House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

FINANCIAL TRANSACTION DEVICES

Senate Bill 34 (Substitute H-2)
First Analysis (12-16-87)

Sponsor: Sen. Jack Faxon
Senate Committee: Commerce & Technology
House Committee: Judiciary

THE APPARENT PROBLEM:

Thousands of Michigan citizens have taken advantage of modern-day banking technology by using convenient "money cards," or electronic funds transfer cards, to do their financial transactions at their banks and credit unions. Despite the increased popularity of these devices, some feel that bank customers and financial institutions do not receive satisfactory protection under the law when the cards have been stolen and used to obtain money or property fraudulently. They claim that existing law has proved to be inadequate to deal with the potential harm that the theft or illegal use of these cards represents. Prosecutors also have found current laws either inappropriate or insufficient to bring the offenders to justice. Thus, it has been recommended that the penal code be amended to reflect recent changes in consumer financial transaction practices and to offer protection from abuse of these practices.

THE CONTENT OF THE BILL:

Senate Bill 34 would amend the Michigan Penal Code to extend to "financial transaction devices" (which would include credit cards, electronic funds transfer cards, and point-of-sale cards) the code's prohibitions against the unlawful use and distribution of credit cards, and to proscribe additional offenses involving financial transaction devices.

Extension of Current Offenses

Current law makes it a felony to do any of the following:

- Steal, knowingly take, or knowingly remove a credit card from the cardholder, or knowingly retain or secrete a credit card without the consent of the cardholder.
- Possess, control, or receive a credit card from another person with the intent to circulate or sell the card without the consent of the cardholder.
- Deliver, circulate, or sell a credit card that was obtained unlawfully, or use or permit the use of a card knowing it was obtained unlawfully.
- Forge, materially alter, or counterfeit a credit card with intent to defraud.

The bill would amend those provisions to refer to financial transaction devices (FTDs) instead of credit cards. The bill also would extend to FTDs the provision making it a misdemeanor for a person who, for the purpose of obtaining something of value worth $100 or less, knowingly and with intent to defraud uses a credit card that has been revoked or canceled by the issuer. Under the bill, however, it would be a felony, instead of a misdemeanor, if the FTD were used to obtain something worth more than $100.

The code also makes it a felony for a person to whom a credit card has been presented to obtain anything of value on credit, who, by forging the cardholder's signature or completing a form to the issuer, causes the cardholder to be overcharged. The bill would revise this provision to make it applicable to FTDs.

Proposed Offenses

The bill would make it a felony to do the following:

- Knowingly possess a fraudulent or altered FTD.
- Knowingly and with intent to defraud, make or cause to be made, directly or indirectly, a false statement in writing regarding a person's identity for the purpose of procuring the issuance of a FTD.

The bill also would prohibit a person from using an FTD to withdraw or transfer funds from a deposit account in violation of the contractual limitations imposed on the account or frequency of withdrawals or transfers, or in an amount in excess of the funds on deposit. It would be a misdemeanor if the amount withdrawn or transferred were $500 or less, and a felony if the amount were more than $500.

It would be a felony to utter and publish as true any false, forged, altered, or counterfeit FTD, with the intent to injure or defraud any person.

In addition, the bill would make it a felony to cast, stamp, engrave, make, or mend, or knowingly possess a mold or other tool or instrument adapted and designed for making a false, forged, altered, or counterfeit FTD, with the intent to use or permit the use of such an object in making a counterfeit FTD.

Definitions

The bill would define "financial transaction device" as an electronic funds transfer card; a credit card; a debit card; a point-of-sale card; or any instrument, device, card, plate, code, account, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or a deposit account, a driver license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument, that can be used alone or in conjunction with another access device, for any of the following purposes:

- Obtaining money, cash refund or credit account credit, goods, services, or any other thing of value.
- Certifying or guaranteeing to a person or business the availability to the deviceholder of funds on deposit to honor a draft or check payable to the order of that person or business.
- Providing the deviceholder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer.

MCL 750.157m

HOUSE COMMITTEE ACTION:

The House Judiciary committee adopted a substitute that, among other things, put the demarcation between felony and misdemeanor offenses at $500, rather than $100, as

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it was in the Senate-passed version, and omitted specified terms of imprisonment. It also omitted a Senate provision that would have made it a felony to make or knowingly possess a device for simulating an FTD.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have no fiscal implications for either the state or local units of government. (2-13-87)

ARGUMENTS:

For:

The bill is needed to help bring current law up to date in order to deal with the illegal use of FTDs. Many abuses of FTDs are not punishable under current statutes that deal with fraud and forgery or credit cards. Fraud and forgery laws refer to transactions on various written documents, such as a check, deed or other paper instrument. This kind of transaction does not encompass the use of most FTDs, since no "paper" is involved. Existing credit card laws, enacted 20 years ago also do not cover misuse of most FTDs, since many do not meet the statutory definition of a credit card, which is a device or instrument for obtaining credit. Although a person who illegally uses an FTD to receive money from an automated teller could be charged under a computer "hacker" law that prohibits access to computers with the intention to defraud or obtain money (MCL 752.794), the bill would provide a more appropriate basis on which to prosecute FTD offenses.

For:

The bill would address the need for more severe penalties for possession of a stolen FTD card. Under current law, a criminal found in possession of even several dozen stolen FTDs can be charged only with a misdemeanor (being in possession of stolen property under $100) since the worth of an FTD is determined only by its intrinsic value, about 25 cents. Yet, the value of an FTD may represent thousands of dollars in illegally withdrawn money. The bill would close this loophole and provide felony penalties for possession of stolen, fraudulent, or altered FTDs. It would further protect FTD users and banking institutions by making it a felony to create or possess an apparatus adapted or designed to create a counterfeit FTD.

POSITIONS:

The Greater Detroit Chamber of Commerce supports the bill. (12-10-87)

The Michigan Bankers Association supports the bill. (12-14-87)

The Michigan Consumers Council supports the bill. (12-9-87)

The Michigan Credit Union League supports the bill. (12-11-87)

The Michigan Merchants Council supports the bill. (12-14-87)

The Prosecuting Attorneys Association of Michigan supports the bill. (12-11-87)