

HOUSE BILL 1113

E1

8lr1089
CF SB 60

By: Delegates Lee, McComas, and Niemann (Task Force to Study Identity Theft) and Delegates ~~Barkley, Barnes, Benson, Bronrott, DeBoy, Dumais, Frick, Gutierrez, Howard, James, Jones, Kaiser, Kramer, Krebs, Kullen, Levy, Montgomery, Pena-Melnyk, Pendergrass, Ramirez, Schuh, Schuler, Shank, Smigiel, Stocksdale, Valderrama, and Waldstreicher~~ 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, Stocksdale, Valderrama, Waldstreicher, and Wood

Introduced and read first time: February 7, 2008

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2008

CHAPTER _____

1 AN ACT concerning

2 **Identity Fraud – ~~Felony or Violations Involving Repeat Offender, Fiduciary,~~**
3 **~~or Vulnerable Adult –~~ Prohibitions, Evidence, and Penalties**

4 FOR the purpose of prohibiting the intentional, willful, and unauthorized copying,
5 attempt to copy, possessing, or attempt to possess all or part of the contents of a
6 computer database accessed in a certain manner; providing that certain
7 penalties apply to a certain violation; authorizing in a criminal case or juvenile
8 proceeding involving identity fraud the introduction of the affidavit of a lawful
9 credit cardholder as substantive evidence that the credit card or credit card
10 number of the credit cardholder was taken, used, or possessed without the
11 authorization of the credit cardholder; prohibiting a person from knowingly,
12 willfully, and with fraudulent intent to obtain a benefit, credit, good, service, or
13 other thing of value using a re-encoder device or a skimming device in a certain
14 manner for certain purposes; prohibiting a person from knowingly, willfully,
15 and with fraudulent intent to possess, obtain, or help another person to possess

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



or obtain a re-encoder device or a skimming device for certain unauthorized purposes; increasing the penalty for a person who commits identity fraud where the benefit, credit, good, service, or other thing of value that is the subject of the offense has a value of \$500 or greater; increasing the penalty for a person who commits identity fraud under circumstances that reasonably indicate that the person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without that individual's consent; ~~providing an enhanced penalty for a person who commits identity fraud while serving as a fiduciary for the victim; providing an enhanced penalty for a person who commits identity fraud in circumstances in which the victim is a vulnerable adult; providing an enhanced penalty for a person convicted of the crime of identity fraud who has been convicted previously of identity fraud;~~ defining certain terms; making stylistic changes; and generally relating to ~~penalties for~~ identity fraud.

~~BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 8-301(b), (c), (d), and (h)
Annotated Code of Maryland
(2002 Volume and 2007 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 7-302(c), 8-214.1, and 8-301(a) and (e)
Annotated Code of Maryland
(2002 Volume and 2007 Supplement)

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

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Law

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

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

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

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

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

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

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

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

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

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

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

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

29 8-214.1.

30 (a) In a criminal case or juvenile proceeding involving a violation of § 8-204,
31 § 8-205, § 8-206, § 8-207, § 8-208, § 8-209, § 8-210, or § 8-214 of this subtitle OR §
32 8-301 OF THIS TITLE, an affidavit sworn to by a lawful credit cardholder may be
33 introduced as substantive evidence that the credit card or credit card number was
34 taken, used, or possessed without the authorization of the credit cardholder.

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

4 (i) rely on the affidavit; and

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

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

9 8-301.

10 (a) (1) In this section the following words have the meanings indicated.

11 ~~(2) “FIDUCIARY” MEANS A PERSONAL REPRESENTATIVE,~~
12 ~~TRUSTEE, AGENT ACTING UNDER A POWER OF ATTORNEY, OR OTHER PERSON~~
13 ~~AUTHORIZED TO ACT IN A POSITION OF TRUST WITH RESPECT TO THE~~
14 ~~PROPERTY OF ANOTHER PERSON.~~

15 ~~[(2)] (3)~~ “Payment device number” has the meaning stated in § 8-213
16 of this title.

17 ~~[(3)] (4)~~ “Personal identifying information” includes a name, address,
18 telephone number, driver’s license number, Social Security number, place of
19 employment, employee identification number, mother’s maiden name, bank or other
20 financial institution account number, date of birth, personal identification number,
21 credit card number, or other payment device number.

22 ~~(5) “VULNERABLE ADULT” HAS THE MEANING STATED IN § 3-604~~
23 ~~OF THIS ARTICLE.~~

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

29 (5) “SKIMMING DEVICE” MEANS A SCANNER, SKIMMER, READER,
30 OR ANY OTHER ELECTRONIC DEVICE THAT IS USED TO ACCESS, READ, SCAN,
31 OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, PERSONAL
32 IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER ENCODED ON THE
33 MAGNETIC STRIP OR STRIPE OF A CREDIT CARD.

(b) A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of the individual.

(c) A person may not knowingly and willfully assume the identity of another:

(1) to avoid identification, apprehension, or prosecution for a crime; or

(2) with fraudulent intent to:

(i) get a benefit, credit, good, service, or other thing of value; or

(ii) avoid the payment of debt or other legal obligation.

(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.

~~(d)~~ **(F)** A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any other action to otherwise induce another person to provide personal identifying information or a payment device number.

~~(e)~~ (G) (1) A person who violates this section where the benefit, credit, good, service, or other thing of value that is the subject of subsection ~~(b) or (c)~~ (B), (C), OR (D) of this section has a value of \$500 or greater is guilty of a felony and on conviction is subject to imprisonment not exceeding [5] **15** years or a fine not exceeding ~~[\$25,000] \$50,000~~ or both.

(2) A person who violates this section where the benefit, credit, good, service, or other thing of value that is the subject of subsection ~~(b) or (c)~~ (B), (C), OR (D) of this section has a value of less than \$500 is guilty of a misdemeanor and on conviction is subject to:

~~(I) FOR A FIRST VIOLATION,~~ imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both; ~~OR~~

~~(H) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.~~

(3) A person who violates this section under circumstances that reasonably indicate that the person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without that individual's consent is guilty of a felony and on conviction is subject to imprisonment not exceeding [5] **15** years or a fine not exceeding ~~[\$25,000] \$50,000~~ or both.

~~(4) A PERSON WHO VIOLATES THIS SECTION WHILE SERVING AS A FIDUCIARY FOR THE VICTIM IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.~~

~~(5) A PERSON WHO VIOLATES THIS SECTION IN CIRCUMSTANCES IN WHICH THE VICTIM IS A VULNERABLE ADULT IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.~~

~~[(4)]~~ (6) A person who violates subsection (c)(1) ~~or (d)~~, (E), OR (F) of this section is guilty of a misdemeanor and on conviction is subject to:

~~(I) FOR A FIRST VIOLATION,~~ imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both; ~~OR~~

~~(H) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT EXCEEDING 15 YEARS OR A FINE NOT EXCEEDING \$50,000 OR BOTH.~~

~~[(5)]~~ (7) When the violation of this section is pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one violation and the value of the benefit, credit, good, service, or

1 other thing of value may be aggregated in determining whether the violation is a
2 felony or misdemeanor.

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

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

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

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

13 ~~(h)~~ (J) A sentence under this section may be imposed separate from and
14 consecutive to or concurrent with a sentence for any crime based on the act or acts
15 establishing the violation of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) an element of the crime occurred; or

1 (2) the victim resides.

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2008.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.