

1-1 By: Hopson (Senate Sponsor - Hinojosa) H.B. No. 2138
1-2 (In the Senate - Received from the House April 28, 2003;
1-3 May 1, 2003, read first time and referred to Committee on Criminal
1-4 Justice; May 23, 2003, reported favorably by the following vote:
1-5 Yeas 4, Nays 0; May 23, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the use of certain electronic devices for the purpose of
1-9 committing identity theft; providing criminal penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter D, Chapter 35, Business & Commerce
1-12 Code, is amended by adding Section 35.58 to read as follows:

1-13 Sec. 35.58. IDENTITY THEFT BY ELECTRONIC DEVICE. (a) In
1-14 this section:

1-15 (1) "Payment card" means a credit card, a debit card, a
1-16 check card, or any other card that is issued to an authorized user
1-17 to purchase or obtain goods, services, money, or any other thing of
1-18 value.

1-19 (2) "Re-encoder" means an electronic device that can
1-20 be used to transfer encoded information from a magnetic strip on a
1-21 payment card onto the magnetic strip of a different payment card.

1-22 (3) "Scanning device" means an electronic device used
1-23 to access, read, scan, or store information encoded on the magnetic
1-24 strip of a payment card.

1-25 (b) A person commits an offense if the person uses a
1-26 scanning device or re-encoder to access, read, scan, store, or
1-27 transfer information encoded on the magnetic strip of a payment
1-28 card without the consent of an authorized user of the payment card
1-29 and with intent to harm or defraud another.

1-30 (c) An offense under this section is a Class B misdemeanor.

1-31 (d) If conduct that constitutes an offense under this
1-32 section also constitutes an offense under any other law, the actor
1-33 may be prosecuted under this section or the other law.

1-34 SECTION 2. Articles 18.18(a), (b), (e), (f), and (g), Code
1-35 of Criminal Procedure, are amended to read as follows:

1-36 (a) Following the final conviction of a person for
1-37 possession of a gambling device or equipment, altered gambling
1-38 equipment, or gambling paraphernalia, for an offense involving a
1-39 criminal instrument, for an offense involving an obscene device or
1-40 material, or for an offense involving a scanning device or
1-41 re-encoder, the court entering the judgment of conviction shall
1-42 order that the machine, device, gambling equipment or gambling
1-43 paraphernalia, instrument, obscene device or material, or scanning
1-44 device or re-encoder be destroyed or forfeited to the state. Not
1-45 later than the 30th day after the final conviction of a person for
1-46 an offense involving a prohibited weapon, the court entering the
1-47 judgment of conviction on its own motion, on the motion of the
1-48 prosecuting attorney in the case, or on the motion of the law
1-49 enforcement agency initiating the complaint on notice to the
1-50 prosecuting attorney in the case if the prosecutor fails to move for
1-51 the order shall order that the prohibited weapon be destroyed or
1-52 forfeited to the law enforcement agency that initiated the
1-53 complaint. If the court fails to enter the order within the time
1-54 required by this subsection, any magistrate in the county in which
1-55 the offense occurred may enter the order. Following the final
1-56 conviction of a person for an offense involving dog fighting, the
1-57 court entering the judgment of conviction shall order that any
1-58 dog-fighting equipment be destroyed or forfeited to the state.
1-59 Destruction of dogs, if necessary, must be carried out by a
1-60 veterinarian licensed in this state or, if one is not available, by
1-61 trained personnel of a humane society or an animal shelter. If
1-62 forfeited, the court shall order the contraband delivered to the
1-63 state, any political subdivision of the state, or to any state
1-64 institution or agency. If gambling proceeds were seized, the court

2-1 shall order them forfeited to the state and shall transmit them to
 2-2 the grand jury of the county in which they were seized for use in
 2-3 investigating alleged violations of the Penal Code, or to the
 2-4 state, any political subdivision of the state, or to any state
 2-5 institution or agency.

2-6 (b) If there is no prosecution or conviction following
 2-7 seizure, the magistrate to whom the return was made shall notify in
 2-8 writing the person found in possession of the alleged gambling
 2-9 device or equipment, altered gambling equipment or gambling
 2-10 paraphernalia, gambling proceeds, prohibited weapon, obscene
 2-11 device or material, scanning device or re-encoder, criminal
 2-12 instrument, or dog-fighting equipment to show cause why the
 2-13 property seized should not be destroyed or the proceeds forfeited.
 2-14 The magistrate, on the motion of the law enforcement agency seizing
 2-15 a prohibited weapon, shall order the weapon destroyed or forfeited
 2-16 to the law enforcement agency seizing the weapon, unless a person
 2-17 shows cause as to why the prohibited weapon should not be destroyed
 2-18 or forfeited. A law enforcement agency shall make a motion under
 2-19 this section in a timely manner after the time at which the agency
 2-20 is informed in writing by the attorney representing the state that
 2-21 no prosecution will arise from the seizure.

2-22 (e) Any person interested in the alleged gambling device or
 2-23 equipment, altered gambling equipment or gambling paraphernalia,
 2-24 gambling proceeds, prohibited weapon, obscene device or material,
 2-25 scanning device or re-encoder, criminal instrument, or
 2-26 dog-fighting equipment seized must appear before the magistrate on
 2-27 the 20th day following the date the notice was mailed or posted.
 2-28 Failure to timely appear forfeits any interest the person may have
 2-29 in the property or proceeds seized, and no person after failing to
 2-30 timely appear may contest destruction or forfeiture.

2-31 (f) If a person timely appears to show cause why the
 2-32 property or proceeds should not be destroyed or forfeited, the
 2-33 magistrate shall conduct a hearing on the issue and determine the
 2-34 nature of property or proceeds and the person's interest therein.
 2-35 Unless the person proves by a preponderance of the evidence that the
 2-36 property or proceeds is not gambling equipment, altered gambling
 2-37 equipment, gambling paraphernalia, gambling device, gambling
 2-38 proceeds, prohibited weapon, criminal instrument, scanning device
 2-39 or re-encoder, or dog-fighting equipment and that he is entitled to
 2-40 possession, the magistrate shall dispose of the property or
 2-41 proceeds in accordance with Paragraph (a) of this article.

2-42 (g) For purposes of this article:

2-43 (1) "criminal instrument" has the meaning defined in
 2-44 the Penal Code;

2-45 (2) "gambling device or equipment, altered gambling
 2-46 equipment or gambling paraphernalia" has the meaning defined in the
 2-47 Penal Code;

2-48 (3) "prohibited weapon" has the meaning defined in the
 2-49 Penal Code; ~~and~~

2-50 (4) "dog-fighting equipment" means:
 2-51 (A) equipment used for training or handling a
 2-52 fighting dog, including a harness, treadmill, cage, decoy, pen,
 2-53 house for keeping a fighting dog, feeding apparatus, or training
 2-54 pen;

2-55 (B) equipment used for transporting a fighting
 2-56 dog, including any automobile, or other vehicle, and its
 2-57 appurtenances which are intended to be used as a vehicle for
 2-58 transporting a fighting dog;

2-59 (C) equipment used to promote or advertise an
 2-60 exhibition of dog fighting, including a printing press or similar
 2-61 equipment, paper, ink, or photography equipment; or

2-62 (D) a dog trained, being trained, or intended to
 2-63 be used to fight with another dog; ~~[-]~~

2-64 (5) ~~[(6)]~~ "obscene device or material" means a device
 2-65 or material introduced into evidence and thereafter found obscene
 2-66 by virtue of a final judgment after all appellate remedies have been
 2-67 exhausted;

2-68 (6) "re-encoder" has the meaning assigned by Section
 2-69 35.58, Business & Commerce Code; and

3-1 (7) "scanning device" has the meaning assigned by
3-2 Section 35.58, Business & Commerce Code.

3-3 SECTION 3. Article 59.01(2), Code of Criminal Procedure, is
3-4 amended to read as follows:

3-5 (2) "Contraband" means property of any nature,
3-6 including real, personal, tangible, or intangible, that is:

3-7 (A) used in the commission of:

3-8 (i) any first or second degree felony under
3-9 the Penal Code;

3-10 (ii) any felony under Section 15.031(b),
3-11 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
3-12 35, Penal Code; or

3-13 (iii) any felony under The Securities Act
3-14 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

3-15 (B) used or intended to be used in the commission
3-16 of:

3-17 (i) any felony under Chapter 481, Health
3-18 and Safety Code (Texas Controlled Substances Act);

3-19 (ii) any felony under Chapter 483, Health
3-20 and Safety Code;

3-21 (iii) a felony under Chapter 153, Finance
3-22 Code;

3-23 (iv) any felony under Chapter 34, Penal
3-24 Code;

3-25 (v) a Class A misdemeanor under Subchapter
3-26 B, Chapter 365, Health and Safety Code, if the defendant has been
3-27 previously convicted twice of an offense under that subchapter;

3-28 [~~or~~]
3-29 (vi) any felony under Chapter 152, Finance
3-30 Code; or

3-31 (vii) a Class B misdemeanor under Section
3-32 35.58, Business & Commerce Code;

3-33 (C) the proceeds gained from the commission of a
3-34 felony listed in Paragraph (A) or (B) of this subdivision, a
3-35 misdemeanor listed in Paragraph (B)(vii) of this subdivision, or a
3-36 crime of violence; or

3-37 (D) acquired with proceeds gained from the
3-38 commission of a felony listed in Paragraph (A) or (B) of this
3-39 subdivision, a misdemeanor listed in Paragraph (B)(vii) of this
3-40 subdivision, or a crime of violence.

3-41 SECTION 4. This Act takes effect September 1, 2003.

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