

SUBJECT: Creating a criminal offense for mail theft and related identity theft

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody,
Murr, Pacheco

0 nays

WITNESSES: For — Johnny Siemens, Castle Hills Police Department; Shad Prichard, Hollywood Park Police Department; Robert Sholund, San Antonio Police Department; Homer Hernandez, Texas State Association of Letter Carriers; (*Registered, but did not testify*: Pete Gallego, Bexar County Criminal District Attorney's Office; Chris Jones, Combined Law Enforcement Associations of Texas; Frederick Frazier, Dallas Police Association, FOP716 State FOP; David Sinclair, Game Warden Peace Officers Association; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers' Union; Jimmy Rodriguez, San Antonio Police Officers Association; John Chancellor, Texas Police Chiefs Association; Noel Johnson, Texas Municipal Police Association)

Against — (*Registered, but did not testify*: Chris Harris, Just Liberty)

On — Marc Levin, Texas Public Policy Foundation

DIGEST: CSHB 37 would make it a criminal offense to appropriate an individual's mail without the effective consent of the addressee and with the intent to deprive the addressee of the mail. The bill would define "mail" as a letter, post card, package, bag, or other sealed article that was delivered by a common carrier or a delivery service and that had not yet been received by the addressee.

The offense of mail theft would be a:

- class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the mail was appropriated from fewer than 10

- addressees;
- state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the mail was appropriated from at least 10 but fewer than 30 addressees; and
 - third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the mail was appropriated from 30 or more addressees.

If it was shown on the trial for an offense under the bill that the appropriated mail contained identifying information and that the actor committed the offense with the intent to facilitate an offense of fraudulent use or possession of identifying information, the offense would be a:

- state-jail felony if the mail was appropriated from fewer than 10 addressees;
- third-degree felony if the mail was appropriated from at least 10 but fewer than 20 addressees;
- second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the mail was appropriated from at least 20 but fewer than 50 addressees; and
- first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the mail was appropriated from 50 or more addressees.

The offense would be increased to the next higher category of offense if it was shown during trial that at the time of the offense the actor knew or had reason to believe the addressee of the appropriated mail was a disabled or elderly individual.

A person who committed an offense under the provisions of the bill that also constituted an offense under another law could be prosecuted under either or both laws.

The bill would take effect September 1, 2019.

SUPPORTERS CSHB 37 would help protect Texans from mail and identity theft and

SAY: would empower local law enforcement to prosecute mail thieves by codifying the criminal offense of mail theft at the state level. Currently, due to the lack of state law on mail theft, law enforcement officers can only forward mail theft incidents to federal officers. This can allow some professional mail thieves to escape prosecution due to the ambiguity of federal statute and the high standard for federal prosecution. Establishing an offense for mail theft at the state level would ensure that local law enforcement could prosecute these cases locally.

Under the bill, mail theft and identity theft committed by appropriating mail would be addressed differently. Identity theft is a much more serious offense and warrants greater penalties, which the bill provides. The bill would also protect vulnerable populations by providing for an enhancement of the penalty for mail theft when committed against elderly individuals and individuals with mental or physical disabilities.

The bill would not provide for overly harsh penalties because law enforcement is primarily concerned with professional mail thieves, not petty offenders. The bill also would ensure that mail theft offenses were prosecuted at an appropriate level by distinguishing between mail theft and the more serious offense of identity theft.

OPPONENTS SAY: CSHB 37 could over-criminalize mail theft by applying inappropriately harsh penalties on certain offenders. Although mail theft should be criminalized under state law, the bill could apply disproportionate penalties on certain offenders, including those who took an individual's mail without intent to cause harm or as part of a prank.

NOTES: According to the Legislative Budget Board, the fiscal impact of the bill could not yet be determined due to the lack of information on the number of specific cases that would fall under the bill's provisions.