

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 1113

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike beginning with “Barkley” down through “Waldstreicher” and substitute “Aumann, Barkley, Barnes, Beitzel, Benson, Bronrott, Carter, DeBoy, Dumais, Eckardt, Elliott, Frank, Frick, George, Gutierrez, Howard, James, Jones, Kaiser, Kramer, Krebs, Kullen, Levy, McConkey, McDonough, Miller, Montgomery, Myers, Norman, Pena-Melnyk, Pendergrass, Ramirez, Robinson, Schuh, Schuler, Shank, Shewell, Smigiel, Sophocleus, Sossi, Stocksdales, Valderrama, Waldstreicher, and Wood”; strike beginning with “Felony” in line 2 down through “Adult -” in line 3 and substitute “Prohibitions, Evidence, and”; in line 4, after “of” insert “prohibiting the intentional, willful, and unauthorized copying, attempt to copy, possessing, or attempt to possess all or part of the contents of a computer database accessed in a certain manner; providing that certain penalties apply to a certain violation; authorizing in a criminal case or juvenile proceeding involving identity fraud the introduction of the affidavit of a lawful credit cardholder as substantive evidence that the credit card or credit card number of the credit cardholder was taken, used, or possessed without the authorization of the credit cardholder; prohibiting a person from knowingly, willfully, and with fraudulent intent to obtain a benefit, credit, good, service, or other thing of value using a re-encoder device or a skimming device in a certain manner for certain purposes; prohibiting a person from knowingly, willfully, and with fraudulent intent to possess, obtain, or help another person to possess or obtain a re-encoder device or a skimming device for certain unauthorized purposes;”; strike beginning with “providing” in line 10 down through “fraud,” in line 14; in line 15, after “terms,” insert “making stylistic changes;”; in the same line, strike “penalties for”; strike in their entirety lines 16 through 20, inclusive; in line 23, after “Section” insert “7-302(c), 8-214.1, and”; and in the same line, strike “(a) and (e)”.

(Over)

On page 2, after line 1, insert:

“BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 7-302(d)
Annotated Code of Maryland
(2002 Volume and 2007 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 4, insert:

“7–302.

(c) (1) A person may not intentionally, willfully, and without
authorization:

(I) access, attempt to access, cause to be accessed, or exceed the
person’s authorized access to all or part of a computer network, computer control
language, computer, computer software, computer system, computer [services]
SERVICE, or computer database; OR

(II) COPY, ATTEMPT TO COPY, POSSESS, OR ATTEMPT TO
POSSESS THE CONTENTS OF ALL OR PART OF A COMPUTER DATABASE
ACCESSED IN VIOLATION OF ITEM (I) OF THIS PARAGRAPH.

(2) A person may not commit an act prohibited by paragraph (1) of this
subsection with the intent to:

(i) cause the malfunction or interrupt the operation of all or
any part of a computer, computer network, computer control language, computer
software, computer system, computer [services] SERVICE, or computer data; or

(ii) alter, damage, or destroy all or any part of data or a computer program stored, maintained, or produced by a computer, computer network, computer software, computer system, computer [services] SERVICE, or computer database.

(3) A person may not intentionally, willfully, and without authorization:

(i) possess, identify, or attempt to identify a valid access code;
or

(ii) publicize or distribute a valid access code to an unauthorized person.

(d) (1) A person who violates subsection (c)(1) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

(2) A person who violates subsection (c)(2) or (3) of this section:

(i) if the aggregate amount of the loss is \$10,000 or more, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both; or

(ii) if the aggregate amount of the loss is less than \$10,000, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

8-214.1.

(Over)

(a) In a criminal case or juvenile proceeding involving a violation of § 8–204, § 8–205, § 8–206, § 8–207, § 8–208, § 8–209, § 8–210, or § 8–214 of this subtitle OR § 8–301 OF THIS TITLE, an affidavit sworn to by a lawful credit cardholder may be introduced as substantive evidence that the credit card or credit card number was taken, used, or possessed without the authorization of the credit cardholder.

(b) (1) At least 10 days before a proceeding in which the State intends to introduce into evidence an affidavit as provided under this section, the State shall provide written notice to the defendant that the State intends to:

(i) rely on the affidavit; and

(ii) introduce the affidavit into evidence at the proceeding.

(2) On written demand of a defendant filed at least 5 days before the proceeding described in subsection (a) of this section, the State shall require the presence of the affiant as a prosecution witness.”.

AMENDMENT NO. 3

On page 2, strike in their entirety lines 7 through 10, inclusive; in line 11, strike the brackets; in the same line, strike “(3)”; in line 13, strike the brackets; in the same line, strike “(4)”; strike lines 18 and 19 in their entirety and substitute:

“(4) “RE-ENCODER” MEANS AN ELECTRONIC DEVICE THAT PLACES ENCODED PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER FROM THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD ONTO THE MAGNETIC STRIP OR STRIPE OF A DIFFERENT CREDIT CARD OR ANY ELECTRONIC MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR.

(5) “SKIMMING DEVICE” MEANS A SCANNER, SKIMMER, READER, OR ANY OTHER ELECTRONIC DEVICE THAT IS USED TO ACCESS, READ, SCAN,

OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER ENCODED ON THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD.”;

after line 29, insert:

“(D) A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH FRAUDULENT INTENT TO OBTAIN A BENEFIT, CREDIT, GOOD, SERVICE, OR OTHER THING OF VALUE, USE:

(1) A RE-ENCODER TO PLACE INFORMATION ENCODED ON THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD ONTO THE MAGNETIC STRIP OR STRIPE OF A DIFFERENT CREDIT CARD OR USE ANY OTHER ELECTRONIC MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR WITHOUT THE CONSENT OF THE INDIVIDUAL AUTHORIZED TO USE THE CREDIT CARD FROM WHICH THE PERSONAL IDENTIFYING INFORMATION OR PAYMENT DEVICE NUMBER IS BEING RE-ENCODED; OR

(2) A SKIMMING DEVICE TO ACCESS, READ, SCAN, OBTAIN, MEMORIZE, OR STORE PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER ON THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD WITHOUT THE CONSENT OF THE INDIVIDUAL AUTHORIZED TO USE THE CREDIT CARD.

(E) A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH FRAUDULENT INTENT POSSESS, OBTAIN, OR HELP ANOTHER POSSESS OR OBTAIN A RE-ENCODER DEVICE OR A SKIMMING DEVICE FOR THE UNAUTHORIZED USE, SALE, OR TRANSFER OF PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER.”;

(Over)

and in line 30, strike “(d)” and substitute “(F)”.

AMENDMENT NO. 3

On page 3, in line 3, strike “(e)” and substitute “(G)”; in lines 4 and 9, in each instance, strike “(b) or (c)” and substitute “(B), (C), OR (D)”; in line 6, strike the second set of brackets; in the same line, strike “\$50,000”; strike beginning with the colon in line 11 down through “**VIOLATION,**” in line 12; strike beginning with the semicolon in line 13 down through “**BOTH**” in line 15; in line 20, strike the second set of brackets; in the same line, strike “\$50,000”; strike in their entirety lines 21 through 28, inclusive; in line 29, strike the brackets; in the same line, strike “**(6)**”; in the same line, strike “or (d)” and substitute “, (E), OR (F)”; strike beginning with the colon in line 30 down through “**VIOLATION,**” in line 31; strike beginning with the semicolon in line 32 down through “**BOTH**” in line 34.

AMENDMENT NO. 4

On page 4, in line 1, strike the brackets; in the same line, strike “**(7)**”; after line 5, insert:

“[(f)](H) A person described in subsection [(e)(2)](G)(2) or (4) of this section is subject to § 5–106(b) of the Courts Article.

[(g)](I) In addition to restitution under Title 11, Subtitle 6 of the Criminal Procedure Article, a court may order a person who pleads guilty or nolo contendere or who is found guilty under this section to make restitution to the victim for reasonable costs, including reasonable attorney’s fees, incurred:

(1) for clearing the victim’s credit history or credit rating; and

(2) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the violation.”;

in line 6, strike “(h)” and substitute “(J)”; and after line 8, insert:

“(i)(K) Notwithstanding any other law, the Department of State Police may initiate investigations and enforce this section throughout the State without regard to any limitation otherwise applicable to that department’s activities in a municipal corporation or other political subdivision.

“(j)(L) (1) Notwithstanding any other law, a law enforcement officer of the Maryland Transportation Authority Police, the Maryland Port Administration Police, the park police of the Maryland–National Capital Park and Planning Commission, or a municipal corporation or county may investigate violations of this section throughout the State without any limitation as to jurisdiction and to the same extent as a law enforcement officer of the Department of State Police.

(2) The authority granted in paragraph (1) of this subsection may be exercised only in accordance with regulations that the Department of State Police adopts.

(3) The regulations are not subject to Title 10, Subtitle 1 of the State Government Article.

(4) The authority granted in paragraph (1) of this subsection may be exercised only if an act related to the crime was committed in the investigating law enforcement agency’s jurisdiction or if the complaining witness resides in the investigating law enforcement agency’s jurisdiction.

“(k)(M) If action is taken under the authority granted in subsection (j)(L) of this section, notification of an investigation:

(1) in a municipal corporation, shall be made to the chief of police or designee of the chief of police;

(Over)

(2) in a county that has a county police department, shall be made to the chief of police or designee of the chief of police;

(3) in a county without a police department, shall be made to the sheriff or designee of the sheriff;

(4) in Baltimore City, shall be made to the Police Commissioner or the Police Commissioner's designee;

(5) on property owned, leased, or operated by or under the control of the Maryland Transportation Authority, the Maryland Aviation Administration, or the Maryland Port Administration, shall be made to the respective chief of police or the chief's designee; and

(6) on property owned, leased, or operated by or under the control of the Maryland-National Capital Park and Planning Commission, to the chief of police of the Maryland-National Capital Park and Planning Commission for the county in which the property is located.

[(1)](N) When acting under the authority granted in subsection [(i)](K) or [(j)](L) of this section, a law enforcement officer:

(1) in addition to any other immunities and exemptions to which the officer may be entitled, has the immunities from liability and exemptions accorded to a law enforcement officer of the Department of State Police; but

(2) remains an employee of the officer's employing agency.

[(m)](O) (1) A State's Attorney or the Attorney General may investigate and prosecute a violation of this section or a violation of any crime based on the act establishing a violation of this section.

(2) If the Attorney General exercises authority under paragraph (1) of this subsection, the Attorney General has all the powers and duties of a State's Attorney, including the use of a grand jury in any county or Baltimore City, to investigate and prosecute the violation.

~~[(n)]~~(P) Notwithstanding any other provision of law, the prosecution of a violation of this section or for a violation of any crime based on the act establishing a violation of this section may be commenced in any county in which:

- (1) an element of the crime occurred; or
- (2) the victim resides.”.