SUBJECT: Restricting use of identifying information collected on merchandise return

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Bohac, Martinez, Solomons, Taylor, Vo, Zedler

0 nays

1 absent — Bailey

WITNESSES: None

DIGEST: HB 853 would add a provision to the Business and Commerce Code allowing a merchant – if that merchant required consumers who returned merchandise to provide their driver's license or social security numbers – to use such numbers only for identification purposes. A merchant could not disclose a consumer's driver's license or social security number to a person who would then use the information for compiling or tracking data on merchandise returned by consumers, including a particular consumer's frequency of returns.

A person who violated the provision would be liable to the state for a civil penalty not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurred could bring suit to recover the penalty. The attorney general could bring an action in the name of the state to restrain or enjoin a person from violating.

The bill would take effect September 1, 2005, and would apply only to an item returned on or after that date.

SUPPORTERS SAY: HB 853 would end the practice of retailers sharing a customer's driver's license number or social security number for the purpose of compiling or tracking information about the customer's merchandise return habits. The bill would not limit a merchant's ability to verify someone's identity for the purpose of a return, but it would prevent retailers from passing along that information to a national database.

More and more retailers are using a service that compiles a customer's identifying information, such as name and driver's license number or even social security number and birth date, in order to track the customer's habits of returning merchandise. The information goes into an electronic tracking system, usually without the customer's knowledge, for the purpose of stopping fraudulent returns. This is not only an intrusion on a customer's privacy and an unnecessary practice, but it has, on occasion, singled out good customers. A reliable customer should be able to return an item without turning over personal information to be fed into a national customer clearinghouse. Furthermore, Texas retailers should be able to fight fraudulent returns without having to rely on a California-based firm.

The main developer and supplier of this national monitoring software professes not to aggregate data – that is, to share data about a customer's returns to one retailer with a second retailer that also uses the software. Absent some action from the state, it would seem only a matter of time before the software aggregates customer data.

The time to protect Texans' privacy is now — before identifying information flows into various national databases and is not retrievable. HB 853 would be such a protection.

Authorizing the attorney general to bring an action to restrain or enjoin such sharing of information would be a practical deterrent. Authorizing the attorney general and the prosecuting attorney in the local county to recover a $500 civil penalty per violation would demonstrate further intolerance for such practices.

OPPONENTS SAY:

HB 853 would restrict retailers trying to reduce fraudulent returns that cost them $16 billion a year. Many Texas retailers use software developed by a national firm to help them decide whether to deny returns or exchanges based on a shopper's history of bringing back items. Such software has been helpful for store clerks, frequently young people with little experience at handling customers' ire.

Retailers rely on the monitoring software to detect shoplifters who return stolen merchandise; customers who switch price tags on items, then return one for the higher amount; shoppers who use fake or old receipts; employees who steal items and return them for cash; and one of the most common, a person who buys an article of clothing, wears it once, and returns it.

Neither the retailer nor the software company attempts to hide anything. If a customer's pattern of returns seems unusual, a transaction is rejected and the customer gets a receipt instructing the person to call a toll-free number for a copy of the report detailing the customer's return activity. The primary company performing this service for retailers maintains that the data are available only to that firm, the executives at the retailer, and the customer. Other personal information, such as a shopper's physical characteristics, is not compiled.

Until recently, retailers had focused on tracking fraud at the time of a purchase. New technology can monitor price overrides, and camera surveillance of shoppers has become commonplace. With technological advances, retailers now can trace patterns of returns, 9 percent of which are fraudulent.

OTHER OPPONENTS SAY:

By authorizing both the attorney general and the prosecuting attorney in a county to bring suit to recover a penalty, HB 853 would make this offense seem quasi-criminal. In addition, the attorney general or a county prosecuting attorney may not have much incentive to bring suit in order to recover a $500 civil penalty per violation. A more customary approach would be to grant the attorney general authority to recover a civil penalty under the deceptive trade practices act.