

SENATE BILL 60

E1

(8lr1088)

ENROLLED BILL

—Judicial Proceedings/Judiciary—

Introduced by **Senators Kelley and Jones (Task Force to Study Identity Theft)** and ~~Senators Britt, Colburn, Conway, Currie, Della, Edwards, Exum, Forehand, Garagiola, Glassman, Greenip, Jacobs, Kasemeyer, King, Kramer, Lenett, McFadden, Middleton, Miller, Mooney, Munson, Muse, Astle, Britt, Colburn, Conway, Currie, Della, Dyson, Edwards, Exum, Forehand, Garagiola, Gladden, Glassman, Greenip, Jacobs, Kasemeyer, King, Kittleman, Klausmeier, Kramer, Lenett, McFadden, Middleton, Miller, Mooney, Munson, Muse, Pinsky, Pugh, Raskin, Rosapepe, Stone, and Zirkin~~

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

President.

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

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.

Italics indicate opposite chamber / conference committee amendments.



1 proceeding involving identity fraud the introduction of the affidavit of a lawful
 2 credit cardholder as substantive evidence that the credit card or credit card
 3 number of the credit cardholder was taken, used, or possessed without the
 4 authorization of the credit cardholder; prohibiting a person from knowingly,
 5 willfully, and with fraudulent intent to obtain a benefit, credit, good, service, or
 6 other thing of value using a re-encoder device or a skimming device in a certain
 7 manner for certain purposes; prohibiting a person from knowingly, willfully, and
 8 with fraudulent intent to possess, obtain, or help another person to possess or
 9 obtain a re-encoder device or a skimming device for certain unauthorized
 10 purposes; increasing the penalty for a person who commits identity fraud where
 11 the benefit, credit, good, service, or other thing of value that is the subject of the
 12 offense has a value of \$500 or greater; increasing the penalty for a person who
 13 commits identity fraud under circumstances that reasonably indicate that the
 14 person's intent was to manufacture, distribute, or dispense another individual's
 15 personal identifying information without that individual's consent; ~~providing an~~
 16 ~~enhanced penalty for a person who commits identity fraud while serving as a~~
 17 ~~fiduciary for the victim; providing an enhanced penalty for a person who~~
 18 ~~commits identity fraud in circumstances in which the victim is a vulnerable~~
 19 ~~adult; providing an enhanced penalty for a person convicted of the crime of~~
 20 ~~identity fraud who has been convicted previously of identity fraud; defining~~
 21 certains terms; making stylistic changes; and generally relating to ~~penalties for~~
 22 identity fraud.

23 ~~BY repealing and reenacting, without amendments,~~
 24 ~~Article – Criminal Law~~
 25 ~~Section 8-301(b), (c), (d), and (h)~~
 26 ~~Annotated Code of Maryland~~
 27 ~~(2002 Volume and 2007 Supplement)~~

28 BY repealing and reenacting, with amendments,
 29 Article – Criminal Law
 30 Section 7-302(c), 8-214.1, and 8-301(a) and (e)
 31 Annotated Code of Maryland
 32 (2002 Volume and 2007 Supplement)

33 BY repealing and reenacting, without amendments,
 34 Article – Criminal Law
 35 Section 7-302(d)
 36 Annotated Code of Maryland
 37 (2002 Volume and 2007 Supplement)

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

40 **Article – Criminal Law**

41 7-302.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 8-214.1.

2 (a) In a criminal case or juvenile proceeding involving a violation of § 8-204,
 3 § 8-205, § 8-206, § 8-207, § 8-208, § 8-209, § 8-210, or § 8-214 of this subtitle OR §
 4 8-301 OF THIS TITLE, an affidavit sworn to by a lawful credit cardholder may be
 5 introduced as substantive evidence that the credit card or credit card number was
 6 taken, used, or possessed without the authorization of the credit cardholder.

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

10 (i) rely on the affidavit; and

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

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

15 8-301.

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

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

21 ~~[(2)] (3)~~ “Payment device number” has the meaning stated in § 8-213
 22 of this title.

23 ~~[(3)] (4)~~ “Personal identifying information” includes a name, address,
 24 telephone number, driver’s license number, Social Security number, place of
 25 employment, employee identification number, mother’s maiden name, bank or other
 26 financial institution account number, date of birth, personal identification number,
 27 credit card number, or other payment device number.

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

30 (4) “RE-ENCODER” MEANS AN ELECTRONIC DEVICE THAT PLACES
 31 ENCODED PERSONAL IDENTIFYING INFORMATION OR A PAYMENT DEVICE
 32 NUMBER FROM THE MAGNETIC STRIP OR STRIPE OF A CREDIT CARD ONTO THE

1 MAGNETIC STRIP OR STRIPE OF A DIFFERENT CREDIT CARD OR ANY ELECTRONIC
2 MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR.

3 (5) "SKIMMING DEVICE" MEANS A SCANNER, SKIMMER, READER,
4 OR ANY OTHER ELECTRONIC DEVICE THAT IS USED TO ACCESS, READ, SCAN,
5 OBTAIN, MEMORIZE, OR STORE, TEMPORARILY OR PERMANENTLY, PERSONAL
6 IDENTIFYING INFORMATION OR A PAYMENT DEVICE NUMBER ENCODED ON THE
7 MAGNETIC STRIP OR STRIPE OF A CREDIT CARD.

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

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

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

15 (2) with fraudulent intent to:

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

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

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

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

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

33 (E) A PERSON MAY NOT KNOWINGLY, WILLFULLY, AND WITH
34 FRAUDULENT INTENT POSSESS, OBTAIN, OR HELP ANOTHER POSSESS OR

1 OBTAIN A RE-ENCODER DEVICE OR A SKIMMING DEVICE FOR THE
 2 UNAUTHORIZED USE, SALE, OR TRANSFER OF PERSONAL IDENTIFYING
 3 INFORMATION OR A PAYMENT DEVICE NUMBER.

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

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

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

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

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

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

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

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

34 ~~(4)~~ (6) A person who violates subsection (c)(1) ~~or (d)~~, (E), OR (F) of
 35 this section is guilty of a misdemeanor and on conviction is subject to:

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

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

5 ~~[(5)] (7)~~ When the violation of this section is pursuant to one scheme
6 or continuing course of conduct, whether from the same or several sources, the conduct
7 may be considered as one violation and the value of the benefit, credit, good, service, or
8 other thing of value may be aggregated in determining whether the violation is a
9 felony or misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (2) the victim resides.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.