

- SUBJECT:** Adding deceased persons to offense of identity theft
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Keel, Riddle, Denny, Escobar, Raymond, Reyna
2 nays — Hodge, P. Moreno
1 absent — Pena
- WITNESSES:** None
- BACKGROUND:** Penal Code sec. 32.51 makes it a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to obtain, possess, transfer, or use identifying information of another person without the other's consent and with intent to harm or defraud another. Identifying information is defined as information that alone or in conjunction with other information identifies an individual, including an individual's:
- name, social security number, date of birth, and government-issued identification number;
 - unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;
 - unique electronic identification number, address, and routing code, financial institution account number; and
 - telecommunication identifying information or access device.
- DIGEST:** CSHB 1574 would make it an offense under the identity theft statute in Penal Code, sec. 32.51, to obtain, possess, transfer, or use the identifying information of a deceased natural person, including a stillborn infant or fetus, without legal authorization. The offense would have to be committed with the same intent to harm or defraud another that is found in current law.
- CSHB 1574 would specify that identifying information that could be part of the offense of identity theft would include a name and a social security number, date of birth, or government-issued identification number.

The offense created by CSHB 1574 would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Offenses involving other persons would remain a state jail felony. The bill would take effect September 1, 2005, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1574 would extend to deceased persons the same protections against identity theft that are given to living persons and would give businesses more protections by allowing a person to be prosecuted for using identifying information of deceased persons.

Current law does not cover deceased persons because the Penal Code definition of a person means a human being who is alive, including an unborn child. In some cases, identity thieves have used information from deceased persons to open accounts or make financial transactions. CSHB 1574 would remedy this gap in the law by including deceased persons under the identity theft offense so that these cases could be prosecuted. Also, in some cases a still born fetus is issued a birth certificate and these have been used to obtain credit or open financial accounts. CSHB 1574 would ensure that these cases also were covered under the offense.

CSHB 1574 also would give prosecutors another tool to help address misuse of another's personal information to receive absentee voter ballots and cast votes. In some cases, the information of deceased persons has been used for these purposes, and CSHB 1574 would provide another way to deter these crimes by allowing some cases to be prosecuted as criminal identity theft.

Also, current law could be interpreted to mean that in order for someone to commit identity theft by possessing the items listed in the four categories of information, they must have all of the items in a category – for example, name, social security number, date of birth, and government-issued identification. Some of the most serious cases of identity theft include names in conjunction with one other item, such as a social security number. CSHB 1574 would clearly state that a crime involving the items in each category would involve only one of the items in that category and that a crime involving sec. 32.51(a)(1)(A) would involve a name and one, but not all, of the other items.

OPPONENTS
SAY:

The change to the list of identity items in sec 32.51(a)(1)(A) could possibly exclude some cases from prosecution if an identity thief had only social security numbers with no name.

CSHB 1574 would impose an inappropriate penalty structure into the identity theft statute by making offenses against deceased persons third-degree felonies and leaving offenses against other persons as state jail felonies.

OTHER
OPPONENTS
SAY:

Concerns about voter fraud are adequately covered by current law. Election Code, sec. 64.012, makes it a third-degree felony to knowingly impersonate another person and vote or attempt to vote as the impersonated person and to knowingly mark or attempt to mark another person's ballot without consent. Election Code, sec. 84.0041, makes it a state jail felony to knowingly provide false information on an application for an early ballot.

NOTES:

Rep. Miller plans to offer a floor amendment so that the penalty for the offense added by the bill would be the same as the one in current law.

The committee substitute added the changes to the definition of the combinations of information that is considered identifying information.