

By: Denny

H.B. No. 2248

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal activity affecting a financial institution.

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

SECTION 1. Section 29.03, Penal Code, is amended by adding subsection (d) to read as follows:

(d) In this section, "financial institution" means a bank, trust company, insurance company, credit union, building and loan association, savings and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

SECTION 2. Section 32.21, Penal Code, is amended to read as follows:

Sec. 32.21. Forgery. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

1 (B) to issue, transfer, register the transfer of,  
2 pass, publish, or otherwise utter a writing that is forged within  
3 the meaning of Paragraph (A); or

4 (C) to possess a writing that is forged within  
5 the meaning of Paragraph (A) with intent to utter it in a manner  
6 specified in Paragraph (B).

7 (2) "Writing" includes:

8 (A) printing or any other method of recording  
9 information;

10 (B) money, coins, tokens, stamps, seals, credit  
11 cards, badges, and trademarks; and

12 (C) symbols of value, right, privilege, or  
13 identification.

14 (b) A person commits an offense if he forges a writing with  
15 intent to defraud or harm another.

16 (c) Except as provided in Subsections (d) and (e) an offense  
17 under this section is a Class A misdemeanor.

18 (d) An offense under this section is a state jail felony if  
19 the writing is or purports to be a will, codicil, deed, deed of  
20 trust, mortgage, security instrument, security agreement, credit  
21 card, check, authorization to debit an account at a financial  
22 institution, or similar sight order for payment of money, contract,  
23 release, or other commercial instrument.

24 (e) An offense under this section is a felony of the third  
25 degree if the writing is or purports to be:

26 (1) part of an issue of money, securities, postage or  
27 revenue stamps;

1 (2) a government record listed in Section 37.01(2)(C);

2 or

3 (3) other instruments issued by a state or national  
4 government or by a subdivision of either, or part of an issue of  
5 stock, bonds, or other instruments representing interests in or  
6 claims against another person.

7 (f) A person is presumed to intend to defraud or harm  
8 another if the person acts with respect to two or more writings of  
9 the same type and if each writing is a government record listed in  
10 Section 37.01(2)(C).

11 SECTION 3. Section 32.31, Penal Code, is amended to read as  
12 follows:

13 Sec. 32.31. Credit Card or Debit Card Abuse. (a) For  
14 purposes of this section:

15 (1) "Cardholder" means the person named on the face of  
16 a credit card or debit card to whom or for whose benefit the card is  
17 issued.

18 (2) "Credit card" means an identification card, plate,  
19 coupon, book, number, or any other device authorizing a designated  
20 person or bearer to obtain property or services on credit. The term  
21 includes the number or description of the device if the device  
22 itself is not produced at the time of ordering or obtaining the  
23 property or service.

24 (3) "Expired credit card" means a credit card bearing  
25 an expiration date after that date has passed.

26 (4) "Debit card" means an identification card, plate,  
27 coupon, book, number, or any other device authorizing a designated

1 person or bearer to communicate a request to an unmanned teller  
2 machine or a customer convenience terminal or obtain property or  
3 services by debit to an account at a financial institution. The  
4 term includes the number or description of the device if the device  
5 itself is not produced at the time of ordering or obtaining the  
6 benefit.

7 (5) "Expired debit card" means a debit card bearing as  
8 its expiration date a date that has passed.

9 (6) "Unmanned teller machine" means a machine, other  
10 than a telephone, capable of being operated by a customer, by which  
11 a customer may communicate to a financial institution a request to  
12 withdraw a benefit for himself or for another directly from the  
13 customer's account or from the customer's account under a line of  
14 credit previously authorized by the institution for the customer.

15 (7) "Customer convenience terminal" means an unmanned  
16 teller machine the use of which does not involve personnel of a  
17 financial institution.

18 (b) A person commits an offense if:

19 (1) with intent to obtain a benefit fraudulently, he  
20 presents or uses a credit card or debit card with knowledge that:

21 (A) the card, whether or not expired, has not  
22 been issued to him and is not used with the effective consent of the  
23 cardholder; or

24 (B) the card has expired or has been revoked or  
25 cancelled;

26 (2) with intent to obtain a benefit, he uses a  
27 fictitious credit card or debit card or the pretended number or

1 description of a fictitious card;

2 (3) he receives a benefit that he knows has been  
3 obtained in violation of this section;

4 (4) he steals a credit card or debit card or, with  
5 knowledge that it has been stolen, receives a credit card or debit  
6 card with intent to use it, to sell it, or to transfer it to a person  
7 other than the issuer or the cardholder;

8 (5) he buys a credit card or debit card from a person  
9 who he knows is not the issuer;

10 (6) not being the issuer, he sells a credit card or  
11 debit card;

12 (7) he uses or induces the cardholder to use the  
13 cardholder's credit card or debit card to obtain property or  
14 service for the actor's benefit for which the cardholder is  
15 financially unable to pay;

16 (8) not being the cardholder, and without the  
17 effective consent of the cardholder, he signs or writes his name or  
18 the name of another on a credit card or debit card with intent to use  
19 it;

20 (9) he possesses two or more incomplete credit cards  
21 or debit cards that have not been issued to him with intent to  
22 complete them without the effective consent of the issuer. For  
23 purposes of this subdivision, a card is incomplete if part of the  
24 matter that an issuer requires to appear on the card before it can  
25 be used, other than the signature of the cardholder, has not yet  
26 been stamped, embossed, imprinted, or written on it;

27 (10) being authorized by an issuer to furnish goods or

1 services on presentation of a credit card or debit card, he, with  
2 intent to defraud the issuer or the cardholder, furnishes goods or  
3 services on presentation of a credit card or debit card obtained or  
4 retained in violation of this section or a credit card or debit card  
5 that is forged, expired, or revoked; or

6 (11) being authorized by an issuer to furnish goods or  
7 services on presentation of a credit card or debit card, he, with  
8 intent to defraud the issuer or a cardholder, fails to furnish goods  
9 or services that he represents in writing to the issuer that he has  
10 furnished.

11 (c) It is presumed that a person who used a revoked,  
12 cancelled, or expired credit card or debit card had knowledge that  
13 the card had been revoked, cancelled, or expired if he had received  
14 notice of revocation, cancellation, or expiration from the issuer.  
15 For purposes of this section, notice may be either notice given  
16 orally in person or by telephone, or in writing by mail or by  
17 telegram. If written notice was sent by registered or certified  
18 mail with return receipt requested, or by telegram with report of  
19 delivery requested, addressed to the cardholder at the last address  
20 shown by the records of the issuer, it is presumed that the notice  
21 was received by the cardholder no later than five days after sent.

22 (d) An offense under this section is a state jail felony.

23 SECTION 4. Section 32.51, Penal Code, is amended to read as  
24 follows:

25 Sec. 32.51. Fraudulent Use or Possession of Identifying  
26 Information. (a) In this section:

27 (1) "Identifying information" means information that

1 alone or in conjunction with other information identifies an  
2 individual, including an individual's:

3 (A) name, social security number, date of birth,  
4 and government-issued identification number;

5 (B) unique biometric data, including the  
6 individual's fingerprint, voice print, and retina or iris image;

7 (C) unique electronic identification number,  
8 address, and routing code, financial institution account number;  
9 and

10 (D) telecommunication identifying information or  
11 access device.

12 (2) "Telecommunication access device" means a card,  
13 plate, code, account number, personal identification number,  
14 electronic serial number, mobile identification number, or other  
15 telecommunications service, equipment, or instrument identifier or  
16 means of account access that alone or in conjunction with another  
17 telecommunication access device may be used to:

18 (A) obtain money, goods, services, or other thing  
19 of value; or

20 (B) initiate a transfer of funds other than a  
21 transfer originated solely by paper instrument.

22 (b) A person commits an offense if the person obtains,  
23 possesses, transfers, or uses identifying information of another  
24 person without the other person's consent and with intent to harm or  
25 defraud another.

26 (c) An offense under this section is a state jail felony.

27 (d) If a court orders a defendant convicted of an offense

1 under this section to make restitution to the victim of the offense,  
2 the court may order the defendant to reimburse the victim for lost  
3 income or other expenses, other than attorney's fees, incurred as a  
4 result of the offense.

5 (e) If conduct that constitutes an offense under this  
6 section also constitutes an offense under any other law, the actor  
7 may be prosecuted under this section or the other law.

8 SECTION 5. This Act takes effect September 1, 2003.