

# Hall of the House of Representatives

87th General Assembly - Regular Session, 2009

## Amendment Form

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### Subtitle of House Bill No. 2086

"TO CREATE THE CRIME OF USE OF A FALSE IDENTITY TO OBTAIN EMPLOYMENT."

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### Amendment No. 1 to House Bill No. 2086.

Amend House Bill No. 2086 as originally introduced:

Page 1, delete lines 9 through 11 and substitute "AN ACT TO AMEND THE CRIME OF FINANCIAL IDENTITY FRAUD; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 14 and 15 and substitute "TO AMEND THE CRIME OF FINANCIAL IDENTITY FRAUD."

AND

Delete everything after the enacting clause and substitute:

"SECTION 1. Arkansas Code § 5-37-227 is amended to read as follows:

5-37-227. Financial identity fraud – Nonfinancial identity fraud – Restitution – Venue.

(a) A person commits financial identity fraud if, with the intent 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; or

(4) To obtain employment.

(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, including name or date of birth, that can be used to access a person's financial resources or cause a financial liability to be assessed to the other person;

(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) It is not a defense a prosecution under subdivision (b)(4) of this section that the prospective employer knew that the identity given was false or that the person whose identity was used falsely consented to its use by the person.

~~(g)~~(h)(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)~~(i)(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)~~(i)(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)~~(j) 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."

The Amendment was read \_\_\_\_\_  
By: Representative B. Wilkins  
BPG/BCS - 03-20-2009 12:00  
BPG320

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Chief Clerk