

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1100
Senate Judiciary I Committee Substitute Adopted 8/13/02

Short Title: Financial Fraud Protection Enhancement.

(Public)

Sponsors:

Referred to:

April 11, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CONSUMERS AND FINANCIAL INSTITUTIONS
3 GREATER PROTECTION FROM FRAUDULENT FINANCIAL
4 TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 14-119. Forgery of notes, checks, and other ~~securities~~securities; counterfeiting**
8 **of instruments.**

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

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

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

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

21 (b) ~~For purposes of this section:~~

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

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

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

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

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

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

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

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

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

- 26 (1) ~~He takes;~~Takes, obtains or withholds a financial transaction card from
27 the person, possession, custody or control of another without the
28 cardholder's consent and with the intent to use it; or who, with
29 knowledge that it has been so taken, obtained or withheld, receives the
30 financial transaction card with intent to use it or to sell it, or to transfer
31 it to a person other than the issuer or the ~~cardholder;~~or cardholder.
32 (2) ~~He receives~~Receives a financial transaction card that he knows to
33 have been lost, mislaid, or delivered under a mistake as to the identity
34 or address of the cardholder, and who retains possession with intent to
35 use it or to sell it or to transfer it to a person other than the issuer or the
36 ~~cardholder;~~or cardholder.
37 (3) ~~He, not~~Not being the issuer, sells a financial transaction card or buys a
38 financial transaction card from a person other than the ~~issuer;~~or issuer.
39 (4) ~~He, not~~Not being the issuer, during any 12-month period, receives
40 financial transaction cards issued in the names of two or more persons
41 which he has reason to know were taken or retained under
42 circumstances which constitute a violation of G.S. 14-113.13(a)(3) and
43 subdivision (3) of subsection (a) of this section.

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

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

7 "**§ 14-113.20. Financial identity fraud.**

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

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

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

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

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

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

42 "**§ 14-113.20A. Trafficking in stolen identities.**

43 (a) It is unlawful for a person to sell, transfer, or purchase the identifying
44 information of another person with the intent to commit financial identity fraud, or to

1 assist another person in committing financial identity fraud, as set forth in G.S.
2 14-113.20.

3 (b) A violation of this section is a felony punishable as provided in G.S.
4 14-113.22(a1)."

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

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

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

21 "**§ 14-113.22. Punishment and liability.**

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

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

28 (a2) The court may order a person convicted under G.S. 14-113.20 or G.S. 14-
29 113.20A to pay restitution pursuant to Article 81C of Chapter 15A of the General
30 Statutes for financial loss caused by the violation to any person. Financial loss included
31 under this subsection may include, in addition to actual losses, lost wages, attorneys'
32 fees, and other costs incurred by the victim in correcting his or her credit history or
33 credit rating, or in connection with any criminal, civil, or administrative proceeding
34 brought against the victim resulting from the misappropriation of the victim's
35 identifying information.

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

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

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

3 **"§ 1-539.2C. Damages for identity fraud.**

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

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

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

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

26 **SECTION 9.** Sections 1 through 5, and Section 7 of this act become
27 effective December 1, 2002, and apply to offenses committed on or after that date. The
28 remainder of this act becomes effective October 1, 2002, and applies to acts committed
29 on or after that date.