

SUBJECT: Creating the offense of acquisition or transfer of financial information

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Y. Davis, Rodriguez,  
Zedler

0 nays

1 absent — Christian

WITNESSES: For — Meg Brooks, Travis County District Attorney's Office; Joseph Reynolds; (*Registered, but did not testify*: Catherine Babbitt, Bexar County District Attorney's Office; Jim Jones, San Antonio Police Department)

Against — None

BACKGROUND: Penal Code, sec. 32.51 makes it illegal to obtain, possess, transfer, or use the identifying information of another person without his or her consent if intent to harm or defraud is involved.

DIGEST: HB 1215 would make it illegal to obtain or transfer someone's financial information if the information was obtained using an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing that information, as long as the person knew that he or she was not entitled to obtain or possess that information.

Financial information would mean information contained on either side of a check, check card, debit card, credit card, or information encoded on the magnetic strip or stripe of one of those cards.

Obtaining the financial information would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), and transferring the information to a third party would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). If conduct constituting an offense under this bill also was an offense under any other law, the person could be prosecuted for either offense.

HB 1215 also would require peace officers who received a complaint regarding these offenses to report those complaints to their law enforcement agencies and include:

- the name of the victim;
- the name of the suspect, if known;
- the type of financial information obtained or transferred; and
- the results of the investigation.

The victim would be entitled to the report, redacted of confidential information that was not the subject of the complaint. The offense could be prosecuted in the county where it was committed or in the victim's county of residence.

The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

HB 1215 is needed to protect our financial privacy from those who use modern technology to violate it. With the use of telephoto lenses and very small but powerful digital equipment, thieves can take hundreds of pictures of checks at a checkout line or can install devices near ATMs to record sensitive financial information for dozens of customers. Technology is now so advanced that the person can record the financial information without anyone noticing.

The current law under which someone would be prosecuted requires an intent to harm or defraud another. By the time that occurs or is proven, the damage to a person's financial accounts already will have been done. HB 1215 would allow law enforcement to hold a person responsible for obtaining the financial information if the person knew that he or she was not entitled to obtain that information.

A common criminal scheme is for a person to pay waiters or cashiers to record credit and debit card information using a skimming machine that fits into the palm of a hand. If the waiter or cashier is caught with that financial information, they often claim ignorance about what the other person wanted to do with the information. HB 1215 would allow a charge to be brought before any of the financial information was exploited. In the case of the skimming machine scheme, the new offense also would give prosecutors a tool to negotiate with the waiter or cashier to turn in the person who paid for the information. Creation of this new offense would

allow prosecutors to charge under both laws and then drop down to the lower offense if the intent to harm or defraud could not be proven.

HB 1215 would recognize that obtaining the information without using it is not as serious as using the information with the intent to harm or defraud, so the punishment under this new law would be a misdemeanor rather than a felony. Prosecutor discretion would ensure that charges were not brought against those merely experimenting with new technology or recording for purposes other than to capture financial information, such as shopkeepers who videotape their checkout counters as a security precaution.

OPPONENTS  
SAY:

Current law is sufficient to protect our financial information. If someone records financial information on checks or debit cards using electronic recording devices of any kind, prosecutors would rightly presume that the person's intent is to harm or defraud. A financial predator should be prosecuted under current law to ensure a felony conviction; a misdemeanor would not fit the severity of the crime.

More importantly, before prosecuting anyone, we need to make sure that the person had the intent to harm or to defraud. By lowering the intent level, HB 1215 could criminalize activity that should not be criminalized. For example, college kids may use their newfound technical skills and electronic devices to see if they can record information unnoticed and accidentally record financial information. They may know that they are not entitled to that information, but they have no intention to do harm. Yet under HB 1215 they could be subject to prosecution for a class A misdemeanor if they send that information to a friend because they thought it was cool. Though immature, such actions are not criminal. Another example might be a shopkeeper who videotapes his store for protection and happens to get clear views of checks and debit card entries.