

6954--A

I N S E N A T E

April 16, 2012

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the penal law, in relation to creating the crime of criminal practices with an access device

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new
2 section 520-d to read as follows:
3 S 520-D. CRIMINAL PRACTICES WITH AN ACCESS DEVICE. 1. A PERSON IS
4 GUILTY OF CRIMINAL PRACTICES WITH AN ACCESS DEVICE WHEN HE OR SHE:
5 (A) KNOWINGLY AND WITH INTENT TO DEFRAUD PRODUCES, USES, OR TRAFFICS
6 IN ONE OR MORE COUNTERFEIT ACCESS DEVICE; OR
7 (B) KNOWINGLY AND WITH INTENT TO DEFRAUD TRAFFICS IN OR USES ONE OR
8 MORE UNAUTHORIZED DEVICE DURING ANY ONE-YEAR PERIOD, AND BY SUCH CONDUCT
9 OBTAINS ANYTHING OF VALUE AGGREGATING ONE THOUSAND DOLLARS OR MORE
10 DURING THAT PERIOD; OR
11 (C) KNOWINGLY AND WITH INTENT TO DEFRAUD POSSESSES FIFTEEN OR MORE
12 DEVICES WHICH ARE COUNTERFEIT OR UNAUTHORIZED ACCESS DEVICES; OR
13 (D) KNOWINGLY AND WITH INTENT TO DEFRAUD PRODUCES, TRAFFICS IN, HAS
14 CONTROL OR CUSTODY OF, OR POSSESSES DEVICE-MAKING EQUIPMENT; OR
15 (E) KNOWINGLY AND WITH INTENT TO DEFRAUD EFFECTS TRANSACTIONS WITH ONE
16 OR MORE ACCESS DEVICES ISSUED TO ANOTHER PERSON OR PERSONS AND USED
17 WITHOUT THE CONSENT OF SUCH PERSON, TO RECEIVE PAYMENT OR ANY OTHER
18 THING OF VALUE DURING ANY ONE-YEAR PERIOD THE AGGREGATE VALUE OF WHICH
19 IS EQUAL TO OR GREATER THAN ONE THOUSAND DOLLARS; OR
20 (F) WITHOUT THE AUTHORIZATION OF THE ISSUER OF THE ACCESS DEVICE KNOW-
21 INGLY AND WITH INTENT TO DEFRAUD SOLICITS A PERSON FOR THE PURPOSE OF:
22 (I) OFFERING AN ACCESS DEVICE; OR
23 (II) SELLING INFORMATION REGARDING OR AN APPLICATION TO OBTAIN AN
24 ACCESS DEVICE.
25 2. CRIMINAL PRACTICES WITH AN ACCESS DEVICE IS A CLASS B MISDEMEANOR.
26 S 2. The penal law is amended by adding a new section 165.21 to read
27 as follows:
28 S 165.21 CRIMINAL PRACTICES WITH AN ACCESS DEVICE.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD15090-04-2

1 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS
2 SHALL HAVE THE FOLLOWING MEANINGS:

3 (A) "ACCESS DEVICE" SHALL MEAN ANY CARD, INCLUDING GIFT CARD, PLATE,
4 CODE, INCLUDING UNIVERSAL PRICE CODE LABEL, ACCOUNT NUMBER, ELECTRONIC
5 SERIAL NUMBER, MOBILE IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION
6 NUMBER, OR OTHER TELECOMMUNICATIONS SERVICE, EQUIPMENT, OR INSTRUMENT
7 IDENTIFIER, INCLUDING A RADIO FREQUENCY IDENTIFICATION TRANSPONDER, OR
8 OTHER MEANS OF ACCOUNT ACCESS THAT CAN BE USED, ALONE OR IN CONJUNCTION
9 WITH ANOTHER ACCESS DEVICE, TO OBTAIN MONEY, GOODS, SERVICES, OR ANY
10 OTHER THING OF VALUE, OR THAT CAN BE USED TO INITIATE A TRANSFER OF
11 FUNDS (OTHER THAN A TRANSFER ORIGINATED SOLELY BY PAPER INSTRUMENT);

12 (B) "COUNTERFEIT ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
13 COUNTERFEIT, FICTITIOUS, ALTERED, OR FORGED, OR AN IDENTIFIABLE COMPO-
14 NENT OF AN ACCESS DEVICE OR A COUNTERFEIT ACCESS DEVICE;

15 (C) "UNAUTHORIZED ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
16 LOST, STOLEN, EXPIRED, REVOKED, CANCELED, OR OBTAINED WITH INTENT TO
17 DEFRAUD;

18 (D) "PRODUCE" SHALL MEAN DESIGN, ALTER, AUTHENTICATE, DUPLICATE, OR
19 ASSEMBLE;

20 (E) "TRAFFIC" SHALL MEAN TRANSFER, OR OTHERWISE DISPOSE OF, TO ANOTHER
21 IN A FRAUDULENT MANNER, OR OBTAIN CONTROL OF WITH INTENT TO FRAUDULENTLY
22 TRANSFER OR DISPOSE OF;

23 (F) "DEVICE-MAKING EQUIPMENT" SHALL MEAN ANY EQUIPMENT, MECHANISM, OR
24 IMPRESSION DESIGNED OR PRIMARILY USED FOR MAKING AN UNAUTHORIZED ACCESS
25 DEVICE OR A COUNTERFEIT ACCESS DEVICE;

26 (G) "CREDIT CARD SYSTEM NUMBER" SHALL MEAN A FINANCIAL INSTITUTION OR
27 OTHER ENTITY THAT IS A MEMBER OF A CREDIT CARD SYSTEM, INCLUDING AN
28 ENTITY, WHETHER AFFILIATED WITH OR IDENTICAL TO THE CREDIT CARD ISSUER,
29 THAT IS THE SOLE MEMBER OF A CREDIT CARD SYSTEM.

30 2. A PERSON IS GUILTY OF CRIMINAL PRACTICES WITH AN ACCESS DEVICE WHEN
31 HE OR SHE:

32 (A) KNOWINGLY AND WITH INTENT TO DEFRAUD PRODUCES, USES, OR TRAFFICS
33 IN ONE OR MORE COUNTERFEIT ACCESS DEVICE; OR

34 (B) KNOWINGLY AND WITH INTENT TO DEFRAUD TRAFFICS IN OR USES ONE OR
35 MORE UNAUTHORIZED DEVICE DURING ANY ONE-YEAR PERIOD, AND BY SUCH CONDUCT
36 OBTAINS ANYTHING OF VALUE AGGREGATING ONE THOUSAND DOLLARS OR MORE
37 DURING THAT PERIOD; OR

38 (C) KNOWINGLY AND WITH INTENT TO DEFRAUD POSSESSES FIFTEEN OR MORE
39 DEVICES WHICH ARE COUNTERFEIT OR UNAUTHORIZED ACCESS DEVICES; OR

40 (D) KNOWINGLY AND WITH INTENT TO DEFRAUD PRODUCES, TRAFFICS IN, HAS
41 CONTROL OR CUSTODY OF, OR POSSESSES DEVICE-MAKING EQUIPMENT; OR

42 (E) KNOWINGLY AND WITH INTENT TO DEFRAUD EFFECTS TRANSACTIONS WITH ONE
43 OR MORE ACCESS DEVICES ISSUED TO ANOTHER PERSON OR PERSONS AND USED
44 WITHOUT THE CONSENT OF SUCH PERSON, TO RECEIVE PAYMENT OR ANY OTHER
45 THING OF VALUE DURING ANY ONE-YEAR PERIOD THE AGGREGATE VALUE OF WHICH
46 IS EQUAL TO OR GREATER THAN ONE THOUSAND DOLLARS; OR

47 (F) WITHOUT THE AUTHORIZATION OF THE ISSUER OF THE ACCESS DEVICE KNOW-
48 INGLY AND WITH INTENT TO DEFRAUD SOLICITS A PERSON FOR THE PURPOSE OF:

49 (I) OFFERING AN ACCESS DEVICE; OR

50 (II) SELLING INFORMATION REGARDING OR AN APPLICATION TO OBTAIN AN
51 ACCESS DEVICE.

52 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IS A CLASS B MISDEMEANOR.

53 S 3. This act shall take effect on the first of November next succeed-
54 ing the date on which it shall have become a law.