

SUBJECT: Permitting businesses to scan driver's licenses to verify checks

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 5 ayes — Driver, Latham, Ortiz, Vo, West
0 nays
2 absent — Allen, Frost

WITNESSES: For — Dwain James, American Collectors Association of Texas; John Wade Kuehler, ColAm Inc. DBA CHECKS; (*Registered, but did not testify*: Doug DuBois, Texas Petroleum Marketers and Convenience Store Association)
Against — None

BACKGROUND: Transportation Code, sec. 521.126 limits the information contained electronically on the magnetic strip of a driver's license to information printed on the front of the license and a physical description of the licensee. This section also prohibits the transmission and misuse of driver's license information.

Driver's license information is misused if the information is accessed or used from the magnetic strip or compiled or maintained in an electronic database. This prohibition does not apply generally to compiling data for a law enforcement or governmental purposes and specifically to Department of Public Safety personnel, Parks and Wildlife licensing deputies, persons enforcing the alcohol or tobacco laws such as by checking a person's age, or persons establishing the identity of a voter. In addition, a financial institution may compile a database of driver's license information with the consent of the licensees, and the executive in charge of a maritime facility may authorize the compilation of a database of driver's license information for specified port security purposes.

An offense for the misuse of driver's license information is a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

DIGEST: HB 320 would amend Transportation Code 521.126 (e) to permit a business to retrieve and use the electronically readable information from the magnetic strip on a driver's license or a personal identification certificate to verify a check offered for purchase of a good or service.

The bill would take effect on September 1, 2007.

SUPPORTERS SAY: HB 320 would help businesses protect themselves against monetary losses from accepting fraudulent or forged checks. Other customers pay the related costs of those dishonored checks through higher prices. The bill would provide a better method for confirming the check writer's identity, than reading the information on the driver's license or scanning the account number on the check. In many cases, bad check writers have many accounts and check verification services might not have all those accounts in their database. A more secure personal identity verification process would detect and deter the passing of worthless checks. Payments by check remain a common practice, and losses from dishonored checks run into millions of dollars in Texas.

The bill would help efforts to combat identity theft. According to the Federal Trade Commission, Texas trails only California in the number of victims reported in 2005, according to the most recent available data. Merchants and check verification services often are the first line of defense against those trying to pass fraudulent or stolen checks, which often is done using false identities as well. Even members of the Legislature are not immune to identity theft where criminals forge documents in someone else's name and use the false identity to pass bad checks.

Concerns about misappropriation of driver's license information are exaggerated. Current check verification technology provides for a read-only process that captures no data. Information from the driver's license or identification cards are relayed to the check verification service, which compares the information with its records on fraudulent checks. If a match is made, the account information is flagged so that the clerk can take additional steps to confirm the check. Otherwise, no record is kept. The process takes seconds and creates no additional data banks.

The Transportation Code punishes misappropriation of drivers' license information with a hefty fine and possible jail time. A number of entities in current law are authorized to collect driver's license information

electronically for important purposes, such as protecting public safety and ensuring the security of financial transactions. Similarly, this privilege should be extended to merchants because they are also involved in financial transactions.

OPPONENTS
SAY:

HB 320 would continue a trend of compromising the security of information contained on the magnetic strips of driver's license without necessarily providing material benefits to Texans. Law enforcement agencies and financial institutions have a legitimate need to retrieve and use that data, but the Legislature, including with several bills this session, continues to chip away the initial restrictions on use of that data. Even preventing monetary losses to merchants does not justify the invasion of privacy and potential collection and misuse of the data.

Losses due to fraudulent checks will diminish over time as other technologies replace paper checks. Checks are becoming an old-fashioned method for making purchases, and debit and check cards provide a more secure method of payment for both consumers and merchants. A significant number of Texans no longer have bank accounts of any kind and make all purchases and bill payments through cash or money orders.

NOTES:

The companion bill, SB 1354 by Carona, was heard and left pending by the Senate Transportation and Homeland Security Committee on April 4. An identical bill, HB 2522 by Parker, has been referred to the House Law Enforcement Committee.

During the 2005 regular session of the 79th Legislature, the House Transportation Committee reported favorably HB 3095 by West, which was similar to HB 320, but the bill died in Calendars Committee. The bill was also attached as an amendment to SB 89 by Averitt, but SB 89 died when the Senate refused to concur with changes made by the House.

On March 27, the House by 136-5 passed HB 1060 by Parker, et al., which would allow health care providers — including physicians, hospitals, and other health professionals — to retrieve and use the electronically readable information from the magnetic strip on a driver's license or a personal identification certificate to compile patient records. The bill has been referred to the Senate Transportation and Homeland Security Committee.