

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2002-175
HOUSE BILL 1100

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.~~

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

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

- (1) "Counterfeit" means to manufacture, copy, reproduce, or forge an instrument that purports to be genuine, but is not, because it has been falsely copied, reproduced, forged, manufactured, embossed, encoded, duplicated, or altered.
- (2) "Financial institution" means any mutual fund, money market fund, credit union, savings and loan association, bank, or similar institution, either foreign or domestic.
- (3) "Governmental unit" means the United States, any United States territory, any state of the United States, any political subdivision, agency, or instrumentality of any state, or any foreign jurisdiction.
- (4) "Instrument" means (i) any currency, bill, note, warrant, check, order, or similar instrument of or on any financial institution or governmental unit, or any cashier or officer of the institution or unit; or (ii) any security issued by, or on behalf of, any corporation, financial institution, or governmental unit."

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

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

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

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

- (1) ~~He takes,~~Takes, obtains or withholds a financial transaction card from the person, possession, custody or control of another without the cardholder's consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained or withheld, receives the financial transaction card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the ~~cardholder;~~cardholder.
- (2) ~~He receives~~Receives a financial transaction card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the ~~cardholder;~~cardholder.
- (3) ~~He, not~~Not being the issuer, sells a financial transaction card or buys a financial transaction card from a person other than the ~~issuer;~~issuer.
- (4) ~~He, not~~Not being the issuer, during any 12-month period, receives financial transaction cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of G.S. 14-113.13(a)(3) and subdivision (3) of subsection (a) of this section.
- (5) With the intent to defraud any person, either (i) uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on another person's financial transaction card, or (ii) receives the encoded information from another person's financial transaction card."

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

"§ 14-113.20. Financial identity fraud.

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

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

- (1) Social security numbers.
- (2) Drivers license numbers.
- (3) Checking account numbers.
- (4) Savings account numbers.
- (5) Credit card numbers.
- (6) Debit card numbers.
- (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
- (8) Electronic identification numbers.
- (9) Digital signatures.
- (10) Any other numbers or information that can be used to access a person's financial resources.
- (11) Biometric data.
- (12) Fingerprints.

(13) Passwords.

(14) Parent's legal surname prior to marriage.

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

(1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.

(2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.

(3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so."

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

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

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

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

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

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

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

"§ 14-113.22. Punishment and liability.

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

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

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

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

(c) In any case in which a person obtains identifying information of another person in violation of ~~G.S. 14-113.20~~this Article, uses that information to commit a crime in addition to a violation of ~~G.S. 14-113.20~~this Article, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime."

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:44 p.m. this 31st day of October, 2002