

SUBJECT: Creating Class A misdemeanor for alteration of UPC symbol

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Keel, Talton, Kitchen, Shields

0 nays

3 absent — Garcia, Green, Martinez Fischer

WITNESSES: None

BACKGROUND: Penal Code, sec. 32.47 makes it a class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) to destroy, remove, conceal, alter, substitute, or otherwise impair the verity, legibility, or availability of certain writings, other than a government record, with the intent to defraud or harm another. A “writing” is defined as:

- ! printing or any other method of recording information;
- ! money, coins, tokens, stamps, seals, credit cards, badges, trademarks;
- ! symbols of value, right, privilege, or identification; and
- ! labels, price tags, or markings on goods.

DIGEST: HB 376 would amend Penal Code, sec. 32.47 to add universal product codes, also known as UPC symbols or bar codes, to the list of items defined as a writing.

The bill would take effect on September 1, 2001.

SUPPORTERS SAY: HB 376 would help deter fraud by making the law clearer and prosecution easier concerning fraudulent alteration of UPS bar codes. Retailers report that organized crime rings are placing counterfeited UPC symbols over UPC symbols in stores and then purchasing the items at a fraudulently-reduced price. These criminals later return the items using counterfeited receipts showing the correct price of the item and profit from the difference between the fraudulent price paid and the actual price refunded. Retailers have had difficulty prosecuting these criminals. If this fraudulent activity is allowed to continue unabated, Texas consumers will have to absorb the cost of these crimes through higher prices.

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OPPONENTS
SAY: HB 376 is unnecessary. Penal Code, sec. 32.47 already makes fraudulent alteration of “labels, price tags, or markings on goods” a Class A misdemeanor. A UPC symbol on a product for sale falls into this category.

NOTES: The companion bill, SB 923 by Staples, passed the Senate on the Local and Uncontested Calendar on March 22 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 10, making it eligible to be considered in lieu of HB 376.