S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

January 25, 2013

Introduced by Sens. ZELDIN, MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

Section 1. The penal law is amended by adding a new section 165.21 to read as follows:

S 165.21 CRIMINAL PRACTICES WITH AN ACCESS DEVICE.

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

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

(B) "COUNTERFEIT ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS COUNTERFEIT, FICTITIOUS, ALTERED, OR FORGED, OR AN IDENTIFIABLE COMPONENT OF AN ACCESS DEVICE OR A COUNTERFEIT ACCESS DEVICE;

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

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

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

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

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

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

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

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

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

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

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

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

(F) WITHOUT THE AUTHORIZATION OF THE ISSUER OF THE ACCESS DEVICE KNOWINGLY AND WITH INTENT TO DEFRAUD SOLICITS A PERSON FOR THE PURPOSE OF:

(I) OFFERING AN ACCESS DEVICE; OR

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

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

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.