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FISCAL IMPACT REPORT

SPONSOR Papen DATE TYPED 3/8/05 HB _____

SHORT TITLE Criminalize Skimming or Credit Card Fraud SB 318/aSJC

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Minimal		General Fund

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Corrections Department (CD)
 Public Defender Department (PDD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment removes references to “skimming” replacing them with the definition of skimming, which is the use of a scanning device to defraud a cardholder. The amendment also removes the section relating to the penalty for second and subsequent offenses of this crime.

Synopsis of Original Bill

Senate Bill 318 creates the crime of skimming. The bill makes it is unlawful for a person to skim or use a scanning device to access, read, obtain, memorize or store information encoded on the magnetic strip of a payment card without the permission of the cardholder and with the intent to defraud either the cardholder, the issuer of the cardholder’s payment card or a merchant. It is also illegal to use a re-encoder to place information encoded on the magnetic strip of a payment card onto the magnetic strip of another card without the permission of the cardholder.

The bill makes the willful and intentional violation a fourth degree felony and subsequent willful and intentional violation is a third degree felony.

Significant Issues

The bill does not require that the State prove economic harm in order to obtain a conviction. Most economic crimes are classified for degrees of felony based on the monetary loss to the victim. This statute does not tie the degree of felony to the incremental economic harm done to a particular victim. This bill is akin to the forgery statute which makes any forgery, whether the forgery is to defraud someone of \$1 or \$1 million, the same degree of crime.

The current law will not prevent an offender from being prosecuted for fraud in a situation where the offender was skimming as described in this bill. In a prosecution for fraud it will be necessary to establish economic harm as in the above example of larceny as fraud does follow the statutory scheme of tying the degree of felony to the amount of economic harm. This bill by not requiring the state to prove an economic harm will be less burdensome on the state in proving its case.

Another benefit to the state will be that an offender who commits this type of crime more than once will be easier to track. The paperwork on a particular offender and his particular crime as a general rule follows him regardless of which county or state he received the convictions in. By showing the specific crime of skimming on his paperwork it will give prosecutors and sentencing judges a better idea of who they are dealing with in a subsequent case.

The AOC notes there is no definition of skimming. They believe it is unclear whether SB 318 presumes knowledge of the definition of skimming, or if subsections (1) and (2) of section 1 are meant to define skimming. The AODA states that skimming should be defined.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

The AGO claims offenders who commit fraud by this method of skimming are being prosecuted for fraud anyway so that the workloads of the prosecuting attorneys, the public defenders and the courts will not increase significantly.

TECHNICAL ISSUES

The PDD indicated credit card offenses are thoroughly covered in NMSA 1978, sections 30-16-25 through 36. Rather than add another section, this could be covered by amending the definition section and adding skimming to one of the applicable offenses.