

By: Hopson

H.B. No. 2138

A BILL TO BE ENTITLED

AN ACT

relating to the use of certain electronic devices for the purpose of committing identity theft; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.58 to read as follows:

Sec. 35.58. IDENTITY THEFT BY ELECTRONIC DEVICE. (a) In this section:

(1) "Payment card" means a credit card, a debit card, a check card, or any other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value.

(2) "Re-encoder" means an electronic device that can be used to transfer encoded information from a magnetic strip on a payment card onto the magnetic strip of a different payment card.

(3) "Scanning device" means an electronic device used to access, read, scan, or store information encoded on the magnetic strip of a payment card.

(b) A person commits an offense if the person uses a scanning device or re-encoder to access, read, scan, store, or transfer information encoded on the magnetic strip of a payment card without the consent of an authorized user of the payment card and with intent to harm or defraud another.

(c) An offense under this section is a Class B misdemeanor.

1 (d) If conduct that constitutes an offense under this
2 section also constitutes an offense under any other law, the actor
3 may be prosecuted under this section or the other law.

4 SECTION 2. Articles 18.18(a), (b), (e), (f), and (g), Code
5 of Criminal Procedure, are amended to read as follows:

6 (a) Following the final conviction of a person for
7 possession of a gambling device or equipment, altered gambling
8 equipment, or gambling paraphernalia, for an offense involving a
9 criminal instrument, for an offense involving an obscene device or
10 material, or for an offense involving a scanning device or
11 re-encoder, the court entering the judgment of conviction shall
12 order that the machine, device, gambling equipment or gambling
13 paraphernalia, instrument, obscene device or material, or scanning
14 device or re-encoder be destroyed or forfeited to the state. Not
15 later than the 30th day after the final conviction of a person for
16 an offense involving a prohibited weapon, the court entering the
17 judgment of conviction on its own motion, on the motion of the
18 prosecuting attorney in the case, or on the motion of the law
19 enforcement agency initiating the complaint on notice to the
20 prosecuting attorney in the case if the prosecutor fails to move for
21 the order shall order that the prohibited weapon be destroyed or
22 forfeited to the law enforcement agency that initiated the
23 complaint. If the court fails to enter the order within the time
24 required by this subsection, any magistrate in the county in which
25 the offense occurred may enter the order. Following the final
26 conviction of a person for an offense involving dog fighting, the
27 court entering the judgment of conviction shall order that any

1 dog-fighting equipment be destroyed or forfeited to the state.
2 Destruction of dogs, if necessary, must be carried out by a
3 veterinarian licensed in this state or, if one is not available, by
4 trained personnel of a humane society or an animal shelter. If
5 forfeited, the court shall order the contraband delivered to the
6 state, any political subdivision of the state, or to any state
7 institution or agency. If gambling proceeds were seized, the court
8 shall order them forfeited to the state and shall transmit them to
9 the grand jury of the county in which they were seized for use in
10 investigating alleged violations of the Penal Code, or to the
11 state, any political subdivision of the state, or to any state
12 institution or agency.

13 (b) If there is no prosecution or conviction following
14 seizure, the magistrate to whom the return was made shall notify in
15 writing the person found in possession of the alleged gambling
16 device or equipment, altered gambling equipment or gambling
17 paraphernalia, gambling proceeds, prohibited weapon, obscene
18 device or material, scanning device or re-encoder, criminal
19 instrument, or dog-fighting equipment to show cause why the
20 property seized should not be destroyed or the proceeds forfeited.
21 The magistrate, on the motion of the law enforcement agency seizing
22 a prohibited weapon, shall order the weapon destroyed or forfeited
23 to the law enforcement agency seizing the weapon, unless a person
24 shows cause as to why the prohibited weapon should not be destroyed
25 or forfeited. A law enforcement agency shall make a motion under
26 this section in a timely manner after the time at which the agency
27 is informed in writing by the attorney representing the state that

1 no prosecution will arise from the seizure.

2 (e) Any person interested in the alleged gambling device or
3 equipment, altered gambling equipment or gambling paraphernalia,
4 gambling proceeds, prohibited weapon, obscene device or material,
5 scanning device or re-encoder, criminal instrument, or
6 dog-fighting equipment seized must appear before the magistrate on
7 the 20th day following the date the notice was mailed or posted.
8 Failure to timely appear forfeits any interest the person may have
9 in the property or proceeds seized, and no person after failing to
10 timely appear may contest destruction or forfeiture.

11 (f) If a person timely appears to show cause why the
12 property or proceeds should not be destroyed or forfeited, the
13 magistrate shall conduct a hearing on the issue and determine the
14 nature of property or proceeds and the person's interest therein.
15 Unless the person proves by a preponderance of the evidence that the
16 property or proceeds is not gambling equipment, altered gambling
17 equipment, gambling paraphernalia, gambling device, gambling
18 proceeds, prohibited weapon, criminal instrument, scanning device
19 or re-encoder, or dog-fighting equipment and that he is entitled to
20 possession, the magistrate shall dispose of the property or
21 proceeds in accordance with Paragraph (a) of this article.

22 (g) For purposes of this article:

23 (1) "criminal instrument" has the meaning defined in
24 the Penal Code;

25 (2) "gambling device or equipment, altered gambling
26 equipment or gambling paraphernalia" has the meaning defined in the
27 Penal Code;

1 (3) "prohibited weapon" has the meaning defined in the
2 Penal Code; ~~and~~

3 (4) "dog-fighting equipment" means:

4 (A) equipment used for training or handling a
5 fighting dog, including a harness, treadmill, cage, decoy, pen,
6 house for keeping a fighting dog, feeding apparatus, or training
7 pen;

8 (B) equipment used for transporting a fighting
9 dog, including any automobile, or other vehicle, and its
10 appurtenances which are intended to be used as a vehicle for
11 transporting a fighting dog;

12 (C) equipment used to promote or advertise an
13 exhibition of dog fighting, including a printing press or similar
14 equipment, paper, ink, or photography equipment; or

15 (D) a dog trained, being trained, or intended to
16 be used to fight with another dog; ~~[-]~~

17 (5) ~~[(6)]~~ "obscene device or material" means a device
18 or material introduced into evidence and thereafter found obscene
19 by virtue of a final judgment after all appellate remedies have been
20 exhausted;

21 (6) "re-encoder" has the meaning assigned by Section
22 35.58, Business & Commerce Code; and

23 (7) "scanning device" has the meaning assigned by
24 Section 35.58, Business & Commerce Code.

25 SECTION 3. Article 59.01(2), Code of Criminal Procedure, is
26 amended to read as follows:

27 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),
6 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
7 35, Penal Code; or

8 (iii) any felony under The Securities Act
9 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

10 (B) used or intended to be used in the commission
11 of:

12 (i) any felony under Chapter 481, Health
13 and Safety Code (Texas Controlled Substances Act);

14 (ii) any felony under Chapter 483, Health
15 and Safety Code;

16 (iii) a felony under Chapter 153, Finance
17 Code;

18 (iv) any felony under Chapter 34, Penal
19 Code;

20 (v) a Class A misdemeanor under Subchapter
21 B, Chapter 365, Health and Safety Code, if the defendant has been
22 previously convicted twice of an offense under that subchapter;

23 [~~or~~]

24 (vi) any felony under Chapter 152, Finance
25 Code; or

26 (vii) a Class B misdemeanor under Section
27 35.58, Business & Commerce Code;

1 (C) the proceeds gained from the commission of a
2 felony listed in Paragraph (A) or (B) of this subdivision, a
3 misdemeanor listed in Paragraph (B)(vii) of this subdivision, or a
4 crime of violence; or

5 (D) acquired with proceeds gained from the
6 commission of a felony listed in Paragraph (A) or (B) of this
7 subdivision, a misdemeanor listed in Paragraph (B)(vii) of this
8 subdivision, or a crime of violence.

9 SECTION 4. This Act takes effect September 1, 2003.