

# SENATE BILL 220

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CF HB 564

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By: **Senators Kelley and Jones (Task Force to Study Identity Theft) and Senators Colburn, Dyson, Gladden, Klausmeier, Middleton, ~~and Stone~~ Stone, and Forehand**

Introduced and read first time: January 22, 2008

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 27, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Identity Fraud – Prohibition of Unauthorized Skimming and Re-Encoding**  
3 **Devices**

4 FOR the purpose of prohibiting a person from knowingly, willfully, and with  
5 fraudulent intent to obtain a benefit, credit, good, service, or other thing of  
6 value by using a re-encoder device or a skimming device in a certain manner for  
7 certain purposes; prohibiting a person from knowingly, willfully, and with  
8 fraudulent intent to possess, obtain, or help another person to possess or obtain  
9 a re-encoder device or a skimming device for certain unauthorized purposes;  
10 defining certain terms; and generally relating to the unauthorized use of certain  
11 devices.

12 BY repealing and reenacting, with amendments,  
13 Article – Criminal Law  
14 Section 8–301  
15 Annotated Code of Maryland  
16 (2002 Volume and 2007 Supplement)

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

19 **Article – Criminal Law**

20 8–301.

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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.



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

2 (2) "Payment device number" has the meaning stated in § 8-213 of  
3 this title.

4 (3) "Personal identifying information" includes a name, address,  
5 telephone number, driver's license number, Social Security number, place of  
6 employment, employee identification number, mother's maiden name, bank or other  
7 financial institution account number, date of birth, personal identification number,  
8 credit card number, or other payment device number.

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

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

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

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

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

26 (2) with fraudulent intent to:

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

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

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

32 (1) **A RE-ENCODER TO PLACE INFORMATION ENCODED ON THE**  
33 **MAGNETIC STRIP OR STRIPE OF A CREDIT CARD ONTO THE MAGNETIC STRIP OR**

1 STRIPE OF A DIFFERENT CREDIT CARD OR USE ANY OTHER ELECTRONIC  
2 MEDIUM THAT ALLOWS SUCH A TRANSACTION TO OCCUR WITHOUT THE  
3 CONSENT OF THE INDIVIDUAL AUTHORIZED TO USE THE CREDIT CARD FROM  
4 WHICH THE PERSONAL IDENTIFYING INFORMATION OR PAYMENT DEVICE  
5 NUMBER IS BEING RE-ENCODED; OR

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

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

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

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

24 (2) A person who violates this section where the benefit, credit, good,  
25 service, or other thing of value that is the subject of subsection (b) [or], (c), OR (D) of  
26 this section has a value of less than \$500 is guilty of a misdemeanor and on conviction  
27 is subject to imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or  
28 both.

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

34 (4) A person who violates subsection (c)(1) [or (d)], (E), OR (F) of this  
35 section is guilty of a misdemeanor and on conviction is subject to imprisonment not  
36 exceeding 18 months or a fine not exceeding \$5,000 or both.

37 (5) When the violation of this section is pursuant to one scheme or  
38 continuing course of conduct, whether from the same or several sources, the conduct

1 may be considered as one violation and the value of the benefit, credit, good, service, or  
2 other thing of value may be aggregated in determining whether the violation is a  
3 felony or misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2                   (2)    the victim resides.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.