

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 85 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H2/1/07

A Bill

HOUSE BILL 1309

5 By: Representatives D. Creekmore, Bond, T. Bradford, E. Brown, J. Brown, Burkes, Cash, Cheatham,
6 Cook, Cooper, Cornwell, Davenport, Dunn, L. Evans, D. Evans, Everett, R. Green, Hardwick, Hawkins,
7 House, Hoyt, D. Hutchinson, Hyde, Lowery, M. Martin, Medley, Patterson, Pennartz, Pierce, J. Roebuck,
8 Rogers, Saunders, Stewart, Wagner, Walters, Webb, Wood
9 By: Senators R. Thompson, Broadway, Capps
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For An Act To Be Entitled

12 AN ACT TO ENHANCE THE PENALTY FOR FINANCIAL
13 IDENTITY FRAUD UNDER CERTAIN CIRCUMSTANCES; TO
14 CREATE THE OFFENSE OF NONFINANCIAL IDENTITY
15 FRAUD; TO AMEND ARKANSAS CODE § 5-37-227 TO
16 INCLUDE PROVISIONS CONCERNING RESTITUTION AND
17 VENUE; AND FOR OTHER PURPOSES.
18

Subtitle

19 TO ENHANCE THE PENALTY FOR FINANCIAL
20 IDENTITY FRAUD UNDER CERTAIN
21 CIRCUMSTANCES; TO CREATE THE OFFENSE OF
22 NONFINANCIAL IDENTITY FRAUD; AND TO
23 AMEND ARKANSAS CODE § 5-37-227.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. Arkansas Code § 5-37-227 is amended to read as follows:

31 5-37-227. Financial identity fraud – Nonfinancial identity fraud –
32 Restitution – Venue.

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

34 (1) Create, obtain, or open a credit account, debit account, or
35 other financial resource for his or her benefit or for the benefit of a third



1 party, he or she accesses, obtains, records, or submits to a financial
2 institution another person's identifying information for the purpose of
3 opening or creating a credit account, debit account, or financial resource
4 without the authorization of the person identified by the information; or

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

8 (A) Uses a scanning device; or

9 (B) Uses a re-encoder.

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

14 (1) To avoid apprehension or criminal prosecution;

15 (2) To harass another person; or

16 (3) To obtain or to attempt to obtain a good, service, real
17 property, or medical information of another person.

18 ~~(b)~~(c) As used in this section:

19 (1) "Disabled person" means the same as defined in § 4-88-201;

20 (2) "Elder person" means the same as defined in § 4-88-201;

21 ~~(1)~~(3) "Financial institution" includes, but is not limited to,
22 a credit card company, bank, or any other type of lending or credit company
23 or institution;

24 ~~(2)~~(4) "Financial resource" includes, but is not limited to, a
25 credit card, debit card, or any other type of line of credit or loan;

26 ~~(3)~~(5) "Identifying information" includes, but is not limited
27 to, a:

28 (A) Social security number;

29 (B) Driver's license number;

30 (C) Checking account number;

31 (D) Savings account number;

32 (E) Credit card number;

33 (F) Debit card number;

34 (G) Personal identification number;

35 (H) Electronic identification number;

36 (I) Digital signature; or

1 (J) Any other number or information that can be used to
2 access a person's financial resources;

3 ~~(4)(6)~~ "Re-encoder" means an electronic device that places
4 encoded information from the magnetic strip or stripe of a payment card onto
5 the magnetic strip or stripe of a different card; and

6 ~~(5)(7)~~ "Scanning device" means a scanner, reader, or any other
7 electronic device that is used to access, read, scan, obtain, memorize, or
8 store, temporarily or permanently, information encoded on the magnetic strip
9 or stripe of a payment card.

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

13 ~~(d)(e)(1)~~ Financial Except as provided in subdivision (e)(2) of this
14 section, financial identity fraud is a Class C felony.

15 (2) Financial identify fraud is a Class B felony if the victim
16 is an elder person or a disabled person.

17 (f)(1) Except as provided in subdivision (f)(2) of this section,
18 nonfinancial identity fraud is a Class D felony.

19 (2) Nonfinancial identity fraud is a Class C felony if the
20 victim is an elder person or a disabled person.

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

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

28 (h)(1)(A) In addition to any penalty imposed under this section, upon
29 conviction for financial identity fraud or nonfinancial identity fraud a
30 court may order the defendant to make restitution to any victim whose
31 identifying information was appropriated or to the estate of the victim under
32 § 5-4-205.

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

36 (i) Any costs incurred by the victim in correcting

1 the credit history or credit rating of the victim; and

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

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

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

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

15 (1) In the county where the violation occurred;

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

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

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

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24 */s/ D. Creekmore, et al*

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26 *APPROVED: 2/9/2007*