

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

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

1 trained personnel of a humane society or an animal shelter. If
2 forfeited, the court shall order the contraband delivered to the
3 state, any political subdivision of the state, or to any state
4 institution or agency. If gambling proceeds were seized, the court
5 shall order them forfeited to the state and shall transmit them to
6 the grand jury of the county in which they were seized for use in
7 investigating alleged violations of the Penal Code, or to the
8 state, any political subdivision of the state, or to any state
9 institution or agency.

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

26 (e) Any person interested in the alleged gambling device or
27 equipment, altered gambling equipment or gambling paraphernalia,

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

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

19 (g) For purposes of this article:

20 (1) "criminal instrument" has the meaning defined in
21 the Penal Code;

22 (2) "gambling device or equipment, altered gambling
23 equipment or gambling paraphernalia" has the meaning defined in the
24 Penal Code;

25 (3) "prohibited weapon" has the meaning defined in the
26 Penal Code; and

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

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

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

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

12 (D) a dog trained, being trained, or intended to
13 be used to fight with another dog.

14 (6) "obscene device or material" means a device or
15 material introduced into evidence and thereafter found obscene by
16 virtue of a final judgment after all appellate remedies have been
17 exhausted.

18 (7) "re-encoder" has the meaning assigned by Section
19 35.58, Business & Commerce Code.

20 (8) "scanning device" has the meaning assigned by
21 Section 35.58, Business & Commerce Code.

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

24 (2) "Contraband" means property of any nature,
25 including real, personal, tangible, or intangible, that is:

26 (A) used in the commission of:

27 (i) any first or second degree felony under

1 the Penal Code;

2 (ii) any felony under Section 15.031(b),
3 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
4 35, Penal Code; or

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

7 (B) used or intended to be used in the commission
8 of:

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

11 (ii) any felony under Chapter 483, Health
12 and Safety Code;

13 (iii) a felony under Chapter 153, Finance
14 Code;

15 (iv) any felony under Chapter 34, Penal
16 Code;

17 (v) a Class A misdemeanor under Subchapter
18 B, Chapter 365, Health and Safety Code, if the defendant has been
19 previously convicted twice of an offense under that subchapter;
20 [~~or~~]

21 (vi) any felony under Chapter 152, Finance
22 Code; or

23 (vii) a Class B misdemeanor under Section
24 35.58, Business & Commerce Code;

25 (C) the proceeds gained from the commission of a
26 felony listed in Paragraph (A) or (B) of this subdivision, a
27 misdemeanor listed in Paragraph (B)(vii) of this subdivision, or a

1 crime of violence; or

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

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