

6954--B

Cal. No. 924

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend 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 penal law is amended by adding a new section 165.21 to
2 read as follows:
3 S 165.21 CRIMINAL PRACTICES WITH AN ACCESS DEVICE.
4 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS
5 SHALL HAVE THE FOLLOWING MEANINGS:
6 (A) "ACCESS DEVICE" SHALL MEAN ANY CARD, INCLUDING GIFT CARD, PLATE,
7 CODE, INCLUDING UNIVERSAL PRICE CODE LABEL, ACCOUNT NUMBER, ELECTRONIC
8 SERIAL NUMBER, MOBILE IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION
9 NUMBER, OR OTHER TELECOMMUNICATIONS SERVICE, EQUIPMENT, OR INSTRUMENT
10 IDENTIFIER, INCLUDING A RADIO FREQUENCY IDENTIFICATION TRANSPONDER, OR
11 OTHER MEANS OF ACCOUNT ACCESS THAT CAN BE USED, ALONE OR IN CONJUNCTION
12 WITH ANOTHER ACCESS DEVICE, TO OBTAIN MONEY, GOODS, SERVICES, OR ANY
13 OTHER THING OF VALUE, OR THAT CAN BE USED TO INITIATE A TRANSFER OF
14 FUNDS (OTHER THAN A TRANSFER ORIGINATED SOLELY BY PAPER INSTRUMENT);
15 (B) "COUNTERFEIT ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
16 COUNTERFEIT, FICTITIOUS, ALTERED, OR FORGED, OR AN IDENTIFIABLE COMPO-
17 NENT OF AN ACCESS DEVICE OR A COUNTERFEIT ACCESS DEVICE;
18 (C) "UNAUTHORIZED ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
19 LOST, STOLEN, EXPIRED, REVOKED, CANCELED, OR OBTAINED WITH INTENT TO
20 DEFRAUD;
21 (D) "PRODUCE" SHALL MEAN DESIGN, ALTER, AUTHENTICATE, DUPLICATE, OR
22 ASSEMBLE;

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

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

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

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

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

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

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

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

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

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

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

30 (I) OFFERING AN ACCESS DEVICE; OR

31 (II) SELLING INFORMATION REGARDING OR AN APPLICATION TO OBTAIN AN
32 ACCESS DEVICE.

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

34 S 2. This act shall take effect on the first of November next succeed-
35 ing the date on which it shall have become a law.