

- SUBJECT:** Providing penalties for unauthorized use of a deceased person's identity
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 5 ayes — Pena, Vaught, Escobar, Pierson, Talton
2 nays — Hodge, Mallory Caraway
1 present not voting — Moreno
1 absent — Riddle
- WITNESSES:** For — John Brewer, Harris County District Attorney's Office.
(*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney Susan D. Reed; Allen Place, Texas Land Title Association)
Against — None
- BACKGROUND:** Penal Code, sec. 32.51 stipulates that it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for offenses related to obtaining, possessing, transferring, or otherwise using certain identifying information with an intent to harm or defraud a non-consenting person. Identifying information includes:
- name, social security number, date of birth, and government-issued identification number;
 - unique biometric data, including an individual's fingerprint, voice print, and retina or iris image;
 - unique electronic identification number, address, and routing code, financial institution account number; and
 - telecommunications identifying information that enables the acquisition or transfer of money or other valuables.
- DIGEST:** CSHB 460 would establish a state-jail felony for illegally possessing or transferring identifying information of a deceased natural person, including a stillborn infant, with the intent to harm or defraud another.

The bill would take effect September 1, 2007, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 460 would target those who steal the identity of a deceased person with harmful or fraudulent intent. Identity theft is a serious, growing problem in Texas. A 2003 report authorized by the Federal Trade Commission (FTC) reported 20,630 incidents of identity theft and 16,700 fraud complaints in Texas in 2002, totaling \$15 million in illegal payments. The most common instances of theft reported involved the fraudulent use of credit cards and bank accounts, amounting to more than 9,000 claims that year.

While the FTC report does not account for crimes committed against deceased victims, this also has been a growing problem in many Texas cities. It can take many months to freeze transactions and close accounts held by a recently deceased person. Information available in obituaries or in death certificates of stillborn infants often provides ample data with which identity thieves can open accounts, complete transactions on credit and debit cards, and make a variety of electronic purchases.

Such crimes have a disproportionately negative affect on aggrieved families, who have to suffer both the anguish of loss and the financial ramifications of unauthorized transactions. Identity thieves often target individuals with good credit and carefully managed finances, which can tarnish the postmortem reputation of victims.

Bereaved families face additional frustrations that result from inadequacies in current law. While Penal Code, sec. 32.51 does provide for the prosecution of crimes related to identity theft, the statute does not expressly include protections for the deceased. Certain fraud-related offenses can alternatively be prosecuted under Penal Code, sec. 32.32, which sets forth penalties for intentionally or knowingly making false or misleading written statements to obtain property or credit. In many cases, however, statutory provisions provide little or no basis from which the state may prosecute offenders. This shortcoming perpetuates injustice brought upon bereaved families by the act of theft against a recently deceased relative.

CSHB 460 would correct the current omission of the deceased from identity theft protections. The bill would provide a basis for the state to prosecute the possession or transfer of sensitive documents of a deceased

person with the intent to harm or defraud. A violation would be a state-jail felony as set forth in the current statute. Granting the state of Texas clear statutory authority to prosecute the criminal activities covered would create a strong deterrent and would help ensure prosecution. Federal prosecutors are overwhelmed and often unable to prosecute criminal identity theft against a person that does not involve large sums of money. The bill would be restricted to those with a demonstrable intent to defraud or harm another. The principal intent of the bill is not to address voter fraud, nor would it have any major implications on elections.

OPPONENTS
SAY:

CSHB 460 could have some unintended consequences in the course of attempting to address a problem that has not been documented sufficiently. It is not clear that credit fraud against deceased individuals is a widespread problem or that current statutory provisions are inadequate to provide for prosecution. The bill specifically would include stillborn infants who would have no credit or other monetary standing.

Increasing the scope of individuals subject to punishment is a serious matter and merits careful consideration. The Legislature should not enact laws that could add to large state jail populations unless it is demonstrably necessary for the protection of citizens. The majority of identity theft crimes could be prosecuted under existing statutes.

Identity fraud indirectly is covered by other state statutes that could provide a means of prosecuting, such as penalties for making false statements or breaching computer security. Also, the federal Identity Theft and Assumption Deterrence Act of 1998 prohibits knowingly transferring or using, without lawful authority, identification of another person with the intent to commit, aid, or abet, any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law. The U.S. Department of Justice prosecutes cases of identity theft and fraud under a variety of federal statutes and works with other federal agencies to prosecute identity theft and fraud cases.

CSHB 460 could be applied beyond a narrow range of credit and banking offenses involving unauthorized transfers of funds. The “intent to harm or defraud” language already in the statute could be applicable to a range of unauthorized activities involving deceased persons, including alleged voter fraud. In addition, the bill would make no distinction between large and small infractions and would not require monetary damage to deceased persons.

OTHER
OPPONENTS
SAY:

A state-jail felony would be insufficient to deter serious identity thieves. Penalties for identity theft of the deceased should be raised to a third-degree felony.

NOTES:

The bill as filed would have established a third-degree felony for the possession, transfer, or use of documents identifying a deceased person. The committee would eliminated the third-degree felony and maintain the offense as a state jail felony. The original would have included in the term “deceased natural person” a stillborn infant or fetus; the substitute removed fetus from specific inclusion in the term. The substitute also would make revise language listing what documents constitute identifying information by replacing “and” with “or.”.

The companion bill, SB 788 by Hegar, has been referred to the Senate Criminal Justice Committee.

A related bill, HB 1823 by Zerwas, which would establish different levels of penalties ranging from a state jail felony to a first-degree felony based on the number items used in the offense, is pending in the House Criminal Jurisprudence Committee.