

- SUBJECT:** Second-degree felony for theft of an automated teller machine
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Zedler
- 0 nays
- 1 absent — Rodriguez
- WITNESSES:** For — Michael Keller, Cardtronics, Inc., ATM Industry Association; Ted Shinn, for Dallas Police Department Chief of Police David Brown (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Stephanie Gibson, Texas Retailers Association; Jim Jones, San Antonio Police Department; Jessica Sloman, Houston Police Department; Gary Tittle, North Texas Crime Commission; Michael Ware, Dallas County District Attorney)
- Against — None
- BACKGROUND:** Under Penal Code, sec. 31.03, theft is the unlawful taking of property with the intent to deprive the owner of property. The penalty for theft varies from a class C misdemeanor (maximum fine of \$500) if the value of the property stolen is less than \$50 to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the value of the property stolen is \$200,000 or more.
- Criminal mischief, under Penal Code, sec. 28.03, includes intentionally or knowingly damaging or destroying the tangible property of the owner without the effective consent of the owner, or intentionally or knowingly tampering with the tangible property of the owner causing pecuniary loss or substantial inconvenience to the owner or a third person. The penalty value ladder for criminal mischief is the same as for theft.
- DIGEST:** CSHB 922 would create a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) theft offense if the property stolen was an automated teller machine (ATM) or contents or components of an ATM and the value of the property stolen was less than \$200,000.

An automated teller machine would mean an unmanned electronic information processing device that, at the request of the user, performed a financial transaction through the direct transmission of electronic impulses to a financial institution or through the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution. The term would include an automated banking machine.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CShB 922 would make the theft of an ATM a second-degree felony, a consistent punishment for a crime that causes significant damage and loss. A person who steals an ATM currently can be charged with a number of offenses, including criminal mischief and theft. The penalties for stealing an ATM vary widely, depending on the value of the damage caused under the criminal mischief statute or the value of the money inside the ATM under the theft statute.

More than 100 ATM thefts happened in Texas last year. A common method for stealing an ATM is backing a vehicle through a convenience store's front windows, dragging the ATM into the parking lot with chains, and then lifting it onto a flatbed truck and driving away. It is not surprising that some convenience store owners decide not to have ATMs because of the potential damage to their stores, and those with ATMs must fortify them with steel plates and anti-saw applications to prevent the ATM theft.

The costs of these extra precautions are passed on to consumers as higher ATM fees. Separate penalties also exist for other kinds of theft in which the monetary value of the item alone does not reflect the bigger compounded loss, such as for the theft of livestock and copper wire. CShB 922 would provide the consistent, strong penalty of up to 20 years in prison to deter these bold thieves and hold them accountable when they were caught.

**OPPONENTS
SAY:**

CShB 922 is unnecessary because the theft statute already provides sufficient penalties, depending on the value of the item stolen. The theft value ladder is in place so that every item of value does not have to be listed individually and so that punishment matches the value of the item stolen. There is no compelling argument for why an ATM is so different from other property that the penalty should be up to 20 years in jail, even

if the money stolen was minimal. If the damage to the convenience store is significant, the thief can be charged for criminal mischief with a penalty matching the actual value of the damage caused.

A better deterrent would be to require the thief to make complete restitution. Paying for the damage to property and paying back any money stolen would make the victim more whole and would teach the thief an important lesson.

NOTES: SB 887 by Carona, a similar bill, passed the Senate by 31-0 on March 31 and was scheduled for a public hearing by the House Criminal Jurisprudence Committee on May 3.