

4273--B

2013-2014 Regular Sessions

I N A S S E M B L Y

February 1, 2013

Introduced by M. of A. CUSICK, TITONE, SCARBOROUGH, GUNTHER, MAGNARELLI, CRESPO, ZEBROWSKI, COLTON, WEPRIN -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, GIBSON, MAGEE, SIMANOWITZ -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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;
18 3. "UNAUTHORIZED ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
19 LOST, STOLEN, EXPIRED, REVOKED, CANCELED, OR OBTAINED WITH INTENT TO
20 DEFRAUD;

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

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

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

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

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

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

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

17 CRIMINAL PRACTICES WITH AN ACCESS DEVICE IN THE THIRD DEGREE IS A
18 CLASS A MISDEMEANOR.

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

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

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

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

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

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

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

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

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

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

42 (A) OFFERING AN ACCESS DEVICE; OR

43 (B) SELLING INFORMATION REGARDING OR AN APPLICATION TO OBTAIN AN
44 ACCESS DEVICE.

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

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