

SUBJECT: Offense for unauthorized possession of credit or debit card

COMMITTEE: Criminal Jurisprudence — favorable, with amendment

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Hodge, Raymond, Reyna
0 nays
2 absent — Escobar, P. Moreno

WITNESSES: For — None
Against — None
On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Penal Code sec. 32.31 describes credit and debit card abuse and makes these offenses punishable as a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). Under sec. 32.31(b)(8), signing or writing a name on a credit or debit card that belongs to another individual, without the individual's effective consent and with intent to use the card, is among these offenses.

DIGEST: HB 1323 would amend Penal Code sec. 32.31(b)(8) to make it an offense to possess another individual's credit or debit card without the individual's effective consent and with intent to use it.
The bill would take effect September 1, 2005, and would apply to offenses committed on or after this date.

SUPPORTERS SAY: HB 1323 would provide a stricter means for prosecuting identity theft. Offenders caught with multiple credit and debit cards now cannot be prosecuted under this section unless they have signed the cards. Offenders rarely bother to sign these cards because they recognize many ways to use them without having to sign them. It is much more likely that an offender will be found in possession of an unsigned card, so making possession an offense not only would protect the property of the individual from whom

the card was taken but also would provide a deterrent for engaging in identity theft.

The bill would not apply to anyone who simply was in unauthorized possession of another's credit or debit card. The bill as amended would require intent to use it.

**OPPONENTS
SAY:**

This bill could open the door to prosecuting good Samaritans who come into possession of another person's lost credit or debit card and seek to return it to the owner. A prosecutor could attempt to prove that it was implicit that someone had intent to use a card merely because the individual was carrying the card.

**OTHER
OPPONENTS
SAY:**

HB 1323 was more effective as originally filed. Proving the intent to use another person's credit card can be difficult, and this requirement would diminish the ability to prosecute crimes under this section. This would create an impediment to prosecuting criminals who not only engage in identity theft but also may engage in criminal activities that correlate strongly with identity crimes, such as methamphetamine dealing.

NOTES:

The committee amendment would revise the original bill by retaining the requirement to prove intent in order to prosecute an individual in possession of another person's credit or debit card. It also struck a provision allowing possession of another individual's credit or debit card to be prosecuted as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) rather than a state jail felony.

The criminal justice impact statement estimates no significant impact on state corrections programs or workload from the bill.

The companion bill, SB 539 by Seliger, has been referred to the Senate Criminal Justice Committee.