



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB225
Sponsored by Senator Rapert**

Subtitle CONCERNING CREDIT OR DEBIT CARD “SKIMMING”; AND CREATING THE OFFENSE OF UNAUTHORIZED ACQUISITION OR TRANSFER OF FINANCIAL SIGHT ORDER OR PAYMENT CARD INFORMATION.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Title 5, Chapter 37, Subchapter 2, to add an additional section, § 5-37-229, Unauthorized acquisition or transfer of financial sight order or payment card information. Under the proposed bill, a person commits the offense of unauthorized acquisition or transfer of financial sight order or payment card information if, knowing he or she is not entitled to obtain or possess financial sight order or payment card information, the person (1) obtains the financial sight order or payment card information of another person by use of a skimmer; (2) transfers to another person financial sight order or payment card information obtained under (1); or (3) uses a re-encoder to place encoded financial sight order or payment card information on the computer chip or magnetic strip or stripe of a payment card of any electronic medium that allows an unauthorized transaction to occur. Under the proposed bill, transferring financial sight order or payment card information obtained by use of a skimmer to another person is a Class D felony. Otherwise, the penalty is a Class A misdemeanor.

Impact Information

Because this bill creates a new offense, the impact on the financial resources of the State cannot be determined. Some conduct covered under the proposed bill is potentially already criminalized under existing law, A.C.A. § 5-37-227, Financial Identity Fraud, or its inchoate offenses (attempt, conspiracy or solicitation). See attached for a reprint of this code section. The following data is provided for informational purposes.

The Arkansas Department of Correction reports that as of January 31, 2017, there are eighteen (18) inmates serving a sentence for A.C.A. § 5-37-227, Financial Identity Fraud, a Class C felony. There are another four (4) inmates serving a sentence for A.C.A. § 5-37-227, Financial Identity Fraud, where the victim is elderly or incompetent, a Class B Felony.

¹ This impact assessment was prepared (2/9/2017, 1:07 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

A.C.A. § 5-37-227. Financial identity fraud -- Nonfinancial identity fraud -- Restitution -- Venue.

(a) A person commits financial identity fraud if, with the purpose to:

(1) Create, obtain, or open a credit account, debit account, or other financial resource for his or her benefit or for the benefit of a third party, he or she accesses, obtains, records, or submits to a financial institution another person's identifying information for the purpose of opening or creating a credit account, debit account, or financial resource without the authorization of the person identified by the information; or

(2) Appropriate a financial resource of another person to his or her own use or to the use of a third party without the authorization of that other person, the actor:

- (A) Uses a scanning device; or
- (B) Uses a re-encoder.

(b) A person commits nonfinancial identity fraud if he or she knowingly obtains another person's identifying information without the other person's authorization and uses the identifying information for any unlawful purpose, including without limitation:

- (1) To avoid apprehension or criminal prosecution;
- (2) To harass another person; or
- (3) To obtain or to attempt to obtain a good, service, real property, or medical information of another person.

(c) As used in this section:

- (1) "Disabled person" means the same as defined in § 4-88-201;
- (2) "Elder person" means the same as defined in § 4-88-201;
- (3) "Financial institution" includes, but is not limited to, a credit card company, bank, or any other type of lending or credit company or institution;
- (4) "Financial resource" includes, but is not limited to, a credit card, debit card, or any other type of line of credit or loan;
- (5) "Identifying information" includes, but is not limited to, a:
 - (A) Social security number;
 - (B) Driver's license number;
 - (C) Checking account number;
 - (D) Savings account number;
 - (E) Credit card number;
 - (F) Debit card number;
 - (G) Personal identification number;
 - (H) Electronic identification number;
 - (I) Digital signature; or
 - (J) Any other number or information that can be used to access a person's financial resources;
- (6) "Re-encoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card; and
- (7) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(d) The provisions of this section do not apply to any person who obtains another person's driver's license or other form of identification for the sole purpose of misrepresenting the actor's age.

- (e) (1) Except as provided in subdivision (e)(2) of this section, financial identity fraud is a Class C felony.
- (2) Financial identify fraud is a Class B felony if the victim is an elder person or a disabled person.

- (f) (1) Except as provided in subdivision (f)(2) of this section, nonfinancial identity fraud is a Class D felony.
- (2) Nonfinancial identity fraud is a Class C felony if the victim is an elder person or a disabled person.

(g) (1) In addition to any penalty imposed under this section, a violation of this section constitutes an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) Any remedy, penalty, or authority granted to the Attorney General or another person under the Deceptive Trade Practices Act, § 4-88-101 et seq., is available to the Attorney General or that other person for the enforcement of this section.

(h) (1) (A) In addition to any penalty imposed under this section, upon conviction for financial identity fraud or nonfinancial identity fraud, a court may order the defendant to make restitution to any victim whose identifying information was appropriated or to the estate of the victim under § 5-4-205.

(B) In addition to any other authorized restitution, the restitution order described in subdivision (h)(1)(A) of this section may include without limitation restitution for the following financial losses:

(i) Any costs incurred by the victim in correcting the credit history or credit rating of the victim; and

(ii) Any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation resulting from the theft of the victim's identifying information, including lost wages and attorney's fees.

(C) The court also may order restitution for financial loss to any other person or entity that suffers a financial loss from a violation of subsection (a) or (b) of this section.

(2) A judgment entered under this section and § 5-4-205 does not bar a remedy available in a civil action to recover damages relating to financial identity fraud or nonfinancial identity fraud.

(i) Venue for any criminal prosecution under this section or any civil action to recover damages relating to financial identity fraud or nonfinancial identity fraud is proper in any of the following venues:

(1) In the county where the violation occurred;

(2) If the violation was committed in more than one (1) county, or if the elements of the offense were committed in more than one (1) county, then in any county where any violation occurred or where an element of the offense occurred;

(3) In the county where the victim resides; or

(4) In the county where property that was fraudulently used or attempted to be used was located at the time of the violation.

HISTORY: Acts 1999, No. 568, § 1; 1999, No. 1578, § 1; 2005, No. 280, § 1; 2005, No. 1018, § 1; 2007, No. 85, § 1; 2009, No. 748, § 20.