

HOUSE BILL 564

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8lr1170
CF SB 220

By: **Delegates McComas and Niemann (Task Force to Study Identity Theft) and Delegates Aumann, Beitzel, DeBoy, Eckardt, Elliott, Frank, George, Kaiser, Krebs, Levy, McConkey, Miller, Myers, Norman, Robinson, Schuh, Shank, Shewell, Smigiel, Sophocleus, Sossi, Stocksdales, and Wood**

Introduced and read first time: January 31, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud – Prohibition of Unauthorized Skimming and Re-Encoding**
3 **Devices**

4 FOR the purpose of prohibiting a person from knowingly, willfully, and with
5 fraudulent intent to obtain a benefit, credit, good, service, or other thing of
6 value by using a re-encoder device or a skimming device in a certain manner for
7 certain purposes; prohibiting a person from knowingly, willfully, and with
8 fraudulent intent to possess, obtain, or help another person to possess or obtain
9 a re-encoder device or a skimming device for certain unauthorized purposes;
10 defining certain terms; and generally relating to the unauthorized use of certain
11 devices.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Law
14 Section 8–301
15 Annotated Code of Maryland
16 (2002 Volume and 2007 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Criminal Law**

20 8–301.

21 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Payment device number” has the meaning stated in § 8-213 of
2 this title.

3 (3) “Personal identifying information” includes a name, address,
4 telephone number, driver’s license number, Social Security number, place of
5 employment, employee identification number, mother’s maiden name, bank or other
6 financial institution account number, date of birth, personal identification number,
7 credit card number, or other payment device number.

8 (4) **“RE-ENCODER” MEANS AN ELECTRONIC DEVICE THAT**
9 **PLACES ENCODED PERSONAL IDENTIFYING INFORMATION OR A PAYMENT**
10 **DEVICE NUMBER FROM THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD**
11 **ONTO THE MAGNETIC STRIP OR STRIPE OF A DIFFERENT CREDIT CARD OR ANY**
12 **ELECTRONIC MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR.**

13 (5) **“SKIMMING DEVICE” MEANS A SCANNER, SKIMMER, READER,**
14 **OR ANY OTHER ELECTRONIC DEVICE THAT IS USED TO ACCESS, READ, SCAN,**
15 **OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, PERSONAL**
16 **IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER ENCODED ON THE**
17 **MAGNETIC STRIP OR STRIPE OF A CREDIT CARD.**

18 (b) A person may not knowingly, willfully, and with fraudulent intent
19 possess, obtain, or help another to possess or obtain any personal identifying
20 information of an individual, without the consent of the individual, in order to use,
21 sell, or transfer the information to get a benefit, credit, good, service, or other thing of
22 value in the name of the individual.

23 (c) A person may not knowingly and willfully assume the identity of another:

24 (1) to avoid identification, apprehension, or prosecution for a crime; or

25 (2) with fraudulent intent to:

26 (i) get a benefit, credit, good, service, or other thing of value; or

27 (ii) avoid the payment of debt or other legal obligation.

28 (D) **A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH**
29 **FRAUDULENT INTENT TO OBTAIN A BENEFIT, CREDIT, GOOD, SERVICE, OR**
30 **OTHER THING OF VALUE, USE:**

31 (1) **A RE-ENCODER TO PLACE INFORMATION ENCODED ON THE**
32 **MAGNETIC STRIP OR STRIPE OF A CREDIT CARD ONTO THE MAGNETIC STRIP OR**
33 **STRIPE OF A DIFFERENT CREDIT CARD OR USE ANY OTHER ELECTRONIC**
34 **MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR WITHOUT THE**
35 **CONSENT OF THE INDIVIDUAL AUTHORIZED TO USE THE CREDIT CARD FROM**

1 WHICH THE PERSONAL IDENTIFYING INFORMATION OR PAYMENT DEVICE
2 NUMBER IS BEING RE-ENCODED; OR

3 (2) A SKIMMING DEVICE TO ACCESS, READ, OBTAIN, MEMORIZE,
4 OR STORE PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE
5 NUMBER ON THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD WITHOUT THE
6 CONSENT OF THE INDIVIDUAL AUTHORIZED TO USE THE CREDIT CARD.

7 (E) A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH
8 FRAUDULENT INTENT POSSESS, OBTAIN, OR HELP ANOTHER POSSESS OR
9 OBTAIN A RE-ENCODER DEVICE OR A SKIMMING DEVICE FOR THE
10 UNAUTHORIZED USE, SALE, OR TRANSFER OF PERSONAL IDENTIFYING
11 INFORMATION OR A PAYMENT DEVICE NUMBER.

12 [(d)] (F) A person may not knowingly and willfully claim to represent
13 another person without the knowledge and consent of that person, with the intent to
14 solicit, request, or take any other action to otherwise induce another person to provide
15 personal identifying information or a payment device number.

16 [(e)] (G) (1) A person who violates this section where the benefit, credit,
17 good, service, or other thing of value that is the subject of subsection (b) [or], (c), OR
18 (D) of this section has a value of \$500 or greater is guilty of a felony and on conviction
19 is subject to imprisonment not exceeding 5 years or a fine not exceeding \$25,000 or
20 both.

21 (2) A person who violates this section where the benefit, credit, good,
22 service, or other thing of value that is the subject of subsection (b) [or], (c), OR (D) of
23 this section has a value of less than \$500 is guilty of a misdemeanor and on conviction
24 is subject to imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or
25 both.

26 (3) A person who violates this section under circumstances that
27 reasonably indicate that the person's intent was to manufacture, distribute, or
28 dispense another individual's personal identifying information without that
29 individual's consent is guilty of a felony and on conviction is subject to imprisonment
30 not exceeding 5 years or a fine not exceeding \$25,000 or both.

31 (4) A person who violates subsection (c)(1) [or (d)], (E), OR (F) of this
32 section is guilty of a misdemeanor and on conviction is subject to imprisonment not
33 exceeding 18 months or a fine not exceeding \$5,000 or both.

34 (5) When the violation of this section is pursuant to one scheme or
35 continuing course of conduct, whether from the same or several sources, the conduct
36 may be considered as one violation and the value of the benefit, credit, good, service, or
37 other thing of value may be aggregated in determining whether the violation is a
38 felony or misdemeanor.

1 [(f)] (H) A person described in subsection [(e)(2)] (G)(2) or (4) of this section
2 is subject to § 5–106(b) of the Courts Article.

3 [(g)] (I) In addition to restitution under Title 11, Subtitle 6 of the Criminal
4 Procedure Article, a court may order a person who pleads guilty or nolo contendere or
5 who is found guilty under this section to make restitution to the victim for reasonable
6 costs, including reasonable attorney’s fees, incurred:

7 (1) for clearing the victim’s credit history or credit rating; and

8 (2) in connection with a civil or administrative proceeding to satisfy a
9 debt, lien, judgment, or other obligation of the victim that arose because of the
10 violation.

11 [(h)] (J) A sentence under this section may be imposed separate from and
12 consecutive to or concurrent with a sentence for any crime based on the act or acts
13 establishing the violation of this section.

14 [(i)] (K) Notwithstanding any other law, the Department of State Police
15 may initiate investigations and enforce this section throughout the State without
16 regard to any limitation otherwise applicable to that department’s activities in a
17 municipal corporation or other political subdivision.

18 [(j)] (L) (1) Notwithstanding any other law, a law enforcement officer of
19 the Maryland Transportation Authority Police, the Maryland Port Administration
20 Police, the park police of the Maryland–National Capital Park and Planning
21 Commission, or a municipal corporation or county may investigate violations of this
22 section throughout the State without any limitation as to jurisdiction and to the same
23 extent as a law enforcement officer of the Department of State Police.

24 (2) The authority granted in paragraph (1) of this subsection may be
25 exercised only in accordance with regulations that the Department of State Police
26 adopts.

27 (3) The regulations are not subject to Title 10, Subtitle 1 of the State
28 Government Article.

29 (4) The authority granted in paragraph (1) of this subsection may be
30 exercised only if an act related to the crime was committed in the investigating law
31 enforcement agency’s jurisdiction or if the complaining witness resides in the
32 investigating law enforcement agency’s jurisdiction.

33 [(k)] (M) If action is taken under the authority granted in subsection [(j)]
34 (L) of this section, notification of an investigation:

1 (1) in a municipal corporation, shall be made to the chief of police or
2 designee of the chief of police;

3 (2) in a county that has a county police department, shall be made to
4 the chief of police or designee of the chief of police;

5 (3) in a county without a police department, shall be made to the
6 sheriff or designee of the sheriff;

7 (4) in Baltimore City, shall be made to the Police Commissioner or the
8 Police Commissioner's designee;

9 (5) on property owned, leased, or operated by or under the control of
10 the Maryland Transportation Authority, the Maryland Aviation Administration, or the
11 Maryland Port Administration, shall be made to the respective chief of police or the
12 chief's designee; and

13 (6) on property owned, leased, or operated by or under the control of
14 the Maryland–National Capital Park and Planning Commission, to the chief of police
15 of the Maryland–National Capital Park and Planning Commission for the county in
16 which the property is located.

17 [(1)] (N) When acting under the authority granted in subsection [(i)] (K) or
18 [(j)] (L) of this section, a law enforcement officer:

19 (1) in addition to any other immunities and exemptions to which the
20 officer may be entitled, has the immunities from liability and exemptions accorded to a
21 law enforcement officer of the Department of State Police; but

22 (2) remains an employee of the officer's employing agency.

23 [(m)] (O) (1) A State's Attorney or the Attorney General may investigate
24 and prosecute a violation of this section or a violation of any crime based on the act
25 establishing a violation of this section.

26 (2) If the Attorney General exercises authority under paragraph (1) of
27 this subsection, the Attorney General has all the powers and duties of a State's
28 Attorney, including the use of a grand jury in any county or Baltimore City, to
29 investigate and prosecute the violation.

30 [(n)] (P) Notwithstanding any other provision of law, the prosecution of a
31 violation of this section or for a violation of any crime based on the act establishing a
32 violation of this section may be commenced in any county in which:

33 (1) an element of the crime occurred; or

34 (2) the victim resides.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2008.