

SUBJECT: Signs warning restaurant or bar employees of fraudulent use of bank cards

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Giddings, Elkins, Martinez, Bailey, Bohac, Solomons, Taylor, Vo, Zedler

0 nays

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association

Against — Richie Jackson, Texas Restaurant Association

On — Shannon Edmonds, Texas District & County Attorneys Association

BACKGROUND: Penal Code, sec. 32.51 makes it a state jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) to obtain, possess, transfer, or use identifying information of another person without consent and with the intent to harm or defraud another. Under this provision, a court could order a convicted defendant to make restitution.

DIGEST: CSHB 982 would amend the Business and Commerce Code by adding sec. 35.60 to require a restaurant or bar that accepted debit or credit cards from customers to display a sign in a prominent place on the premises stating in letters at least two inches high:

"Under section 32.51, Penal Code, it is a state jail felony (punishable by confinement in a state jail for not more than two years) to obtain, possess, transfer, or use a customer's debit card or credit card number without the customer's consent."

The sign would have to be in English and in any other language spoken by a substantial portion of the employees.

A restaurant or bar owner who failed to comply would commit a misdemeanor punishable by a fine of not more than \$25. If a restaurant or bar owner were charged with failure to display the required sign, a court would dismiss the charge if the evidence were satisfactory that the

restaurant or bar owner put up the specified sign not later than 48 hours after receiving a citation.

This bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 982 would help reduce the fraudulent use of debit and credit card reencoders, often called "skimmers," in restaurants and bars. Skimmers, in most cases, can be held inconspicuously in the palm of the hand and frequently resemble beepers. These skimming devices capture a customer's data from the magnetic strip of a debit or credit card by swiping the card through it. The skimmer stores data from the strip of a customer's card until the information can be downloaded to a computer or transferred to a cloned debit or credit card.

Skimmers have created a new subset of identity theft. Customers in restaurants and bars are especially vulnerable because these establishments are some of the few places where customers are separated momentarily from their debit or credit cards and where often customers cannot see their payments processed, usually through an electronic scanner. Nearly 70 percent of fraudulent debit or credit card skimming takes place in restaurants. Gas stations, the second most active retail sector for such crimes, are a distant second.

Criminals who specialize in debit or credit card scams prey upon restaurant and bar staff, who often consider themselves underpaid. The criminals tempt the employees to skim bank cards with an offer of a \$20 to \$50 bounty per swipe. The restaurant or bar employees turn the reencoders over to "handlers," who pirate the debit or credit card data and make counterfeit cards or Internet purchases before unknowing victims receive their next billing statements.

Wait staff in restaurants and bars may not be aware of the seriousness of these thefts and their current penalties. These employees typically are young and could be in their first jobs handling money transactions. CSHB 982, by requiring signs detailing the penalty for fraudulent use of debit or credit cards, would be a reminder to restaurant and bar staff of the consequences of such crimes.

Major bank card companies have lost as much as \$300 million a year collectively from these crimes. Credit card companies usually write off a substantial portion of their losses, but fraudulent transactions can affect

victims' credit. In addition, victims of debit and credit card skimming generally have to file affidavits disclaiming fraudulent charges and therefore lose time proving that certain transactions were not authorized.

Making skimmers illegal might be the course the state eventually needs to take, but not enough is yet known about these devices to take that step now. More research should take place before criminalizing use of reencoders because they can have legitimate functions. They are similar to devices currently used to swipe driver's licenses to determine underage drinking.

For now, education would seem to be the key to preventing crimes related to debit or credit card skimming. By requiring restaurants and bars to post signs on their premises warning of fraudulent use of debit or credit cards, CSHB 982 would go a long way toward eliminating this form of identity theft. The bill would make restaurant and bar owners more aware of this crime by fining them \$25 for failure to comply with the specified sign posting. By allowing citations to be dismissed if proprietors complied with sign requirements within 48 hours, CSHB 982 would not hold them responsible for possible criminal conduct of their employees.

**OPPONENTS
SAY:**

This bill could exacerbate the problem of debit and credit card skimming. By placing a sign in a restaurant or bar, proprietors could be advertising the crime to someone who otherwise might not know the opportunity existed to skim debit or credit cards. Several parties could be involved in cases of fraudulent debit or credit card use. Restaurant and bar owners, however, in no way should be held accountable for criminal conduct on the part of employees.

**OTHER
OPPONENTS
SAY:**

Simply requiring a sign would not go far enough to eliminate the problems associated with debit and credit card skimming. The state should outlaw possession of scanners and reencoders with the intent to commit fraud. Four states – West Virginia, Iowa, Kentucky, and Arizona – have enacted laws within the last two years to make illegal the use of scanners and reencoders without the permission of the authorized cardholder. Three of those states have made the first such offense a felony.

The sale, possession, or use of skimmers (or reencoders) should be made illegal in Texas. They are a criminal tool with no legitimate purpose.

NOTES:

The committee substitute differs from the original by including bars, along with restaurants, as among the establishments required to display warning signs about fraudulent use of a credit or debit card. The substitute also added a defense that if a restaurant or bar owner displayed a required sign not later than 48 hours after being cited for an offense and if a court were satisfied with such evidence, the court would dismiss the charge.