Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 109

HOUSE BILL 2116

AN ACT

AMENDING SECTIONS 13-2001, 13-2003, 13-2008, 13-2101, 13-2110, 44-1373 AND 44-1373.01, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 9, ARTICLE 17, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-1373.02; RELATING TO IDENTITY THEFT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

STATE OF SENATE

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2001, Arizona Revised Statutes, is amended to read:

13-2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Access device" means any card, token, code, account number, electronic serial number, mobile or personal identification number, password, encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer or network access or any other thing of value or that can be used to initiate a transfer of any thing of value.

2. "Coin machine" means a coin box, turnstile, vending machine or other mechanical, electrical or electronic device or receptacle that is designed to receive a coin or bill of a certain denomination or a token made for such purpose and that, in return for the insertion or deposit of the coin, bill or token, automatically offers, provides, assists in providing or permits the acquisition or use of some property or service.

3. "Complete written instrument" means a written instrument that purports to be genuine and fully drawn with respect to every essential feature.

4. "ENTITY IDENTIFYING INFORMATION" INCLUDES, IF THE ENTITY IS A PERSON OTHER THAN A HUMAN BEING, ANY WRITTEN DOCUMENT OR ELECTRONIC DATA THAT DOES OR PURPORTS TO PROVIDE INFORMATION CONCERNING THE ENTITY'S NAME, ADDRESS, TELEPHONE NUMBER, EMPLOYER IDENTIFICATION NUMBER, ACCOUNT NUMBER OR ELECTRONIC SERIAL NUMBER, THE IDENTIFYING NUMBER OF THE ENTITY'S DEPOSITORY ACCOUNT OR ANY OTHER INFORMATION OR DATA THAT IS UNIQUE TO, ASSIGNED TO OR BELONGS TO THE ENTITY AND THAT IS INTENDED TO BE USED TO ACCESS SERVICES, FUNDS OR BENEFITS OF ANY KIND THAT THE ENTITY OWNS OR TO WHICH THE ENTITY IS ENTITLED.

~~4.~~ 5. "Falsely alters a written instrument" means to change a complete or incomplete written instrument, without the permission of anyone entitled to grant it, by means of counterfeiting, washing, erasure, obliteration, deletion, insertion of new matter, connecting together different parts of the whole of more than one genuine instrument or transposition of matter or in any other manner, so that the altered instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

~~5.~~ 6. "Falsely completes a written instrument" means to transform an incomplete written instrument into a complete one by adding, inserting or changing matter without the permission of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

~~6.~~ 7. "Falsely makes a written instrument" means to make or draw a complete or incomplete written instrument that purports to be an authentic

creation of its ostensible maker but that is not either because the ostensible maker is fictitious, or because, if real, the ostensible maker did not authorize the making or drawing of the written instrument.

~~7.~~ 8. "Forged instrument" means a written instrument that has been falsely made, completed or altered.

~~8.~~ 9. "Incomplete written instrument" means a written instrument that contains some matter by way of content or authentication but that requires additional matter to render it a complete written instrument.

~~9.~~ 10. "Personal identifying information" means ANY WRITTEN DOCUMENT OR ELECTRONIC DATA THAT DOES OR PURPORTS TO PROVIDE INFORMATION CONCERNING a name, SIGNATURE, electronic identifier or screen name, ELECTRONIC MAIL SIGNATURE, ADDRESS OR ACCOUNT, biometric identifier, driver or professional license number, access device, residence or mailing address, telephone number, employer, student or military identification number, social security number, TAX IDENTIFICATION NUMBER, EMPLOYMENT INFORMATION, CITIZENSHIP STATUS OR ALIEN IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, PHOTOGRAPH, birth date, savings, ~~or~~ checking OR OTHER FINANCIAL account number, credit card, charge card or debit card number, mother's maiden name, fingerprint~~,~~ OR retinal image, ~~or~~ the image of an iris OR DEOXYRIBONUCLEIC ACID OR GENETIC INFORMATION.

~~10.~~ 11. "Slug" means an object, article or device that by virtue of its size, its shape or any other quality is capable of being inserted, deposited or otherwise used in a coin machine as a fraudulent substitute for a genuine token, lawful coin or bill of the United States.

~~11.~~ 12. "Written instrument" means either:

(a) Any paper, document or other instrument that contains written or printed matter or its equivalent.

(b) Any token, stamp, seal, badge, trademark, graphical image, access device or other evidence or symbol of value, right, privilege or identification.

Sec. 2. Section 13-2003, Arizona Revised Statutes, is amended to read:

13-2003. <u>Criminal possession of a forgery device; classification</u>

A. A person commits criminal possession of a forgery device if the person either:

1. Makes or possesses with knowledge of its character AND WITH INTENT TO COMMIT FRAUD any plate, die, or other device, apparatus, equipment, software, access device, ~~or~~ article, MATERIAL, GOOD, PROPERTY OR SUPPLY specifically designed or adapted for use in forging written instruments.

2. Makes or possesses any device, apparatus, equipment, software, access device, ~~or~~ article, MATERIAL, GOOD, PROPERTY OR SUPPLY adaptable for use in forging written instruments with intent to use it or to aid or permit another to use it for purposes of forgery.

B. Subsection A, paragraph 1 does not apply to peace officers or prosecutors in the performance of their duties.

C. A violation of subsection A, paragraph 1 is a class 6 felony. A violation of subsection A, paragraph 2 is a class 5 felony.

Sec. 3. Section 13-2008, Arizona Revised Statutes, is amended to read:

13-2008. Taking identity of another person or entity; classification

A. A person commits taking the identity of another person OR ENTITY if the person knowingly takes, PURCHASES, MANUFACTURES, RECORDS, uses, sells, ~~or~~ transfers OR TRANSMITS any personal identifying information OR ENTITY IDENTIFYING INFORMATION of another person OR ENTITY, INCLUDING A REAL OR FICTITIOUS PERSON OR ENTITY, without the consent of that other person OR ENTITY, with the intent to obtain, use, sell or transfer the other person's OR ENTITY'S identity for any unlawful purpose or to cause loss to a person OR ENTITY whether or not the person OR ENTITY actually suffers any economic loss as a result of the offense.

B. ON THE REQUEST OF A PERSON OR ENTITY, a peace officer in any jurisdiction in which an element of the offense is committed, ~~or~~ a result of the offense occurs ~~may~~ OR THE PERSON OR ENTITY WHOSE IDENTITY IS TAKEN RESIDES OR IS LOCATED SHALL take a report. THE PEACE OFFICER MAY PROVIDE A COPY OF THE REPORT TO ANY OTHER LAW ENFORCEMENT AGENCY THAT IS LOCATED IN A JURISDICTION IN WHICH A VIOLATION OF THIS SECTION OCCURRED.

C. If a defendant is alleged to have committed multiple violations of this section within the same county, the prosecutor may file a complaint charging all of the violations and any related charges under other sections that have not been previously filed in ~~the justice of the peace~~ ANY precinct in which ~~the greatest number of violations are~~ A VIOLATION IS alleged to have occurred. IF A DEFENDANT IS ALLEGED TO HAVE COMMITTED MULTIPLE VIOLATIONS OF THIS SECTION WITHIN THE STATE, THE PROSECUTOR MAY FILE A COMPLAINT CHARGING ALL OF THE VIOLATIONS AND ANY RELATED CHARGES UNDER OTHER SECTIONS THAT HAVE NOT BEEN PREVIOUSLY FILED IN ANY COUNTY IN WHICH A VIOLATION IS ALLEGED TO HAVE OCCURRED.

D. Taking the identity of another person is a class 4 felony.

Sec. 4. Section 13-2101, Arizona Revised Statutes, is amended to read:

13-2101. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancelled or revoked credit card" means a credit card that is no longer valid because permission to use it has been suspended, revoked or terminated by the issuer of the credit card by written notice sent by certified or registered mail addressed to the person to whom the credit card was issued at the person's last known address. Proof that the written notice has been deposited as certified or registered matter in the United States mail addressed to the person to whom the credit card was issued at the person's last known address gives rise to an inference that the written notice has been given to the cardholder.

2. "Cardholder" means any person WHO IS EITHER:

(a) Named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer. ~~; or~~

(b) In possession of a credit card with the consent of the person to whom the credit card was issued.

3. "Credit card" means:

(a) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, that is issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, on a promise to pay in part or in full therefor at a future time, whether or not all or any part of the indebtedness that is represented by the promise to make deferred payment is secured or unsecured.

(b) A debit card, electronic benefit transfer card or other access instrument or device, other than a check that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services or anything else of value.

(c) A stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the card, instrument or device.

(d) The number that is assigned to the card, instrument or device described in subdivision (a), (b) or (c) of this paragraph even if the physical card, instrument or device is not used or presented.

4. "Expired credit card" means a credit card that is no longer valid because the term shown on the credit card has elapsed.

5. "Incomplete credit card" means a credit card on which part of the matter, other than the signature of the cardholder, which an issuer requires to appear before it can be used by a cardholder, has not been stamped, embossed, imprinted or written.

6. "Issuer" means any business organization, state agency or financial institution, or its duly authorized agent, that issues a credit card.

7. "Merchant" means a person who is authorized under a written contract with a participating party to furnish money, goods, services or anything else of value on presentation of a credit card by a cardholder.

8. "Participating party" means a business organization or financial institution that is obligated or permitted by contract to acquire by electronic transmission or other means from a merchant a sales slip or sales draft or instrument for the payment of money evidencing a credit card transaction and from whom an issuer is obligated or permitted by contract to acquire by electronic transmission or other means such sales slip, sales draft or instrument for the payment of money evidencing a credit card transaction.

9. "Receives" or "receiving" means acquiring possession or control of a credit card or accepting a credit card as security for a loan.

10. "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card.

11. "Scanning device" means a scanner, reader or other electronic device that is used to access, read, scan, obtain, memorize, TRANSMIT or store, temporarily or permanently, information that is encoded on a magnetic strip or stripe of a credit card.

Sec. 5. Section 13-2110, Arizona Revised Statutes, is amended to read:

13-2110. Unlawful possession or use of scanning device or reencoder; classification

A. It is unlawful for a person to use a scanning device or reencoder without the permission of the cardholder of the credit card from which the information is being scanned or reencoded and with the intent to defraud the cardholder, the issuer or a merchant.

B. IT IS UNLAWFUL FOR A PERSON TO INTENTIONALLY OR KNOWINGLY MAKE OR POSSESS WITH THE INTENT TO COMMIT FRAUD ANY DEVICE, APPARATUS, EQUIPMENT, SOFTWARE, ARTICLE, MATERIAL, GOOD, PROPERTY OR SUPPLY THAT IS SPECIFICALLY DESIGNED OR ADAPTED FOR USE AS OR IN A SCANNING DEVICE OR A REENCODER.

C. SUBSECTION B DOES NOT APPLY TO PEACE OFFICERS OR PROSECUTORS IN THE PERFORMANCE OF THEIR DUTIES.

~~B.~~ D. A person who violates this section is guilty of a class 6 felony.

Sec. 6. Section 44-1373, Arizona Revised Statutes, is amended to read:

44-1373. Restricted use of social security numbers; definition

A. Except as otherwise specifically provided by law, beginning on January 1, 2005, a person or entity shall not:

1. Intentionally communicate or otherwise make an individual's social security number available to the general public.

2. Print an individual's social security number on any card required for the individual to receive products or services provided by the person or entity.

3. Require the transmission of an individual's social security number over the internet unless the connection is secure or the social security number is encrypted.

4. Require the use of an individual's social security number to access an internet web site, unless a password or unique personal identification number or other authentication device is also required to access the site.

5. Print A NUMBER THAT THE PERSON OR ENTITY KNOWS TO BE an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. This paragraph does not prohibit the mailing of documents that include social security numbers sent as part of an application or enrollment process or to establish, amend or terminate an

account, contract or policy or to confirm the accuracy of the social security number. IN A TRANSACTION INVOLVING OR OTHERWISE RELATING TO AN INDIVIDUAL, IF A PERSON OR ENTITY RECEIVES A NUMBER FROM A THIRD PARTY, THE PERSON OR ENTITY HAS NO DUTY TO INQUIRE OR OTHERWISE DETERMINE IF THE NUMBER IS OR INCLUDES THAT INDIVIDUAL'S SOCIAL SECURITY NUMBER. THE PERSON OR ENTITY MAY PRINT THAT NUMBER ON MATERIALS THAT ARE MAILED TO THE INDIVIDUAL, UNLESS THE PERSON OR ENTITY THAT RECEIVED THE NUMBER HAS ACTUAL KNOWLEDGE THAT THE NUMBER IS OR INCLUDES THE INDIVIDUAL'S SOCIAL SECURITY NUMBER. THIS PARAGRAPH DOES NOT PROHIBIT THE MAILING TO THE INDIVIDUAL OF ANY COPY OR REPRODUCTION OF A DOCUMENT THAT INCLUDES A SOCIAL SECURITY NUMBER IF THE SOCIAL SECURITY NUMBER WAS INCLUDED ON THE ORIGINAL DOCUMENT BEFORE JANUARY 1, 2005.

B. Notwithstanding subsection A, a person or entity that before January 1, 2005 used an individual's social security number in a manner inconsistent with subsection A may continue using that individual's social security number in that manner on and after January 1, 2005 subject to the following conditions:

1. The use of the social security number must be continuous. If the use is stopped for any reason, subsection A applies.

2. Beginning in 2005, the person or entity must provide the individual with an annual written disclosure of the individual's right to stop the use of the social security number in a manner prohibited by subsection A.

3. If the individual requests in writing, the person or entity must stop using the social security number in a manner prohibited by subsection A within thirty days after receiving the request. No fee or charge is allowed for implementing the request, and the person or entity shall not deny services to the individual because of the request.

C. This section does not prohibit the collection, use or release of a social security number as required by the laws of this state or the United States or for internal verification or administrative purposes.

D. Beginning on January 1, 2005, this state or any political subdivision of this state shall not use an individual's social security number on state issued or political subdivision issued forms of identification.

E. For THE purposes of this section, "individual" means a resident of this state.

Sec. 7. Section 44-1373.01, Arizona Revised Statutes, is amended to read:

44-1373.01. <u>Exceptions</u>

This article does not apply to:

1. The use of social security numbers by an agency of this state or by a county, city, town or other political subdivision of this state, except that all agencies of this state and all political subdivisions must comply with section 44-1373, subsection A, paragraphs 2 and 5.

2. Documents or records that are recorded or required to be open to the public pursuant to the constitution or laws of this state or by court rule or order, and this article does not limit access to these documents or records.

3. AN INDIVIDUAL'S SOCIAL SECURITY NUMBER THAT IS PRINTED OR CAUSED TO BE PRINTED ON A DOCUMENT BY THE INDIVIDUAL.

Sec. 8. Title 44, chapter 9, article 17, Arizona Revised Statutes, is amended by adding section 44-1373.02, to read:

44-1373.02. Restricted use of sequential numbers; definition

A. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY LAW, BEGINNING ON JANUARY 1, 2009, A PERSON OR ENTITY SHALL NOT KNOWINGLY:

1. PRINT ANY SEQUENCE OF MORE THAN FIVE NUMBERS THAT ARE REASONABLY IDENTIFIABLE AS BEING PART OF AN INDIVIDUAL'S SOCIAL SECURITY NUMBER ON ANY CARD REQUIRED FOR THE INDIVIDUAL TO RECEIVE PRODUCTS OR SERVICES PROVIDED BY THE PERSON OR ENTITY.

2. PRINT ANY SEQUENCE OF MORE THAN FIVE NUMBERS THAT ARE REASONABLY IDENTIFIABLE AS BEING PART OF AN INDIVIDUAL'S SOCIAL SECURITY NUMBER ON ANY MATERIALS THAT ARE MAILED TO THE INDIVIDUAL, UNLESS STATE OR FEDERAL LAW REQUIRES THE SOCIAL SECURITY NUMBER TO BE ON THE DOCUMENT TO BE MAILED. THIS PARAGRAPH DOES NOT PROHIBIT THE MAILING OF DOCUMENTS TO THE INDIVIDUAL THAT INCLUDE SOCIAL SECURITY NUMBERS OR ANY SEQUENCE OF NUMBERS CONTAINED IN A SOCIAL SECURITY NUMBER THAT IS SENT AS PART OF AN APPLICATION OR ENROLLMENT PROCESS OR TO ESTABLISH, AMEND OR TERMINATE AN ACCOUNT, CONTRACT OR POLICY OR TO CONFIRM THE ACCURACY OF THE SOCIAL SECURITY NUMBER OR SEQUENCE OF NUMBERS.

B. FOR THE PURPOSES OF THIS SECTION, "INDIVIDUAL" MEANS A RESIDENT OF THIS STATE.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.

STATE OF SENATE

Passed the House February 10, 2004

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 7, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmain Billingsley
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2116

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 15, 2004,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

14th day of April, 2004,

at 10:24 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 19 day of

Apr. 1, 2004,

at 11:45 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 19 day of April, 2004,

at 4:30 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2116