

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1100
Senate Judiciary I Committee Substitute Adopted 8/13/02
Senate Judiciary I Committee Substitute #2 Adopted 9/24/02

Short Title: Financial Fraud Protection Enhancement.

(Public)

Sponsors:

Referred to:

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CONSUMERS AND FINANCIAL INSTITUTIONS
GREATER PROTECTION FROM FRAUDULENT FINANCIAL
TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-119 reads as rewritten:

"§ 14-119. Forgery of notes, checks, and other ~~securities~~securities; counterfeiting of instruments.

(a) If a person makes, forges, or counterfeits:

(1) ~~Any bill, note, warrant, check, order, or similar instrument in imitation of, or purporting to be, a bill, note, warrant, check, order, or similar instrument of or on any financial institution or governmental unit, or any cashier or officer of such an institution or unit; or~~

(2) ~~Any security purporting to be issued by, or on behalf of, any corporation, financial institution, or governmental unit,~~

~~with the intent to injure or defraud any person, corporation, financial institution, or governmental unit, he shall be punished as a Class I felon. It is unlawful for any person to forge or counterfeit any instrument, or possess any counterfeit instrument, with the intent to injure or defraud any person, financial institution, or governmental unit. Any person in violation of this subsection is guilty of a Class I felony.~~

(b) For purposes of this section:

(1) ~~"Financial institution" means any mutual fund, money market fund, credit union, savings and loan association, bank, or similar institution.~~

(2) ~~"Governmental unit" means the United States, any United States territory, any state of the United States, or any political subdivision of any state.~~

1 (b) Any person who transports or possesses five or more counterfeit instruments
2 with the intent to injure or defraud any person, financial institution, or governmental
3 unit is guilty of a Class G felony.

4 (c) As used in this Article, the term:

5 (1) "Counterfeit" means to manufacture, copy, reproduce, or forge an
6 instrument that purports to be genuine, but is not, because it has been
7 falsely copied, reproduced, forged, manufactured, embossed, encoded,
8 duplicated, or altered.

9 (2) "Financial institution" means any mutual fund, money market fund,
10 credit union, savings and loan association, bank, or similar institution,
11 either foreign or domestic.

12 (3) "Governmental unit" means the United States, any United States
13 territory, any state of the United States, any political subdivision,
14 agency, or instrumentality of any state, or any foreign jurisdiction.

15 (4) "Instrument" means (i) any currency, bill, note, warrant, check, order,
16 or similar instrument of or on any financial institution or governmental
17 unit, or any cashier or officer of the institution or unit; or (ii) any
18 security issued by, or on behalf of, any corporation, financial
19 institution, or governmental unit."

20 **SECTION 2.** G.S. 14-113.8 is amended by adding a new subdivision to

21 read:

22 "(10) Scanning Device. – "Scanning device" means a scanner, reader, or any
23 other device that is used to access, read, scan, obtain, memorize, or
24 store, temporarily or permanently, information encoded on a financial
25 transaction card."

26 **SECTION 3.** G.S. 14-113.9(a) reads as rewritten:

27 (a) A person is guilty of financial transaction card theft ~~when~~ when the person
28 does any of the following:

29 (1) ~~He takes,~~ Takes, obtains or withholds a financial transaction card from
30 the person, possession, custody or control of another without the
31 cardholder's consent and with the intent to use it; or who, with
32 knowledge that it has been so taken, obtained or withheld, receives the
33 financial transaction card with intent to use it or to sell it, or to transfer
34 it to a person other than the issuer or the ~~cardholder;~~ or cardholder.

35 (2) ~~He receives~~ Receives a financial transaction card that he knows to
36 have been lost, mislaid, or delivered under a mistake as to the identity
37 or address of the cardholder, and who retains possession with intent to
38 use it or to sell it or to transfer it to a person other than the issuer or the
39 ~~cardholder;~~ or cardholder.

40 (3) ~~He, not~~ Not being the issuer, sells a financial transaction card or buys a
41 financial transaction card from a person other than the ~~issuer;~~ or issuer.

42 (4) ~~He, not~~ Not being the issuer, during any 12-month period, receives
43 financial transaction cards issued in the names of two or more persons
44 which he has reason to know were taken or retained under

1 circumstances which constitute a violation of G.S. 14-113.13(a)(3) and
2 subdivision (3) of subsection (a) of this section.

- 3 (5) With the intent to defraud any person, either (i) uses a scanning device
4 to access, read, obtain, memorize, or store, temporarily or
5 permanently, information encoded on another person's financial
6 transaction card, or (ii) receives the encoded information from another
7 person's financial transaction card."

8 **SECTION 4.** G.S. 14-113.20 reads as rewritten:

9 **"§ 14-113.20. Financial identity fraud.**

10 (a) A person who knowingly obtains, possesses, or uses ~~personal~~ identifying
11 information of another ~~person-person, living or dead, without the consent of that other~~
12 ~~person,~~ with the intent to fraudulently represent that the person is the other person for
13 the purposes of making financial or credit transactions in the other person's ~~name-name,~~
14 to obtain anything of value, benefit, or advantage, or for the purpose of avoiding legal
15 consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

16 (b) The term "identifying information" as used in this ~~section~~ Article includes the
17 following:

- 18 (1) Social security numbers.
19 (2) Drivers license numbers.
20 (3) Checking account numbers.
21 (4) Savings account numbers.
22 (5) Credit card numbers.
23 (6) Debit card numbers.
24 (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
25 (8) Electronic identification numbers.
26 (9) Digital signatures.
27 (10) Any other numbers or information that can be used to access a person's
28 financial resources.
29 (11) Biometric data.
30 (12) Fingerprints.
31 (13) Passwords.
32 (14) Parent's legal surname prior to marriage.

33 (c) It shall not be a violation under this ~~section~~ Article for a person to do any of
34 the following:

- 35 (1) Lawfully obtain credit information in the course of a bona fide
36 consumer or commercial transaction.
37 (2) Lawfully exercise, in good faith, a security interest or a right of offset
38 by a creditor or financial institution.
39 (3) Lawfully comply, in good faith, with any warrant, court order, levy,
40 garnishment, attachment, or other judicial or administrative order,
41 decree, or directive, when any party is required to do so."

42 **SECTION 5.** Article 19C of Chapter 14 of the General Statutes is amended
43 by adding a new section to read:

44 **"§ 14-113.20A. Trafficking in stolen identities.**

1 (a) It is unlawful for a person to sell, transfer, or purchase the identifying
2 information of another person with the intent to commit financial identity fraud, or to
3 assist another person in committing financial identity fraud, as set forth in G.S.
4 14-113.20.

5 (b) A violation of this section is a felony punishable as provided in G.S.
6 14-113.22(a1)."

7 **SECTION 6.** G.S. 14-113.22(b) reads as rewritten:

8 "(b) Notwithstanding subsection (a) of this section, any person who commits an
9 act made unlawful by this Article may also be liable for damages under G.S.
10 1-539.2C.knowingly obtains, possesses, or uses personal identifying information of
11 another person without the consent of that other person, with the intent to fraudulently
12 represent that the person is the other person for the purposes of making financial or
13 credit transactions in the other person's name or for the purpose of avoiding legal
14 consequences, shall be liable to the other person for civil damages of up to five
15 thousand dollars (\$5,000) for each incident, or three times the amount of actual
16 damages, if any, sustained by the person damaged, whichever amount is greater. A
17 person damaged as set forth in this subsection may also institute a civil action to enjoin
18 and restrain future acts which would constitute a violation of this subsection. The court,
19 in an action brought under this subsection, may award reasonable attorneys' fees to the
20 prevailing party."

21 **SECTION 7.** Effective December 1, 2002, G.S. 14-113.22, as amended by
22 Section 6 of this act, reads as rewritten:

23 **"§ 14-113.22. Punishment and liability.**

24 (a) A violation of ~~G.S. 14-113.20~~G.S.14-113.20(a) is punishable as a Class ~~H-G~~
25 felony, except if it is punishable as a Class F felony if: (i) the victim suffers arrest,
26 detention, or conviction as a proximate result of the offense, or (ii) the person is in
27 possession of the identifying information pertaining to three or more separate persons.
28 then the violation is punishable as a Class G felony.

29 (a1) A violation of G.S. 14-113.20A is punishable as a Class E felony.

30 (a2) The court may order a person convicted under G.S. 14-113.20 or G.S.
31 14-113.20A to pay restitution pursuant to Article 81C of Chapter 15A of the General
32 Statutes for financial loss caused by the violation to any person. Financial loss included
33 under this subsection may include, in addition to actual losses, lost wages, attorneys'
34 fees, and other costs incurred by the victim in correcting his or her credit history or
35 credit rating, or in connection with any criminal, civil, or administrative proceeding
36 brought against the victim resulting from the misappropriation of the victim's
37 identifying information.

38 (b) Notwithstanding ~~subsection (a)~~subsection (a), (a1), or (a2) of this section,
39 any person who commits an act made unlawful by this Article may also be liable for
40 damages under G.S. 1-539.2C.

41 (c) In any case in which a person obtains identifying information of another
42 person in violation of ~~G.S. 14-113.20~~this Article, uses that information to commit a
43 crime in addition to a violation of ~~G.S. 14-113.20~~this Article, and is convicted of that

1 additional crime, the court records shall reflect that the person whose identity was
2 falsely used to commit the crime did not commit the crime."

3 **SECTION 8.** Article 43 of Chapter 1 of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 1-539.2C. Damages for identity fraud.**

6 (a) Any person whose property or person is injured by reason of an act made
7 unlawful by Article 19C of Chapter 14 of the General Statutes may sue for civil
8 damages. Damages may be in an amount of up to five thousand dollars (\$5,000) for
9 each incident, or three times the amount of actual damages, whichever amount is
10 greater. A person seeking damages as set forth in this section may also institute a civil
11 action to enjoin and restrain future acts that would constitute a violation of this section.
12 The court, in an action brought under this section, may award reasonable attorneys' fees
13 to the prevailing party.

14 (b) If the identifying information of a deceased person is used in a manner made
15 unlawful by Article 19C of Chapter 14 of the General Statutes, the deceased person's
16 estate shall have the right to recover damages pursuant to subsection (a) of this section.

17 (c) The venue for any civil action brought under this section shall be the county
18 in which the plaintiff resides or any county in which any part of the alleged violation of
19 G.S. 14-113.20 or G.S. 14-113.20A took place, regardless of whether the defendant was
20 ever actually present in that county. Civil actions under this section must be brought
21 within three years from the date on which the identity of the wrongdoer was discovered
22 or reasonably should have been discovered.

23 (d) Civil action under this section does not depend on whether or not a criminal
24 prosecution has been or will be instituted under Article 19C of Chapter 14 of the
25 General Statutes for the acts which are the subject of the civil action. The rights and
26 remedies provided by this section are in addition to any other rights and remedies
27 provided by law."

28 **SECTION 9.** This act become effective December 1, 2002, and applies to
29 offenses committed on or after that date.