

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/13/17

A Bill

SENATE BILL 225

By: Senator Rapert

For An Act To Be Entitled

*AN ACT CONCERNING CREDIT OR DEBIT CARD "SKIMMING";
AMENDING THE OFFENSE OF FINANCIAL IDENTITY FRAUD; AND
FOR OTHER PURPOSES.*

Subtitle

*CONCERNING CREDIT OR DEBIT CARD
"SKIMMING"; AND AMENDING THE OFFENSE OF
FINANCIAL IDENTITY FRAUD.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 37, Subchapter 2, is amended to add an additional section to read as follows:

5-37-218. Unlawful possession of a skimmer.

(a) As used in this section, "skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner financial sight order or payment card information.

(b) A person commits the offense of unlawful possession of a skimmer if he or she knowingly possesses a skimmer with the purpose to commit an offense under this subchapter.

(c) Unlawful possession of a skimmer is a Class C felony.

SECTION 2. Arkansas Code § 5-37-227 is amended to read as follows:

5-37-227. Financial identity fraud – Nonfinancial identity fraud – Restitution – Venue.



~~(a) A person commits financial identity fraud if, with the purpose to:~~
~~(1) Create, obtain, or open a credit account, debit account, or other financial resource for his or her benefit or for the benefit of a third party, he or she accesses, obtains, records, or submits to a financial institution another person's identifying information for the purpose of opening or creating a credit account, debit account, or financial resource without the authorization of the person identified by the information; or~~
~~(2) Appropriate a financial resource of another person to his or her own use or to the use of a third party without the authorization of that other person, the actor:~~

~~(A) Uses a scanning device; or~~

~~(B) Uses a re-encoder.~~

(a) A person commits financial identity fraud if the person:

(1) For his or her benefit or the benefit of a third party, accesses, obtains, records, or submits to a financial institution another person's identifying information with a purpose to create, obtain, or open a credit account, debit account, or financial resource without the authorization of the other person;

(2) Uses a scanning device, re-encoder, or a skimmer for the purpose of appropriating a financial resource, financial sight order information, or payment card information of another person to his or her own use or to the use of a third party without the authorization of the other person; or

(3) Transfers to another person a financial resource, a financial sight order, or payment card information knowing that the other person is not entitled to obtain or possess the financial resource, financial sight order, or payment card information.

(b) A person commits nonfinancial identity fraud if he or she knowingly obtains another person's identifying information without the other person's authorization and uses the identifying information for any unlawful purpose, including without limitation:

(1) To avoid apprehension or criminal prosecution;

(2) To harass another person; or

(3) To obtain or to attempt to obtain a good, service, real property, or medical information of another person.

(c) As used in this section:

(1) "Check" means the same as defined in § 4-60-101;

(2) "Debit card" means the same as defined in § 4-88-702;

~~(1)~~(3) "Disabled person" means the same as defined in § 4-88-201;

~~(2)~~(4) "Elder person" means the same as defined in § 4-88-201;

~~(3)~~(5) "Financial institution" includes, but is not limited to, without limitation a credit card company, bank, or any other type of lending or credit company or institution;

~~(4)~~(6) "Financial resource" includes, but is not limited to, without limitation a credit card, debit card, or any other type of line of credit or loan;

(7) "Financial sight order or payment card information" means financial information that is:

(A) Contained on either side of a check or similar sight order or payment card; or

(B) Encoded on the magnetic strip or stripe of a payment card;

~~(5)~~(8) "Identifying information" includes, but is not limited to, without limitation a:

(A) Social ~~security~~ Security number;

(B) Driver's license number;

(C) Checking account number;

(D) Savings account number;

(E) Credit card number;

(F) Debit card number;

(G) Personal identification number;

(H) Electronic identification number;

(I) Digital signature; or

(J) Any other number or information that can be used to access a person's financial resources;

(9) "Payment card" means a debit card or credit card;

~~(6)~~(10) "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, or any electronic medium that allows an authorized transaction to occur; and

~~(7)~~(11) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card; and

(12) "Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner financial sight order or payment card information.

(d) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting the actor's age.

(e)(1) Except as provided in subdivision (e)(2) of this section, financial identity fraud is a Class C felony.

(2) Financial ~~identify~~ identity fraud is a Class B felony if the victim is an elder person or a disabled person.

(f)(1) Except as provided in subdivision (f)(2) of this section, nonfinancial identity fraud is a Class D felony.

(2) Nonfinancial identity fraud is a Class C felony if the victim is an elder person or a disabled person.

(g)(1) In addition to any penalty imposed under this section, a violation of this section constitutes an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) Any remedy, penalty, or authority granted to the Attorney General or another person under the Deceptive Trade Practices Act, § 4-88-101 et seq., is available to the Attorney General or that other person for the enforcement of this section.

(h)(1)(A) In addition to any penalty imposed under this section, upon conviction for financial identity fraud or nonfinancial identity fraud, a court may order the defendant to make restitution to any victim whose identifying information was appropriated or to the estate of the victim under § 5-4-205.

(B) In addition to any other authorized restitution, the restitution order described in subdivision (h)(1)(A) of this section may include without limitation restitution for the following financial losses:

(i) Any costs incurred by the victim in correcting the credit history or credit rating of the victim; and

(ii) Any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation resulting from the theft of the victim's identifying information, including lost wages and attorney's fees.

(C) The court also may order restitution for financial loss to any other person or entity that suffers a financial loss from a violation of subsection (a) or subsection (b) of this section.

(2) A judgment entered under this section and § 5-4-205 does not bar a remedy available in a civil action to recover damages relating to financial identity fraud or nonfinancial identity fraud.

(i) Venue for any criminal prosecution under this section or any civil action to recover damages relating to financial identity fraud or nonfinancial identity fraud is proper in any of the following venues:

(1) In the county where the violation occurred;

(2) If the violation was committed in more than one (1) county, or if the elements of the offense were committed in more than one (1) county, then in any county where any violation occurred or where an element of the offense occurred;

(3) In the county where the victim resides; or

(4) In the county where property that was fraudulently used or attempted to be used was located at the time of the violation.

/s/Rapert