

CHAPTER 244

H.B. No. 220

An Act relating to the creation of an offense of the fraudulent use of a debit card.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.50 to read as follows:

Sec. 32.50. DEBIT CARD ABUSE. (a) For purposes of this section:

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

(2) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.

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

(4) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the institution for the customer.

(5) "Customer convenience terminal" means a device which is a particular kind of unmanned teller machine (i.e., the use of which does not involve personnel of a financial institution).

(b) A person commits an offense if:

(1) with intent to obtain a benefit for himself or for another fraudulently, he intentionally or knowingly presents or uses a debit card with knowledge that:

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

(B) the card has expired or has been revoked or canceled;

(2) with intent to obtain a benefit for himself or for another, he intentionally or knowingly uses a fictitious debit card or the pretended number or description of a fictitious card;

(3) he intentionally or knowingly receives a benefit for himself or for another that he knows has been obtained in violation of this section;

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

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

(6) not being the issuer, he sells a debit card;

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

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

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

(d) An offense under this section is a felony of the third degree.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1985.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 25, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 220 on May 17, 1985, by a non-record vote; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 4, 1985

Effective: September 1, 1985