

1 State of Arkansas
2 88th General Assembly
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4

As Engrossed: H3/21/11 H3/30/11

A Bill

HOUSE BILL 1920

5 By: Representative Johnston
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For An Act To Be Entitled

8 AN ACT TO AMEND THE OFFENSES OF FORGERY AND
9 FRAUDULENT USE OF A CREDIT OR DEBIT CARD TO INCLUDE
10 ELECTRONIC CHECKS; AND FOR OTHER PURPOSES.
11

Subtitle

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14 TO AMEND THE OFFENSES OF FORGERY AND
15 FRAUDULENT USE OF A CREDIT OR DEBIT CARD
16 TO INCLUDE ELECTRONIC CHECKS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 5-37-101 is amended to read as follows:
22 5-37-101. Definitions.

23 As used in this chapter:

24 (1) "Coin machine" means a coin box, turnstile, vending machine,
25 receptacle, or other mechanical or electronic device designed to receive a
26 coin or bill of a certain denomination or token made for that purpose, and in
27 return for the insertion or deposit of the coin, bill, or token, to offer, to
28 provide, to assist in providing, or to permit the acquisition of property or
29 public or private service;

30 (2) "Credit card" means any instrument or device issued with or
31 without fee by an issuer for use in obtaining money, goods, services, or
32 anything else of value on credit;

33 (3)(A) "Deception" means:

34 (i) Creating or reinforcing a false impression, including
35 a false impression of fact, law, value, or intention or other state of mind
36 that the actor does not believe to be true;



1 (ii) Preventing another person from acquiring information
2 that would affect his or her judgment of a transaction;

3 (iii) Failing to correct a false impression that the actor
4 knows to be false and that the actor created or reinforced or that the actor
5 knows to be influencing another person to whom the actor stands in a
6 fiduciary or confidential relationship; or

7 (iv) Failing to disclose a lien, adverse claim, or other
8 legal impediment to the enjoyment of property that the actor transfers or
9 encumbers in consideration for the property or service obtained or in order
10 to continue to deprive another person of that other person's property,
11 whether the impediment is or is not valid or is or is not a matter of
12 official record; or

13 (v) Employing any other scheme to defraud.

14 (B) As to a person's intention to perform a promise, "deception"
15 shall not be inferred solely from the fact that the person did not
16 subsequently perform the promise.

17 (C) "Deception" does not include:

18 (i) Falsity as to a matter having no pecuniary
19 significance; or

20 (ii) Puffing by a statement unlikely to deceive an
21 ordinary person in the group addressed;

22 (4)(A) "Electronic check" means any transfer of funds that is
23 initiated through an electronic terminal, telephonic instrument, computer, or
24 magnetic tape so as to order, instruct, or authorize a financial institution
25 to debit or credit an account.

26 (B) "Electronic check" includes without limitation:

27 (i) Point-of-sale transfers;

28 (ii) Automated teller machine transactions; and

29 (iii) Direct deposits or withdrawals of funds.

30 ~~(4)(5)~~ "Enterprise" means any entity of one (1) or more persons,
31 corporate or otherwise, public or private, engaged in business, commercial,
32 professional, industrial, charitable, social, political, or governmental
33 activity;

34 ~~(5)(6)~~ "Financial institution" means any organization or enterprise
35 held out to the public as a place of deposit of funds or medium of savings;

36 ~~(6)(A)(7)(A)~~ "Slug" means an object that by virtue of its size, shape,

1 or any other quality is capable of being inserted, deposited, or otherwise
2 used in a coin machine as a substitute for a genuine coin, bill, or token.

3 (B) The value of a slug is deemed to be the value of the coin,
4 bill, or token for which it is capable of being substituted;

5 ~~(7)~~(8) "Utter" means to transfer, pass, or deliver or cause to be
6 transferred, passed, or delivered to another person any written instrument,
7 or to attempt to do so;

8 ~~(8)(A)~~(9)(A) "Value" means:

9 (i) The market value of the property or service at the
10 time and place of the offense;

11 (ii) If the market value of the property cannot be
12 ascertained, the cost of replacing the property within a reasonable time
13 after the offense; or

14 (iii) In the case of a written instrument, other than a
15 written instrument having a readily ascertainable market value:

16 (a) The amount due and collectible at maturity less
17 any part that has been satisfied if the written instrument constitutes
18 evidence of a debt; or

19 (b) The greatest amount of economic loss that the
20 owner might reasonably suffer by virtue of the loss of the written instrument
21 if the written instrument is other than evidence of a debt.

22 (B) If the actor gave consideration for or had a legal interest
23 in the property or service, the amount of the consideration or the value of
24 the interest shall be deducted from the value of the property or service to
25 determine value; and

26 ~~(9)(A)~~(10)(A) "Written instrument" means any paper, document, or other
27 material containing written or printed matter or its equivalent.

28 (B) "Written instrument" includes any money, token, stamp, seal,
29 badge, trademark, retail sales receipt, universal product code label or other
30 evidence or symbol of value, right, privilege, or identification that is
31 capable of being used to the advantage or disadvantage of any person.

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33 SECTION 2. Arkansas Code § 5-37-201(c), regarding the offense of
34 forgery in the second degree, is amended to read as follows:

35 (c) A person commits forgery in the second degree if he or she forges
36 a written instrument that is:

1 (1) A deed, will, codicil, contract, assignment, check,
2 commercial instrument, credit card, electronic check, or other written
3 instrument that does or may evidence, create, transfer, terminate, or
4 otherwise affect a legal right, interest, obligation, or status;

5 (2) A public record, or an instrument filed or required by law
6 to be filed, or an instrument legally entitled to be filed in a public office
7 or with a public servant; or

8 (3) A written instrument officially issued or created by a
9 public office, public servant, or government agent.

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11 SECTION 3. Arkansas Code § 5-37-207 is amended to read as follows:

12 5-37-207. Fraudulent use of a credit card, ~~or~~ debit card, or
13 electronic check.

14 (a) A person commits the offense of fraudulent use of a credit card,
15 ~~or~~ debit card, or electronic check if with purpose to defraud, he or she uses
16 a credit card, credit card account number, debit card, ~~or~~ debit card account
17 number, or electronic check to obtain property or a service ~~with knowledge~~
18 knowing that:

19 (1) The credit card, credit card account number, debit card, ~~or~~
20 debit card account number, or electronic check is stolen;

21 (2) The credit card, credit card account number, debit card, ~~or~~
22 debit card account number, or electronic check has been revoked or cancelled;

23 (3) The credit card, credit card account number, debit card, ~~or~~
24 debit card account number, or electronic check is forged; or

25 (4) For any other reason his or her use of the credit card,
26 credit card account number, debit card, ~~or~~ debit card account number, or
27 electronic check is unauthorized by either the issuer or the person to whom
28 the credit card, ~~or~~ debit card, or electronic check is issued.

29 (b) Fraudulent use of a credit card, ~~or~~ debit card, or electronic
30 check is a:

31 (1) Class C felony if the value of all moneys, goods, or
32 services obtained during any six-month period exceeds one hundred dollars
33 (\$100); or

34 (2) Class A misdemeanor if otherwise committed.

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36 /s/Johnston