

SUBJECT: Criminal offense and civil action for fraudulently using false identification

COMMITTEE: Civil Practices — favorable, with amendment

VOTE: 8 ayes — Bosse, Janek, Dutton, Goodman, Hope, Nixon, Smithee, Zbranek

0 nays

1 absent — Alvarado

WITNESSES: For — John McGee, Computer Sciences Corporation

Against — None

DIGEST: HB 25 would create an offense for using the identifying information of another person fraudulently to obtain a benefit. It would also be an offense to obtain identifying information from a person so that a third party could use that identifying information to obtain a benefit. An offense would be a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000). If the conduct of a person committing the offense also would constitute an offense under another law, that person could be prosecuted under either law.

Identifying information would include a person's name, address, date of birth, social security number, and credit card account number.

HB 25 also would create a civil cause of action for anyone whose identity was fraudulently used to obtain a benefit. A person who suffered personal injury or property damages as a result of their identity being stolen would be allowed to recover actual damages, exemplary damages, and reasonable attorney's fees and costs.

HB 25 would take effect September 1, 1999.

SUPPORTERS SAY: The fraudulent use of identifying information is becoming more prevalent as our society becomes more reliant on computers and identification numbers to conduct business transactions. The use of another's identity can have a serious impact on that person. They could be charged with a crime committed

using that identification, they could be billed for the goods bought with that identification, or they could have their credit rating damaged.

In most cases, the theft of identity, without the possession of something physical like a driver's license or credit card, is not illegal. The use of a credit card number often is seen as a crime against the credit card company and not against the individual whose card number was used.

HB 25 would create both a criminal offense for the use of identifying information and a civil cause of action so that the person whose identification was stolen could recover damages. The new federal Fair Credit Reporting Act, 15 U.S.C. §1681o, also includes a civil cause of action for the fraudulent use of identifying information.

This legislation is needed to fill a gap in current state law that is not covered by traditional theft or fraud law. The addition of a civil cause of action in this legislation would allow the person harmed to pursue a resolution of the theft even in cases when the law enforcement authorities were unable to do much to recover from the offender.

OPPONENTS
SAY:

This legislation is unnecessary because most of the actions that this law would cover could be prosecuted under traditional theft or fraud law. Adding a special provision would disturb the balance of offenses and penalties that were carefully established in crafting the 1993 Penal Code recodification.

Most theft penalties create a sliding scale of penalties based on the value of the property stolen. This bill would not create such a sliding scale, but instead would punish all offenders equally, regardless of the amount of benefit that they fraudulently obtained or the amount of harm they caused.

OTHER
OPPONENTS
SAY:

While it would not include a civil cause of action, a Senate companion bill, SB 46 by Carona, would cover a broader range of conduct that could be prosecuted relating to the possession or fraudulent use of identifying information and would make the offense a state jail felony, which would create a stronger deterrent.

NOTES:

The companion bill, SB 46 by Carona, passed the Senate on the Local and Uncontested Calendar on February 25 and was reported favorably, without amendment by the House Criminal Jurisprudence Committee on April 27 and recommended for the Local, Consent, and Resolutions Calendar. SB 46 would make the fraudulent use or possession of another's identifying information offense of a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000. It would not create a civil cause of action.

A related bill, HB 853 by Hamric, currently pending in the House Criminal Jurisprudence Committee, would create an offense for using the official identification of another to commit an offense, evade detention or arrest for any offense, or avoid prosecution, conviction, or punishment for any offense.