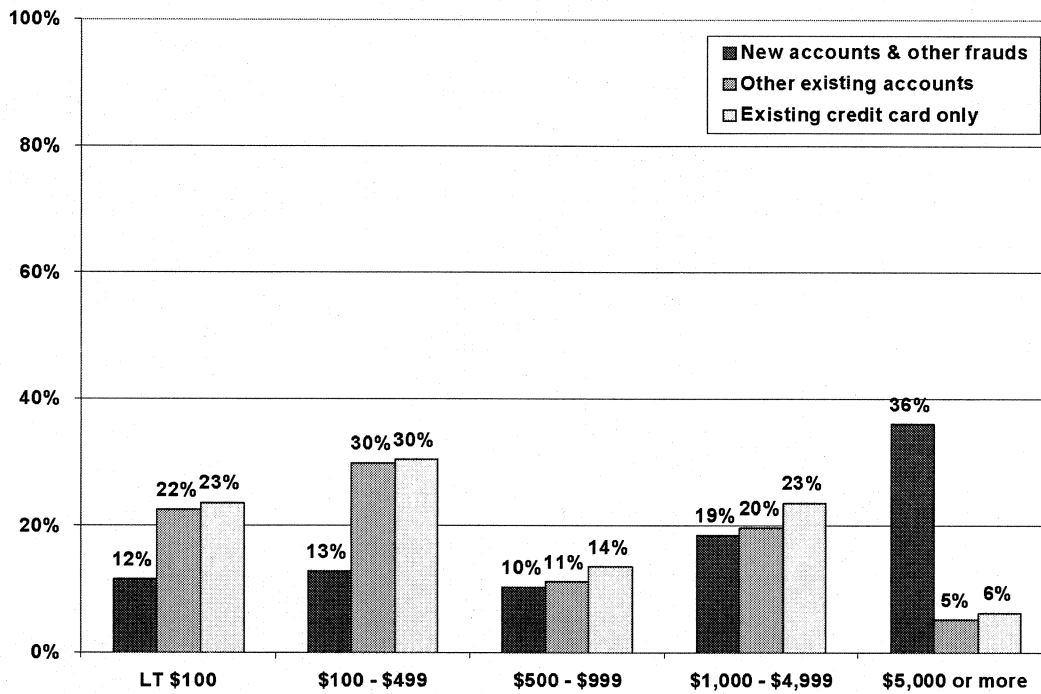


Figure 7: Dollar Value an Identity Thief Obtained.¹⁵⁶

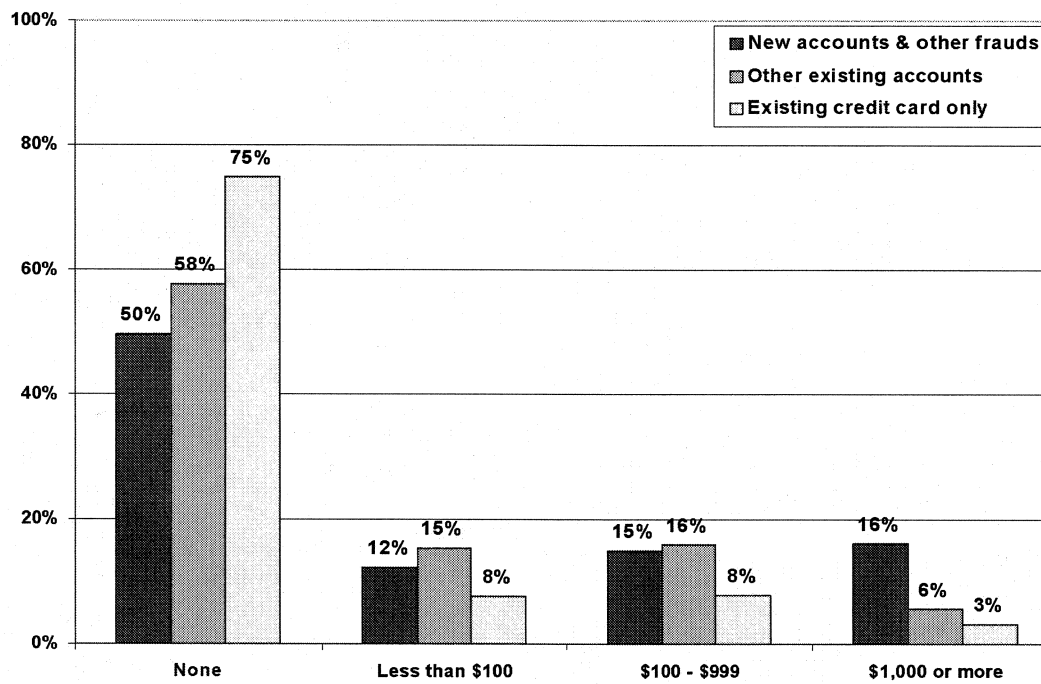


Figure 8: Money Paid Out-Of-Pocket By Identity Theft Victim¹⁵⁷

¹⁵⁶ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q29, p. 41.

¹⁵⁷ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q30, p. 43.

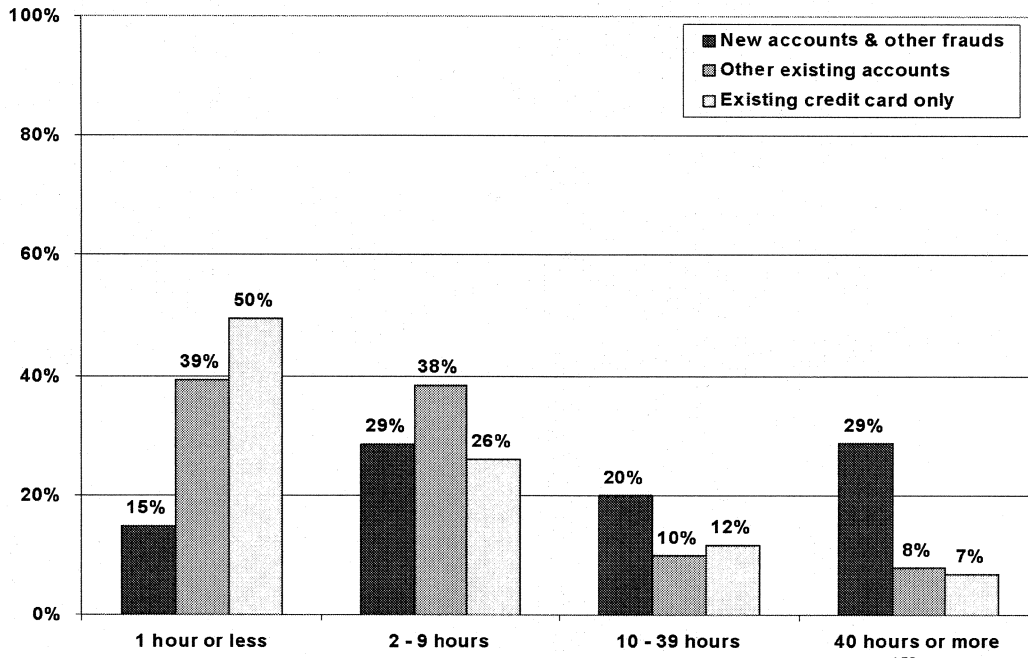


Figure 9: Time Spent By Identity Theft Victim Resolving Problems.¹⁵⁸

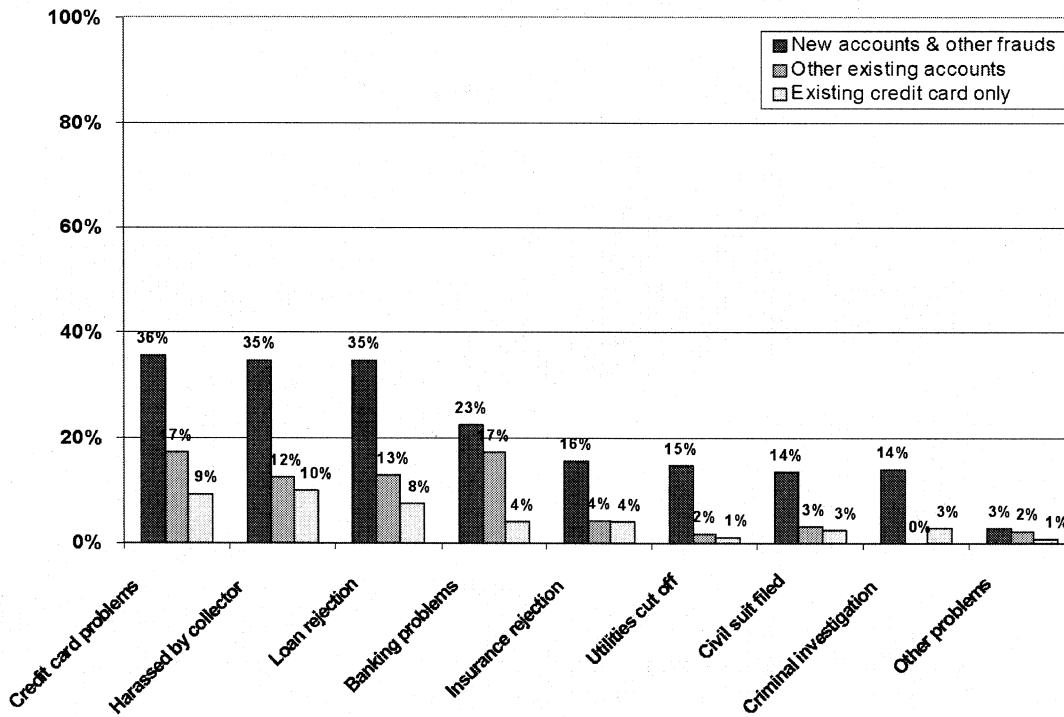


Figure 10: Other Problems Experienced By Identity Theft Victims.¹⁵⁹

¹⁵⁸ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q31, p. 45.

¹⁵⁹ Federal Trade Commission, *Identity Theft Survey Report*, September 2003, Table Q32, p. 47.

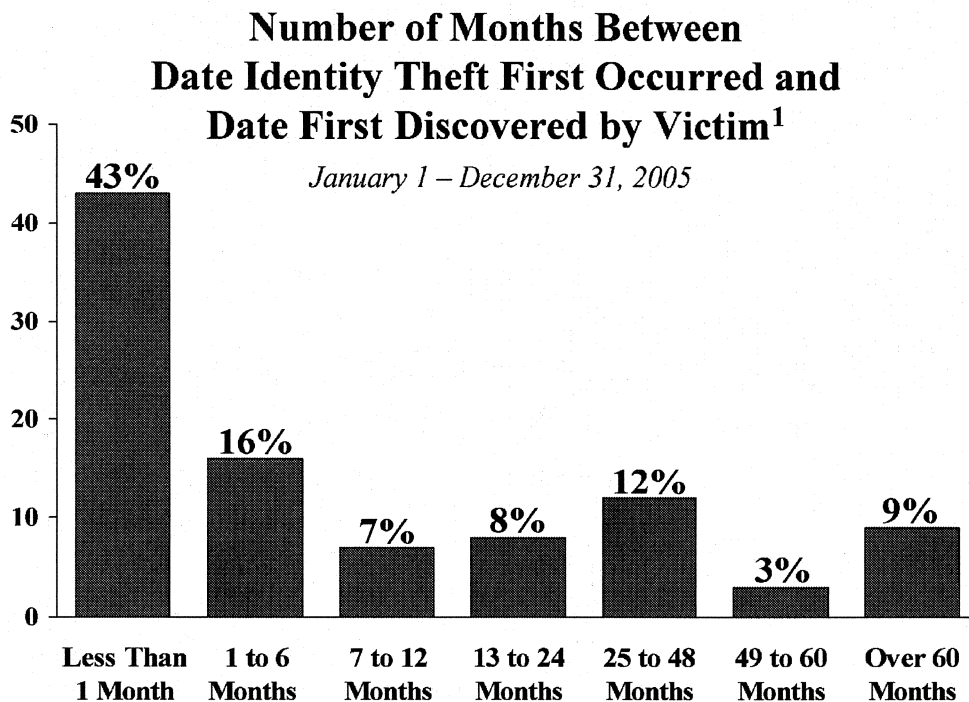


Figure 11: Number of Months Between Date Theft First Occurred and Date First Discovered by Identity Theft Victim.¹⁶⁰

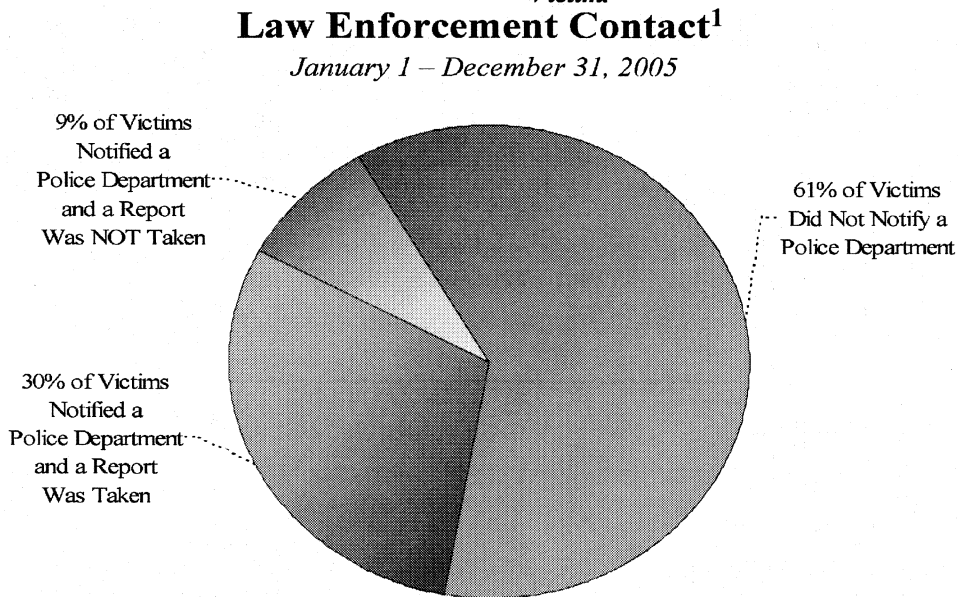


Figure 12: Identity Theft Victims in 2005 - Law Enforcement Contact.¹⁶¹

¹⁶⁰ Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends, January 1- December 31, 2005*, Washington D.C., January 25, 2006, Figure 8.

¹⁶¹ Federal Trade Commission, *Identity Theft Victim Complaint Data: Figures and Trends, January 1- December 31, 2005*, Washington D.C., January 25, 2006, Figure 10.

Charge 2: APPENDIX B - Analysis of Certain Identity Theft Legislation¹⁶²

<p>79th session status Definitions</p>	<p>SB 122 By Hinojosa</p> <p>Passed. Effective 9/1/05</p> <p>Personal identifying information means information that alone or in conjunction with other information identifies an individual, including an individual's: (A) name, social security number, date of birth or government-issued identification number; (B) mother's maiden name; (C) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; (D) unique electronic number, address, or routing code; and (E) telecommunication</p>	<p>SB 327 By Zaffirini</p> <p>Passed. Effective 9/1/05</p> <p>"Personally identifiable information," with respect to an individual who is the owner or operator of a computer, means: (A) first name or first initial in combination with last name; (B) a home or other physical address, including street name; (C) an electronic mail address; (D) a credit or debit card number; (E) a bank account number; (F) a password or access code associated with a credit or debit card or bank account; (G) a social security number, tax identification number, driver's</p>	<p>HB 698 By McCall</p> <p>Passed. Effective 9/1/05</p> <p>Personal identifying information means an individual's first and last name in combination with any one or more of the following items: (A) date of birth; (B) social security number or other government-issued identification number; (C) mother's maiden name; (D) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image; (E) unique electronic identification number, address, or routing code; (F) telecommunication access device,</p>	<p>HB 1130 By Cook</p> <p>Passed. Effective 9/1/05</p>	<p>HB 1682 By McCall</p> <p>Passed house, but not senate.</p> <p>Consumer reporting agency</p> <p>Personal identifying information (A) means an individual's first name or first initial in combination with last name and with one or more of the following items of information: (i) a social security number; (ii) a driver's license number or other government-issued identification number; (iii) an account number or a credit or debit card number, in combination with any required security code, access code, or password that permits access to an individual's financial account;</p>	<p>SB 674 By West</p> <p>Passed Senate. Died in House Calendars.</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570</p>
---	---	--	--	---	---	---	--

¹⁶² Commissioner Leslie L. Pettijohn, Office of the Consumer Credit Commissioner, *Testimony Before the Business and Industry Committee and State Affairs Committee*, April 25, 2006.

<p>Definitions (Continued)</p>	<p>SB 122 By Hinojosa</p> <p>access device.</p>	<p>SB 327 By Zaffirini</p> <p>license number, passport number, or other government-issued identification number; or (H) any of the following information if the information alone or in combination with other information personally identifies the individual: (i) account balances; (ii) overdraft history; or (iii) payment history.</p>	<p>HB 698 By McCall</p> <p>including debit and credit card information; or (G) financial institution account number or any other financial information.</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p> <p>and (B) does not include publicly available information that is lawfully made available to the public from federal, state, or local government records.</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570</p>
	<p>Sensitive personal information (A) means an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (i) social security number; (ii) driver's license number or</p>						<p>Sensitive personal information means a customer's name, address, or telephone number, in conjunction with the customer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or</p>

<p>Definitions (Continued)</p>	<p>SB 122 By Hinojosa</p> <p>government-issued identification number; or (iii) account number or credit or debit card number in combination with any required security code, access code, or password, that would permit access to an individual's financial account; and (B) does not include publicly available information that is lawfully made available to the general public from the federal government or a state or local government.</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p> <p>Service Provider means a person that is authorized to hold or use a computerized database containing personal identifying information on</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30.208; 225;364;568;570</p> <p>password that would permit access to the customer's account. Sensitive customer information also includes any combination of components of customer information that would allow someone to log onto or access the customer's account, such as user name and password or password and account number.</p>
---	--	---------------------------------------	------------------------------------	-----------------------------------	---	----------------------------------	---

<p>Business Duty to Protect Information</p>	<p>SB 122 By Hinojosa</p> <p>Business shall implement and maintain reasonable procedures to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by the business.</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p> <p>A person that requests a customer's number to complete a credit check shall: 1) destroy each record of the number by shredding, erasing, or other means after credit check completed; (2) maintain the number: (A) for the sole purpose of allowing authorized employees to use the number to collect a debt or to protect against fraud; and (B) in a database or other location that ensures security and confidentiality of data and protects against unauthorized access.</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570</p> <p>A financial institution must protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer.</p>
<p>Disclosure of Social Security Number</p>	<p>A person may not require an individual to disclose the</p>	<p>A person may not request a customer's social security number, or</p>	<p>A person may not</p>	<p>A person may not</p>	<p>A person may not</p>	<p>A person may not</p>	<p>A person may not</p>

<p>Disclosure of Social Security Number (Continued)</p>	<p>SB 122 By Hinojosa</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30:208; 225;364;568;570</p>
	<p>Business shall destroy or arrange for destruction of records containing sensitive personal</p>		<p>When a business disposes of a business record that contains personal</p>	<p>individual's social security number to obtain goods or services unless the person: (1) adopts a privacy policy; (2) makes the policy available; (3) maintains the confidentiality and security of the number. Policy must include how personal information is collected, how and when the personal information is used and protected, who has access to the personal information, and how the personal information is disposed.</p>		<p>another number that contains four or more digits of a customer's social security number, as an identifier unless the number is needed to complete a credit check that is required to provide a service or product requested by the customer. A person may not request an existing customer's social security number, or another number that includes four or more consecutive digits of an existing customer's social security number, to verify the customer's relationship with the person.</p>	
<p>Disposal of Records</p>						<p>When a customer's number is no longer maintained by the person, the person shall</p>	

<p>Disposal of Records <i>(Continued)</i></p>	<p>SB 122 By Hinojosa</p>	<p>information within the business's custody or control that are not to be retained by the business by: (1) shredding; (2) erasing; or (3) otherwise modifying the sensitive personal information in the records to make the information unreadable or undecipherable.</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30; 208; 225; 364; 568; 570</p>
<p>Breach of Security of Computerized Data System</p>	<p>Breach of system security means unauthorized acquisition of computerized data that comprises the security, confidentiality, or integrity of sensitive personal information maintained by a person.</p>	<p>identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable.</p>	<p>A breach is considered to have occurred when there is unauthorized access to data electronically stored that compromises the security, confidentiality, or integrity of personal identifying information.</p>	<p>destroy each record by shredding, erasing or other means.</p>	<p>When financial institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused.</p>			

<p>Notification Required following Breach of Security</p>	<p>SB 122 By Hinojosa</p> <p>A person that conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any resident of the state whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.</p> <p>Disclosure shall be made as quickly as possible. Notice may be delayed at request of law enforcement agency.</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p> <p>A person that owns or licenses computerized data that includes identifying information of a resident of this state must notify the resident of any breach if the resident's unencrypted personal identifying information was, or may have been, obtained by an unauthorized person.</p> <p>Notification must be made promptly after the date the person discovers the breach, taking into law enforcement agency requests.</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570</p> <p>If the institution determines that misuse of its information about a customer has occurred or is reasonably possible, it should notify the affected customer as soon as possible.</p> <p>Customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the institution with</p>
--	---	---------------------------------------	------------------------------------	-----------------------------------	---	----------------------------------	--

<p>Notification Required following Breach of Security (Continued)</p>	<p>SB 122 By Hinojosa</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570 written require for delay. Notice should be delivered in any manner designed to ensure that a customer can reasonably be expected to receive it.</p>
				<p>A service provider holding or using the data shall immediately notify and cooperate with the owner or licensee of the information of any breach of the service provider's system if person identifying information was, or may have been, obtained by an unauthorized person. The person may provide the notification in writing or by electronic notice.</p>			

<p>Notification Required following Breach of Security (Continued)</p>	<p>SB 122 By Hinojosa</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p>	<p>HB 1130 By Cook</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p>	<p>Federal Guidelines 12 CFR part 30,208; 225,364;568;570</p>
	<p>Notice may be: written, electronic, or if cost would exceed \$250,000 or more than 500,000 persons are affected, then notice may be by email, website posting, or broadcast by major statewide media.</p> <p>If person required to notify more than 10,000 persons in single event, the person must also notify all consumer reporting agencies.</p> <p>Provides safe harbor if notice given in conformity with information security policies that provide for notification within time requirement of the section.</p>				<p>If cost would exceed \$250,000 or more than 500,000 affected, then notice may be by email, website posting, or broadcast by major statewide media.</p> <p>If person required to notify more than 1,000 persons then person must also notify all consumer reporting agencies.</p>		

<p>Civil Penalties</p>	<p>SB 122 By Hinojosa</p> <p>Violation liable to state for civil penalty of at least \$2000 but not more than \$50,000 for each violation.</p>	<p>SB 327 By Zaffirini</p> <p>Violation liable to state for a civil penalty in an amount not to exceed \$100,000</p> <p>Violation liable for damages in amount equal to greater of actual damages or \$100,000</p>	<p>HB 698 By McCall</p> <p>Violation liable for a civil penalty of up to \$500 for each record.</p>	<p>HB 1130 By Cook</p> <p>Violation liable to the state for a civil penalty in an amount NTE \$500 for each calendar month during which a violation occurred.</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p> <p>Violation liable to state for civil penalty of \$1000 for each violation.</p> <p>AG may bring action to restrain or enjoin violations.</p>	<p>Federal Guidelines 12 CFR part 30;208; 225;364;568;570</p>
-------------------------------	---	---	--	--	-------------------------------------	--	--

	SB 122 By Hinojosa	SB 327 By Zaffirini	HB 698 By McCall	HB 1130 By Cook	HB 1682 By McCall	SB 674 By West	Federal Guidelines 12 CFR part 30.208; 225.364;568;570
Civil Penalties (Continued)			whole or in part, through extraordinary means.				
DTPA	Violation of unauthorized use or possession of personal identifying information section is a DTPA.				Violation of chapter is DTPA		
Report Required in connection with Fraudulent Use or Possession of Identifying Information	Amends Code of Criminal Procedure art. 2.29. Requires law enforcement to make written report of ID theft. Victim may receive copy.						
Court Order to Declare Individual Victim of ID Theft	Victim may petition court for court order declaring victim status.						
Affected / Exempted entities	Exemptions from business duty to protect information: Gramm-Leach- Billey financial	Exemptions for: Gramm-Leach- Billey financial entities or a covered entity under 601 or 602	Exemptions for: Gramm-Leach- Billey financial entities; HIPAA covered entities; Family	Exemptions for: financial institution, mortgage lender or mortgage broker; a covered entity	Exemptions for: financial institution, mortgage lender or mortgage broker; a covered entity	Exemptions for: financial institution, mortgage lender or mortgage broker; a covered entity	Applies only to Financial Institutions, their subsidiaries, and their contract service providers

<p>Affected / Exempted entities (Continued)</p>	<p>SB 122 By Hinojosa</p> <p>entities HIPAA covered entities Exemption from destruction provisions for: Gramm-Leach-Bliley financial entities</p>	<p>SB 327 By Zaffirini</p>	<p>HB 698 By McCall</p> <p>Insurance Code</p>	<p>HB 1130 By Cook</p> <p>Educational Rights and Privacy Act covered entities. Covered entities under Insurance rules relating to insurance health or financial privacy info; governmental bodies; a person with respect to a loan transaction, if the person is not engaged in the business of making loans.</p>	<p>HB 1682 By McCall</p>	<p>SB 674 By West</p> <p>under 601 or 602 Insurance Code; governmental entity; HIPAA covered entity</p>	<p>Federal Guidelines 12 CFR part 30; 208; 225; 364; 568; 570</p>
<p>Business & Commerce Code provision being amended</p>	<p>Adds new Chapter 48: Identity Theft Enforcement and Protection Act</p>	<p>Adds new Chapter 48: Computer Protection Against Computer Spyware Act</p>	<p>Amends 35.48</p>	<p>Adds 35.581</p>	<p>Adds new Chapter 50: Disclosures Relating to Maintenance of Personal Identifying Information</p>	<p>Adds 35.62: Prohibited Acts with Respect to Use of Social Security Numbers</p>	<p>Requires study by OCC and AG to develop and evaluate proposals to limit use of social security numbers by businesses</p>
<p>Other provisions</p>							

CHARGE 6. Examine the compliance of cigarette manufacturing companies with the 1998 Tobacco Settlement with reference to sales to minors, and the progress toward meeting the state's tobacco use goals and the cost of tobacco use to the state. (Joint Interim Charge with the House Committee on Public Health)

Tobacco Settlement

In 1996, the State of Texas filed a federal lawsuit accusing five major tobacco companies - Philip Morris Incorporated, Lorillard Tobacco Company, Liggett & Myers, R.J. Reynolds Tobacco Company, and Brown & Williamson Tobacco Corporation (now owned by R.J. Reynolds Tobacco Company) - of violating conspiracy, racketeering, consumer protection, and other provisions of state and federal law. The state sought to recover billions of tax dollars it had spent to treat tobacco-related illnesses. Although the case was settled in January of 1998, a most favored nation clause allowed the state to improve its settlement. The State of Texas chose to accept the Minnesota settlement requiring the tobacco companies to pay \$15 billion over 25 years and to pay an extra \$2.3 billion to Texas counties and hospital districts.¹⁶³

Actual payments by the industry are subject to adjustment formulas related to tobacco sales, inflation, and industry profitability. Under Texas' settlement terms, payments from the tobacco companies rise or fall in proportion to domestic consumption of cigarettes each year as compared to consumption in 1997.¹⁶⁴

The 76th Legislature in 1999 used \$1.5 billion of the initial receipts to create endowment funds for health and human services and higher education and created sources of ongoing program funding out of interest earnings.¹⁶⁵ The Texas Tobacco Prevention Initiative is funded by the interest proceeds generated from the \$200 million Permanent Endowment for Tobacco Education and Enforcement that was one of several endowments established by the 76th Legislature.¹⁶⁶

State's Tobacco Use Goals

The Legislature has set specific goals for the Texas Department of State Health Services (or any other agency) to achieve when implementing state funded tobacco cessation programs.

*Tobacco Use Goals.*¹⁶⁷

a. It is the intent of the Legislature that the Department of State Health Services (DSHS) or any other grantee or agency that receives funds for tobacco reduction or cessation in the State of Texas create the following goals;

(1) In areas where the state funds tobacco cessation programs at a level of \$3.00 per capita, there should be a demonstrated reduction in underage use of cigarettes, snuff, and smokeless

¹⁶³ Texas. House Research Organization. *Securitizing Texas' Tobacco-Settlement Receipts*. February 4, 2002. Interim News. Number 77-5.

¹⁶⁴ Ibid. (footnote 106)

¹⁶⁵ Ibid. (footnote 106)

¹⁶⁶ Texas. Department of State Health Services. Email Response to Questions from the House Committee on State Affairs. Received August 11, 2006.

¹⁶⁷ Rider 67 under Article II of the General Appropriations Act, 2006-2007 Biennium, 79th Legislature; Rider 49 under Article II of the General Appropriations Act, 2004-2005 Biennium, 78th Legislature; and Rider 11 under Article XII of the General Appropriations Act, 2002-2003, 77th Legislature

-
- tobacco of 60 percent by the year 2010 by all Texans 22 years and younger; and*
- (2) In areas where the state funds tobacco prevention and cessation programs at a level of \$3.00 per capita, the use of cigarettes, snuff, and smokeless tobacco by all Texans 22 years and younger should be eliminated by the year 2018.*
- b. The agency should focus on achieving these goals by creating and using programs permitted under Government Code, §403.105.*
- c. The agency, or any other grantee or agency receiving funds for tobacco reduction or cessation in the state, shall prepare a report by December 1, 2006, on the agency's progress in achieving the above goals. The report shall include an evaluation of the agency's progress and recommendations on how to improve the programs. The report shall be submitted to the Eightieth Legislature.*

Agency Efforts

Texas Department of State Health Services (DSHS)

In 2000 and 2001, an annual \$10 million dollar appropriation to the Texas Department of Health legacy agency, now DSHS, funded a pilot study conducted in partnership with eight state universities in Southeast Texas known as the Texas Tobacco Prevention Initiative.¹⁶⁸ East Texas and Houston were identified as the primary sites for the initiative because the regions experience a high rate of lung cancer and other tobacco-related diseases and they contain demographically diverse populations that are heavily targeted by the tobacco industry.¹⁶⁹ Due to a funding increase during 2002 and 2003, the pilot area was expanded to be fully implanted in Harris, Fort Bend, Montgomery, and Jefferson Counties, thus reaching 20 percent of the state's population. A reduction in funding during 2004 and 2005 decreased the pilot area to include only the Beaumont-Port Arthur Metropolitan Statistical Area (includes Jefferson County). During this time, the surrounding communities of Harris, Fort Bend, and Montgomery counties did receive a lower intensity level of tobacco prevention methods. DSHS officially ended the pilot study in late 2005, but continues to support comprehensive programming in the Beaumont-Port Arthur area.¹⁷⁰ This programming includes two tobacco use public awareness campaigns aimed to reduce tobacco use by minors in the state and support youth groups that include components related to the reduction of tobacco use by the group's members. These campaigns are known as *Duck Texas - Tobacco is Foul and Worth It*.

¹⁶⁸ Texas. Department of State Health Services. *Southeast Texas Tobacco Prevention Program Frequently Asked Questions*. Provided to House Committees on Public Health and State Affairs Joint Hearing. April 18, 2006.

¹⁶⁹ Texas. Department of State Health Services. *Texas Tobacco Prevention Initiative Infrastructure and Baseline Data*. January 2001. E16-11186. Accessed July 31, 2006. <http://www.dshs.state.tx.us/tobacco/pdf/finalrep.pdf>

¹⁷⁰ *Ibid.* (footnote 111)

Cost of Comprehensive Programming Per Year¹⁷¹			
Fiscal Year	Program Location	Total Population	Approximate Cost
2002	Harris, Jefferson, Fort Bend, and Montgomery Counties	4,300,849	\$9,848,944
2003	Harris, Jefferson, Fort Bend, and Montgomery Counties	4,156,575	\$11,264,318
2004	Beaumont/Port Arthur MSA	386,848	\$1,720,250
2005	Beaumont/Port Arthur MSA	386,848	\$1,720,250
2006	Beaumont/Port Arthur MSA	385,090	\$1,462,750

Youth Population within Comprehensive Programming Area¹⁷²	
Location	% Population Who Are Youth 0-19 yrs. (& Number of Youth)
Montgomery County	32.1% (94,483)
Jefferson County	28.9% (72,924)
Harris County	31.9% (1,083,790)
Fort Bend County	34.7% (123,038)
Beaumont/Port Arthur MSA*	39.3% (113,315)
*Some overlap exists between Jefferson County and the Beaumont/Port Arthur MSA	

Funding at a level of about \$3 per capita of programming that includes school, community, enforcement, cessation and mass media was shown to be effective in reducing tobacco use. Lower level media campaigns and single focus community programs did not have measurable effects on tobacco use among children and adults. For the Beaumont/Port Arthur area and Houston (where a comprehensive program was funded through fiscal year 2003)¹⁷³:

- From 1998 to 2003, current use of any tobacco products showed a 32% reduction among middle school students (from 24.5% to 16.6%) and a 41% reduction among high school students (from 40.1% to 23.6%).
- The prevalence of adult smoking decreased 26.4% (from 21.6% in 2000 to 15.9% in 2004).

In the Beaumont/Port Arthur area only, where the comprehensive program continues to be provided¹⁷⁴:

- From 2000 to 2005, current cigarette use among middle school students decreased 34% (from 17% to 11.2%) and among high school students decreased 46% (from 34.2% to 18.3%).

¹⁷¹ Texas. Department of State Health Services. Response to House Committees on Public Health and State Affairs Asked During Joint Hearing. April 18, 2006. Letter Dated May 26, 2006.

¹⁷² Ibid. (footnote 114 - as ref: U.S. Census Bureau)

¹⁷³ Ibid. (footnote 111)

¹⁷⁴ Ibid. (footnote 111)

After the funding reduction in 2004 and resulting end to comprehensive programming in Harris County, smoking rates among middle school students began to rebound.¹⁷⁵

DSHS contracted with the Kaiser Permanente Center for Health Research to use a return on investment model to calculate the net annual medical care and productivity savings associated with 2003 program spending and smoking rate reductions from the Texas Tobacco Prevention Initiative. The Kaiser Permanente Center estimates that as a result of the 2003 single year investment of \$11.3 million (\$2.71 per person) in the pilot area only (Houston and Southeast Texas) there were 29,870 fewer smokers in 2003 and a five-year savings of over \$252 million in total medical care and productivity costs.¹⁷⁶

In addition to programming in the comprehensive area, DSHS supports tobacco prevention efforts across the state at a low intensity. For example, regional DSHS staff work with tobacco prevention coalitions, community-based organizations, and other interested entities to promote policies that discourage tobacco use.¹⁷⁷ Additionally, DSHS supports limited media activities such as billboards, print ads, promotional events, press releases, radio, and public service announcements.¹⁷⁸

DSHS uses the best information and practices to make the best program intervention investments based on scientific, public health, and psychosocial science literature. Research shows that media messages need to reach at least 80 percent of the target audience a minimum of 6 times in order to change behavior. It is more practical to concentrate the high-intensity media in the comprehensive program area where it can have measurable impact and be reinforced with other program activities, because funds are not available to purchase this level of high-intensity media statewide and the desired result would not be achieved by placing low-intensity media throughout the state. Jefferson County is an advantageous media market because of the availability of local television and radio stations with low advertising rates, which are based on population and viewership levels. Additionally, some Houston stations reach this area as well as a large audience outside the area. However, Houston media is quite costly and is considered a supplement only.¹⁷⁹

In fiscal year 2006, DSHS was able to extend some media buys to areas throughout the state through an agreement with the Texas Association of Broadcasters (TAB). TAB's member television and radio stations across the state agreed to run the placed advertisement a guaranteed number of times. Time slots and audiences are not guaranteed through the arrangement. Because the audience cannot be targeted with this type of placement, it is not considered a good investment for ads aimed at the relatively small age range for teens and pre-teens, which is also a very diverse audience with fragmented viewing habits. The larger adult audience is more suitable. Therefore, DSHS placed two ads aimed at an adult audience through the TAB. One ad focused on cessation and was placed during the end-of-year period when many smokers are

¹⁷⁵ Ibid. (footnote 109)

¹⁷⁶ Ibid. (footnote 109)

¹⁷⁷ Ibid. (footnote 109)

¹⁷⁸ Texas. Department of State Health Services. *Different DSHS Tobacco Prevention Efforts by Program*. Provided to House Committees on Public Health and State Affairs Joint Hearing. April 18, 2006.

¹⁷⁹ Ibid. (footnote 109)

preparing to quit for the New Year. The other ad focused on secondhand smoke education. Each placement cost \$196,000, for a total of \$392,000. The ads were purchased with the following funds: \$301,000 from U.S. Centers for Disease Control and Prevention funds and \$91,000 from settlement funds.¹⁸⁰

Markets include: Amarillo, Dallas/Fort Worth, Houston, San Antonio, Austin, Texarkana, Waco, Harlingen, El Paso, Tyler/Longview, Corpus Christi, Beaumont/Port Arthur, Wichita Falls, Lubbock, Odessa/Midland, Sherman, Abilene, Laredo, San Angelo, and Victoria¹⁸¹

Additionally, DSHS placed ads with an enforcement message in Abilene, Corpus Christi, Lubbock, Tyler/Longview, and Waco. These ad placements were made as part of an interagency contract and funded through the Comptroller's Office. Markets were determined based on feedback from the Comptroller's Office and available funding. The budget for this media buy was \$206,500. The ads were purchased with the following funds: \$180,000 from the Comptroller's Office and \$26,500 from settlement funds.¹⁸²

DSHS receives funding specifically for tobacco prevention and control from General Revenue, the Permanent Fund for Tobacco Education and Enforcement, the Comptroller of Public Accountants, and the U.S. Centers for Disease Control and Prevention. Also, DSHS receives Substance Abuse Prevention and Treatment Block Grant funds from the Substance Abuse and Mental Health Services Administration for prevention programming on alcohol, tobacco, and other drugs.¹⁸³

DSHS Actual Expenditures¹⁸⁴					
Method of Finance	FY 02	FY 03	FY 04	FY 05	FY 06
General Revenue - 0001	121,115	122,868	122,869	109,739	266,695
Tobacco Settlement Receipts - 5040	5,000,000	5,000,000			
Tobacco Education/Enforcement - 5044	7,680,219	8,295,953	5,993,590	5,897,692	5,218,131
Federal Funds - 555	716,401	864,233	864,233	936,362	882,756
Appropriated Receipts - 666	865	34,238	105,160		
Interagency Contracts - 777	636,075	388,253	388,253	426,000	479,429
Total	14,154,674	14,705,545	7,474,105	7,369,793	6,847,011
Notes:					
FY 02 - Travel, rent, and utilities are included in operating costs					
FY 03 - Includes tobacco funds which were in a strategy entitled Tobacco Education/Enforcement					
FY 06 - Budgeted amounts, not actual expenditures					
These amounts do not include all DSHS funds spent on tobacco education/prevention.					

¹⁸⁰ Ibid. (footnote 109)

¹⁸¹ Ibid. (footnote 109)

¹⁸² Ibid. (footnote 109)

¹⁸³ Texas. Department of State Health Services. *DSHS Tobacco Prevention Efforts*. Provided to House Committees on Public Health and State Affairs Joint Hearing. April 18, 2006.

¹⁸⁴ Ibid. (footnote 109)

In 2006, DSHS appropriated \$5.5 million specifically to tobacco prevention and control. An additional \$1.7 million came from the U.S. Centers for Disease Control and Prevention allowing roughly \$7 million to be aimed at these efforts. Although another \$20 million was available from the Texas Commission on Alcohol and Drug Abuse legacy agency, the funds are universal in use covering alcohol, tobacco, and other drug prevention, intervention, and treatment. Only some of this money goes toward tobacco prevention and control.¹⁸⁵ For example, DSHS funds contract agencies that serve more than 450 school districts with evidence based curriculum on alcohol, tobacco, and drug use.¹⁸⁶

Texas Education Agency (TEA)

The Texas Essential Knowledge and Skills (TEKS) are the standards of instruction developed for every required foundation and enrichment content area from kindergarten through twelfth grade. When offering a course, teachers must provide instruction on all of the components of the TEKS for that class at that grade level, using the curriculum or curricula that their district deems appropriate. Substance abuse prevention, including tobacco use, is included in the TEKS for Health Education at every grade level. Instruction in Health Education must be provided within every grade level during elementary school and is also offered in the middle school setting. A half-credit must be earned for high school graduation.¹⁸⁷

In addition, all elementary, middle, and junior high schools are required to implement a Coordinated School Health Program (CSHP) starting in the 2006-2007 school year. However, many school districts started a CSHP in their elementary schools after the passing of Senate Bill 19 in 2001. A CSHP requires that designated staff, especially those involved in school health issues (nurses, cafeteria staff, physical education teachers, counselors, etc.), align their efforts in developing healthier students and staff.¹⁸⁸

TEA contracts with the DSHS to administer the Youth Risk Behavior Survey with a grant received from the U.S. Centers for Disease Control and Prevention. Tobacco use is one of many health issues addressed in this survey.¹⁸⁹ The survey measures behaviors that fall into five other categories including unintentional injuries and violence, alcohol and other drug use, sexual behaviors, dietary behaviors, and physical activity.

Each of the twenty regional education centers has a school health specialist and a Safe and Drug Free School Coordinator (SDFSC). These positions are funded from various funding sources including some federal government funding, a small amount from DSHS, and various others. Sometimes the same person will be the contact for both school health and the SDFSC programs. Any questions pertaining to or from school nurses are handled by the school health specialist.

¹⁸⁵ Sanchez, Eduardo. Texas Department of State Health Services Commissioner. Testimony Before the House Committees on Public Health and State Affairs. April 18, 2006.

¹⁸⁶ Ibid. (footnote 126)

¹⁸⁷ Rathbone, Marissa. Texas Education Agency Director of Health & Physical Education. Email Response to House Committee on State Affairs Information Request, August 9, 2006.

¹⁸⁸ Ibid. (footnote 130)

¹⁸⁹ Ibid. (footnote 130)

They stay in close coordination with the DSHS Division of School Health.¹⁹⁰ The school health specialist provides and promotes wellness information, materials and other resources to teachers, administrators, other school personnel, parents and community members within the school community through in-service training, workshops, and other technical assistance. The specialists, together with support and guidance from the Texas Cancer Council and DSHS, make up the Texas School Health Network.¹⁹¹

Although not required by statute, the Texas School Health Network has been in existence for 20 years and has received funding at different levels from a variety of agencies. In 1995, DSHS became the primary funding source for the network and currently funds 30% of a full-time school health specialist position within each educational service center. DSHS funding for the network comes from two sources: \$210,000 from an inter-agency contract with the Texas Cancer Council to support cancer prevention activities and \$802,132 from Maternal and Child Health (Title V) to provide primary prevention trainings, technical assistance and support to schools. For example, the network provides training on tobacco prevention and other coordinated school health programs.¹⁹²

Comptroller's Office (CO)¹⁹³

Senate Bill 55, relating to the regulation of the sale, distribution, and use of tobacco products by minors, enacted during the 75th Regular Session, charges the CO, along with Local Law Enforcement agencies, to enforce Subchapters H, K, and N of the Texas Health and Safety Code Chapter 161.

The Comptroller's primary enforcement efforts are carried out through inspections of tobacco retail establishments by staff of the Enforcement Division and the Criminal Investigation Division (CID). During inspections, staff ensures that retail establishments maintain appropriate employee notification forms and warning signs and are in compliance with youth access laws. Violations result in an assessment of a civil penalty and/or a criminal citation when deemed appropriate. A total of \$108,000 in civil penalties has been assessed to date.

In addition to performing inspections, CID personnel often partner with local law enforcement agencies to assist in performing "controlled buy" stings where a minor, under the supervision of the law enforcement agency, is sent into a tobacco retail establishment in an attempt to purchase tobacco products. Employees of retail establishments that sell cigarettes or tobacco products to minors are issued criminal citations. CID personnel make follow-up visits to establishments that have been found in such violation to determine whether additional civil penalties should be applied.

¹⁹⁰ Cowan, Tommy. Texas Education Agency Interagency Coordination Director. Email Response to House Committee on State Affairs Information Request. July 31, 2006.

¹⁹¹ Texas. Department of State Health Services. *Texas School Health Network: School Health Specialists*. Accessed July 21, 2006. <http://www.dshs.state.tx.us/schoolhealth/netlist.shtm>

¹⁹² Ibid. (footnote 109)

¹⁹³ Texas. Comptroller of Public Accounts. Response to House Committee on State Affairs Information Request. Letter Dated August 8, 2006.

Enforcement Activities from June 1, 2005 to May 31, 2006	
Comptroller's Office	
Retailer Inspections	5,304
Local Law Enforcement Report	
Retailer Inspections	6,181
"Controlled Buys"	7,292
• Violation to Buy Rate (10.33%)	
Retailers Educated on Tobacco Laws	3,567
Minors in Possession Citations	2,528
Children Educated on Tobacco Laws	348,196
Officers Trained on Tobacco Laws	1,307
Educators trained on Tobacco Laws	11,297
Court Personnel Trained on Tobacco Laws	235

The CO also makes grant dollars available to local law enforcement agencies and school districts with on-campus police programs. These funds are appropriated by the Legislature specifically for the on-going administration of S.B. 55, and are not tied to the Tobacco Settlement payments. The grant dollars for Local Law Enforcement agencies are designated for:

- Educating tobacco retailers on the laws concerning minors access to tobacco;
- Educating local court personnel on the laws concerning minors access to tobacco;
- Inspecting tobacco retailers to ensure compliance with state laws;
- Performing "controlled buy" stings using minor decoys to test tobacco retailers on sales of tobacco products to minors.

The grant dollars available to school districts with on-campus police departments are designated for:

- Educating minors on the tobacco laws;
- Enforcing the tobacco laws concerning minors in possession of tobacco on and off campus at school-sanctioned events.

Through the use of an interagency contract for fiscal year 2006, the CO will pay DSHS \$466,000 to provide the following services:

- DSHS shall subcontract with a toll-free phone service provider in order to receive, dispatch, monitor, and accommodate complaints, questions, reports of violations, requests for technical assistance, and any other incoming calls related to the sale and distribution of tobacco products to minors in Texas, or possession of tobacco products by minors in Texas (1-800-345-8647).
- DSHS shall continue the ongoing development and implementation of a statewide public awareness campaign designed to reduce tobacco use by minors.
- No later than January 5th of each odd numbered year, DSHS shall report to the Governor, Lieutenant Governor, and Speaker of the House on the status of smoking and the use of

tobacco and tobacco products in compliance with all the legislative requirements per Section 1612.0901, Chapter 161, Texas Health and Safety Code.

- DSHS shall implement a revision of the statewide tobacco education program known as the Texas Youth Tobacco Awareness Program, for minors who are cited for possession of tobacco products.

In addition, the CO maintains a memorandum of understanding with DSHS. The agreement states that DSHS will:

- Contract with Texas State University to conduct the federally mandated Synar inspections, using CO's list of retail tobacco outlets. Submit the Synar report required by federal law and any implementing regulations adopted by the United States Department of Health and Human Services.
- Require that DSHS contact tobacco retailers to request voluntary compliance with the state law, participate in raising public awareness regarding minors and tobacco issues, and actively participate in community tobacco prevention coalitions and activities.
- Coordinate the enforcement of state and federal statutes to reduce availability of tobacco products to minors, conduct and report data from compliance inspections and purchase attempts.

Office of the Attorney General (OAG)¹⁹⁴

In response to the problem of underage people trying to purchase cigarettes over the internet, many states have passed laws prohibiting minors from having cigarettes delivered to them. Also, the National Association of Attorneys General has entered into several "Assurances of Discontinuance" with United Parcel Service Inc., DHL Holdings USA, Inc. and Federal Express. These agreements prohibit the delivery of cigarettes to minors. The agreements which have been adopted by many states provide that the delivery company will not ship or deliver "cigarettes to individual consumers in the United States" unless the delivery of the cigarettes is authorized by law. Therefore, under the agreements, the delivery companies will not deliver cigarettes to persons who are under the legal age to purchase cigarettes, the delivery company promises to deliver cigarettes only when the delivery is a "properly labeled tobacco product" and the delivery company "obtains an in-person signature from a person who has reached such legal purchase age, pursuant to the respective laws of each state." Moreover, under the agreements, the delivery companies will train their employees and keep them informed about the restrictions on the delivery of cigarettes.

The following states or territories have all signed onto these agreements: American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Iowa, Missouri, Montana, Northern Mariana Islands, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South

¹⁹⁴ Texas. Office of the Attorney General. Email Response to House Committee on State Affairs Information Request. Received September 5, 2005.

Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.

In Texas, the Delivery Sales Restriction Statute requires that tobacco delivery sales not be made to an individual who is under the age of 18. Among other details, the delivery person must use a reliable source to verify the age of the person receiving the delivery and obtain the person's signature on a statement that certifies the person's address, date of birth, compliance with Texas law, and desire to receive tobacco products.¹⁹⁵

Recommendations

Alternative Delivery

In educating Texas minors, DSHS has isolated its tobacco prevention and education efforts to three counties. Out of the state's more than 4.5 million minors, DSHS only reached roughly 113,315 minors with the Texas Tobacco Prevention Initiative each year from 2004 to 2006.^{196,197} Additionally, DSHS has limited resources available to deliver tobacco education to minors.

Therefore, it is the recommendation of the committee to consider changing the method of delivery used by DSHS to provide tobacco prevention education to minors throughout the state. The committee is aware of numerous options that could be the solution to the limited delivery system currently utilized by DSHS. However, the committee recommends that the Texas Legislature consider three of these possible changes. One, DSHS could be required to contract with TEA whenever DSHS is targeting minors with its tobacco prevention efforts. Two, DSHS and TEA could be required to work together through the Texas School Health Network when targeting minors with tobacco prevention efforts. Three, DSHS could be required to transfer its educational and monetary responsibility of tobacco prevention education to TEA, thereby making TEA the educational delivery system to educate minors throughout the state.

Lack of Information Exchange

The CO conducted 7,292 "controlled buys" from June 1, 2005, to May 31, 2006, and discovered a 10.33% violation to buy rate. Likewise, DSHS conducts an annual Synar survey to determine the rate of illegal sales to minors. This effort results in approximately 1,000 random, unannounced inspections of local tobacco retailers.¹⁹⁸ During fiscal year 2005, DSHS discovered a 12.4% violation to buy rate. Although, the discovered violation to buy rate is reasonably consistent, the information exchange is not. Even though DSHS uses the CO's list of retail tobacco outlets, DSHS claims that the Synar survey compliance inspections are never combined with law enforcement actions. This is to avoid jurisdictional and safety issues since Synar was

¹⁹⁵ Texas Health & Safety Code, Sections 161.451 (2003) and 161.452 (2003)

¹⁹⁶ Texas. Education Agency. *2005-2006 Student Enrollment*. Accessed July 31, 2006.

http://www.tea.state.tx.us/cgi/sas/broker?_service=marykay&_program=adhoc.addispatch.sas&major=st&minor=e&endyear=06&format=W&linespg=60&charsln=120&selsumm=ss&key=TYPE+HERE&grouping=g

¹⁹⁷ Ibid. (footnote 114)

¹⁹⁸ Ibid. (footnote 121)

strictly designed as a survey mechanism and not an enforcement tool.¹⁹⁹ This lack of communication inhibits the CO's enforcement abilities. Therefore, it is the recommendation of the committee to have DSHS conduct the federally required Synar survey as well as inform the CO of discovered violations so that the CO may enforce the Texas Tobacco Laws.

¹⁹⁹ Texas. Department of State Health Services. *Tobacco Retail Sales: Regulation, Enforcement & Education*. Received April 28, 2006.

ADDENDUM

Representative Byron Cook

The State of Texas
House of Representatives



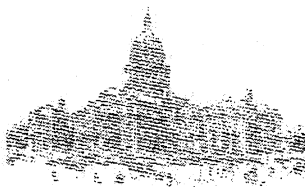
P.O. Box 2910
AUSTIN, TEXAS 78768-2910
512-463-0730
FAX: 512-463-2506
800-643-7026

BYRON COOK
STATE REPRESENTATIVE
DISTRICT 8

COMMITTEES:
VICE CHAIRMAN,
ECONOMIC DEVELOPMENT
MEMBER,
STATE AFFAIRS
MEMBER,
SUNSET ADVISORY COMMISSION

Statement of Representative Byron Cook

The following is my statement to the State Affairs Committee Report. Not only do I agree with the recommendation that the Texas Legislature support and pursue additional funding sources for research on adult stem cells, I also support funding the most promising research in the field of embryonic or early stem cell research, in particular for research involving Somatic Cell Nuclear Transfer.



ANDERSON ★ FREESTONE ★ LIMESTONE ★ NAVARRO

LETTER OF DISSENT

Representative Jessica Farrar

Representative Trey Martinez Fischer

Representative Mike Villarreal



TEXAS HOUSE OF REPRESENTATIVES
TREY MARTINEZ FISCHER
STATE REPRESENTATIVE, DISTRICT 116
Bexar County

November 20, 2006

The Honorable David Swinford
Chairman, State Affairs Committee
Texas House of Representatives
EXT E2.108
P.O. Box 2910
Austin, TX 78768-2910

Dear Chairman Swinford:

It is with regret that we, the undersigned members of the State Affairs Committee, cannot become signatories to the House Committee on State Affairs Interim Report to the 80th Legislature. It appears as though the report's section on stem cell research failed to offer a scientifically accurate presentation of the promise of stem cell research.

Specifically, the report's discussion of somatic cell nuclear transfer (SCNT) makes several erroneous allegations about this critically important process for creating pluripotent stem cells that currently have no possibility to create human life, unlike other sources of stem cells.

The following clause is particularly problematic: "if the technique uses eggs, creates an embryo by replacing the original DNA in the egg and yields embryonic stem cells, it is the same cloning technology..." Adding human somatic cells to an enucleated human egg cell does not create a cell that is the genetic equivalent of a human embryo. A human embryo is a fertilized egg cell that is the product of sexual reproduction. It has unique life-creating properties and is totipotent. A human SCNT cell is an enucleated cell which has been re-nucleated with a somatic cell and is pluripotent and, as yet, will not create human life even if implanted into a human uterus.

Conflating the two ideas is problematic because it equates SCNT with embryonic stem cell research and all of the moral, ethical, and existential questions surrounding that scientific investigation. In truth, SCNT holds the best hope to avoid the moral implications of stem cell research, because, at present, a human SCNT cell cannot become human life. Should human cloning be banned in the state of Texas - as many of us believe it must be, a process using SCNT never will create human life.

While it is true that SCNT was used to create a sheep clone nearly a decade ago, there is no peer-reviewed, scientifically verifiable process that claims to use a human SCNT cell implanted into a woman's womb to create human life. Calling therapeutic SCNT

Committees: State Affairs; Civil Practices

□ District Office: 1910 Fredericksburg Road • San Antonio, Texas 78201-4439 • 210.737.7200 • Fax: 210.737.6700

Ⓛ Capitol Office: P.O. Box 2910 • Austin, Texas 78768-2910 • 512.463.0616 • Fax: 512.463.4873 • Toll-free 866.845.7777



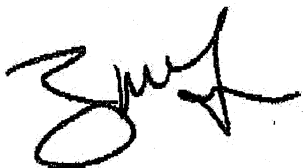
Chairman David Swinford Letter
November 15, 2006
Page 2

research "human cloning" is like calling an apple apple pie. One may need an apple to make an apple pie, but not every apple becomes a pie.

Every member of our committee is committed to preventing the danger of human cloning. Treating SCNT as if it were the moral equivalent of cloning is myopic. It remains a possibility that sometime in the near future a Texas scientist will try to create human life using SCNT, unless we as state legislators do our jobs and wholly prohibit the practice. However, it remains a certainty that thousands of Texans will suffer and die from degenerative illnesses that may someday be cured by this important research. The troubling questions of stem cell research are not made easier by fundamental misstatements about the nature and properties of SCNT. It is our job as a fact-finding committee to engage in an honest discussion of the facts of SCNT and not in the linguistic ambiguities of overly simplified science.

We look forward to working with you on this topic and assuring that our colleagues receive an unbiased look at the potential stem cell research brings to healing human lives.

Sincerely,



Trey Martinez Fischer
State Representative
District 116



Jessica Farrar
State Representative
District 148



Mike U. Villarreal
State Representative
District 123