

2927--B

2013-2014 Regular Sessions

I N   S E N A T E

January 25, 2013

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Introduced by Sens. ZELDIN, LANZA, MAZIARZ, RANZENHOFER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Consumer Protection -- 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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 four new sections  
2     165.21, 165.22, 165.23 and 165.24 to read as follows:  
3     S 165.21 CRIMINAL PRACTICES WITH AN ACCESS DEVICE; DEFINITIONS.  
4     FOR THE PURPOSES OF SECTIONS 165.22, 165.23 AND 165.24 OF THIS ARTI-  
5     CLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
6     1. "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    2. "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;

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

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1 3. "UNAUTHORIZED ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS  
2 LOST, STOLEN, EXPIRED, REVOKED, CANCELED, OR OBTAINED WITH INTENT TO  
3 DEFRAUD;

4 4. "PRODUCE" SHALL MEAN DESIGN, ALTER, AUTHENTICATE, DUPLICATE, OR  
5 ASSEMBLE;

6 5. "TRAFFIC" SHALL MEAN TRANSFER, OR OTHERWISE DISPOSE OF, TO ANOTHER  
7 IN A FRAUDULENT MANNER, OR OBTAIN CONTROL OF WITH INTENT TO FRAUDULENTLY  
8 TRANSFER OR DISPOSE OF;

9 6. "DEVICE-MAKING EQUIPMENT" SHALL MEAN ANY EQUIPMENT, MECHANISM, OR  
10 IMPRESSION DESIGNED OR PRIMARILY USED FOR MAKING AN UNAUTHORIZED ACCESS  
11 DEVICE OR A COUNTERFEIT ACCESS DEVICE;

12 7. "CREDIT CARD SYSTEM NUMBER" SHALL MEAN A FINANCIAL INSTITUTION OR  
13 OTHER ENTITY THAT IS A MEMBER OF A CREDIT CARD SYSTEM, INCLUDING AN  
14 ENTITY, WHETHER AFFILIATED WITH OR IDENTICAL TO THE CREDIT CARD ISSUER,  
15 THAT IS THE SOLE MEMBER OF A CREDIT CARD SYSTEM.

16 S 165.22 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE THIRD DEGREE.

17 A PERSON IS GUILTY OF CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE  
18 THIRD DEGREE WHEN HE OR SHE KNOWINGLY OR WITH THE INTENT TO DEFRAUD,  
19 PRODUCES, USES OR TRAFFICS IN ONE OR MORE COUNTERFEIT ACCESS DEVICE.

20 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE THIRD DEGREE IS A  
21 CLASS A MISDEMEANOR.

22 S 165.23 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE SECOND DEGREE.

23 A PERSON IS GUILTY OF CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE  
24 SECOND DEGREE WHEN HE OR SHE:

25 1. KNOWINGLY AND WITH THE INTENT TO DEFRAUD, TRAFFICS IN OR USES ONE  
26 OR MORE UNAUTHORIZED DEVICE DURING ANY ONE-YEAR PERIOD, AND BY SUCH  
27 CONDUCT OBTAINS ANYTHING OF VALUE AGGREGATING ONE THOUSAND DOLLARS OR  
28 MORE DURING THAT PERIOD; OR

29 2. KNOWINGLY AND WITH INTENT TO DEFRAUD POSSESSES FIFTEEN OR MORE  
30 DEVICES WHICH ARE COUNTERFEIT OR UNAUTHORIZED ACCESS DEVICES; OR

31 3. KNOWINGLY AND WITH INTENT TO DEFRAUD PRODUCES, TRAFFICS IN, HAS  
32 CONTROL OR CUSTODY OF, OR POSSESSES DEVICE-MAKING EQUIPMENT.

33 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE SECOND DEGREE IS A  
34 CLASS E FELONY.

35 S 165.24 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE FIRST DEGREE.

36 A PERSON IS GUILTY OF CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE  
37 FIRST DEGREE WHEN HE OR SHE:

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

43 2. WITHOUT THE AUTHORIZATION OF THE ISSUER OF THE ACCESS DEVICE KNOW-  
44 INGLY AND WITH INTENT TO DEFRAUD SOLICITS A PERSON FOR THE PURPOSE OF:

45 (A) OFFERING AN ACCESS DEVICE; OR

46 (B) SELLING INFORMATION REGARDING OR AN APPLICATION TO OBTAIN AN  
47 ACCESS DEVICE.

48 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE FIRST DEGREE IS A  
49 CLASS D FELONY.

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