

HOUSE BILL NO. 3414

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REUTER.

7224H.02I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to fraudulent activities, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto two new sections, to be known as sections 407.1505 and 407.1510, to read as follows:

407.1505. 1. For purposes of this section, unless the context provides otherwise, the following terms mean:

(1) "Access device", any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number; other telecommunications service, equipment, or instrument identifier; or other means of account access that can be used alone, or in conjunction with another access device, to obtain moneys, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Counterfeit access device", any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) "Credit card system member", a financial institution or other entity that is a member of a credit card system, including an entity whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system;

(4) "Device-making equipment", any equipment, mechanism, or impression designed for or primarily used for making an access device or a counterfeit access device;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **(5) "Facilities-based carrier", an entity that owns communications transmission**
19 **facilities, is responsible for the operation and maintenance of those facilities, and holds**
20 **an operating license issued by the Federal Communications Commission under the**
21 **authority of Title III of the Communications Act of 1934;**

22 **(6) "Produce", to design, alter, authenticate, duplicate, or assemble;**

23 **(7) "Scanning receiver", a device or apparatus that can be used to intercept a**
24 **wire or electronic communication in violation of 18 U.S.C. Chapter 119 or to intercept**
25 **an electronic serial number, mobile identification number, or other identifier of any**
26 **telecommunications service, equipment, or instrument;**

27 **(8) "Telecommunication identifying information", electronic serial number or**
28 **any other number or signal that identifies a specific telecommunications instrument or**
29 **account, or a specific communication transmitted from a telecommunications**
30 **instrument;**

31 **(9) "Telecommunications service", has the same meaning as in Section 3 of Title**
32 **I of the Communications Act of 1934, 47 U.S.C. Section 153;**

33 **(10) "Traffic", to transfer, or otherwise dispose of to another, or obtain control**
34 **of with intent to transfer or dispose;**

35 **(11) "Unauthorized access device", any access device that is lost, stolen, expired,**
36 **revoked, canceled, or obtained with intent to defraud.**

37 **2. A person who:**

38 **(1) Knowingly and with intent to defraud produces, uses, or traffics in one or**
39 **more counterfeit access devices;**

40 **(2) Knowingly and with intent to defraud traffics in or uses one or more**
41 **unauthorized access devices and by such conduct obtains anything of value aggregating**
42 **one thousand dollars or more during every one-year period;**

43 **(3) Knowingly and with intent to defraud possesses fifteen or more counterfeit**
44 **access devices or unauthorized access devices;**

45 **(4) Knowingly and with intent to defraud or assist others in defrauding**
46 **produces, traffics in, has control or custody of, or possesses device-making equipment;**

47 **(5) Knowingly and with intent to defraud effects transactions with one or more**
48 **access devices issued to another person or persons to receive payment or any other thing**
49 **of value during any one-year period, the aggregate value of which is equal to or greater**
50 **than one thousand dollars;**

51 **(6) Without the authorization of the issuer of the access device, knowingly and**
52 **with intent to defraud solicits a person for the purpose of:**

53 **(a) Offering an access device; or**

54 **(b) Selling information regarding, or an application to obtain, an access device;**

55 **(7) Knowingly and with intent to defraud uses, produces, traffics in, has control**
56 **or custody of, or possesses a telecommunications instrument that has been modified or**
57 **altered to obtain unauthorized use of telecommunications services;**

58 **(8) Knowingly and with intent to defraud uses, produces, traffics in, has control**
59 **or custody of, or possesses a scanning receiver;**

60 **(9) Knowingly uses, produces, traffics in, has control or custody of, or possesses**
61 **hardware or software knowing it has been configured to insert or modify**
62 **telecommunication identifying information associated with or contained in a**
63 **telecommunications instrument so that such instrument may be used to obtain**
64 **telecommunications service without authorization; or**

65 **(10) Without the authorization of the credit card system member or its agent,**
66 **knowingly and with intent to defraud, causes or arranges for another person to present**
67 **to the member or its agent for payment one or more records of transactions made by an**
68 **access device**

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70 **shall be punished as provided in subsection 4 of this section.**

71 **3. (1) A person who attempts to commit a violation under subsection 2 of this**
72 **section shall be subject to the same penalties as those prescribed for the violation**
73 **attempted.**

74 **(2) A person who is a party to a conspiracy of two or more persons to commit a**
75 **violation under subsection 2 of this section, if any of the parties engages in any conduct**
76 **in furtherance of such violation, shall be fined an amount not greater than the amount**
77 **provided as the maximum fine for such violation under subsection 4 of this section, or**
78 **imprisoned not longer than one-half the period provided as the maximum imprisonment**
79 **for such violation under subsection 4 of this section, or both.**

80 **4. (1) The punishment for a violation under subsection 2 of this section is as**
81 **follows:**

82 **(a) For the first violation under subdivision (1), (2), (3), (6), (7), or (10) of**
83 **subsection 2 of this section, a fine under this section or imprisonment for not more than**
84 **ten years, or both; and**

85 **(b) For the first violation under subdivision (4), (5), (8), or (9) of subsection 2 of**
86 **this section, a fine under this section or imprisonment for not more than fifteen years, or**
87 **both.**

88 **(2) The punishment for a second or subsequent violation under subsection 2 of**
89 **this section shall be a fine under this section or imprisonment for not more than twenty**
90 **years, or both.**

91 **(3) For any violation under subdivision (1) or (2) of subsection 2 of this section,**
92 **any personal property used or intended to be used to commit the violation shall be**
93 **forfeited to the state of Missouri.**

94 **(4) The forfeiture of property under this subsection, including any seizure and**
95 **disposition of the property and any related administrative and judicial proceeding, shall**
96 **be governed by sections 513.600 to 513.660.**

97 **5. The Missouri attorney general is authorized to investigate all violations under**
98 **this section and shall have all the powers and authority under sections 407.005 to**
99 **407.145. The attorney general shall enforce the provisions of this section and shall bring**
100 **necessary actions for violations of this section.**

101 **6. This section does not prohibit any lawfully authorized investigative,**
102 **protective, or intelligence activity of a law enforcement agency of the United States,**
103 **the state of Missouri, or a political subdivision of this state.**

104 **7. (1) It is not a violation of subdivision (9) of subsection 2 of this section for an**
105 **officer, employee, or agent of or a person engaged in business with a facilities-based**
106 **carrier to engage in conduct, other than trafficking, otherwise prohibited by subsection**
107 **2 of this section for the purpose of protecting the property or legal rights of that carrier**
108 **unless such conduct is for the purpose of obtaining telecommunications service provided**
109 **by another facilities-based carrier without the authorization of such carrier.**

110 **(2) In a prosecution for a violation of subdivision (9) of subsection 2 of this**
111 **section, other than a violation consisting of producing or trafficking, it shall be an**
112 **affirmative defense that the defendant shall establish by a preponderance of the**
113 **evidence that the conduct charged was engaged in for research or development in**
114 **connection with a lawful purpose.**

115 **8. Any person who, outside the jurisdiction of this state, engages in any act that if**
116 **committed within the jurisdiction of this state would constitute a violation under**
117 **subsection 2 or 3 of this section shall be subject to the fines, penalties, imprisonment,**
118 **and forfeiture provided under this section if the offense involves an access device issued,**
119 **owned, managed, or controlled by a financial institution, account issuer, credit card**
120 **system member, or other entity organized under the laws of this state.**

407.1510. 1. Any person who having devised, or intending to devise, any scheme
2 **or artifice to defraud or for obtaining moneys or property by means of false or**
3 **fraudulent pretenses, representations, or promises transmits or causes to be transmitted**
4 **by means of wire, radio, or television communication in interstate or foreign commerce**
5 **any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme**
6 **or artifice shall be fined not more than two hundred fifty thousand dollars or**
7 **imprisoned for not more than five years, or both. If the violation affects a financial**

8 **institution, such person shall be fined not more than one million dollars or imprisoned**
9 **not more than thirty years, or both.**

10 **2. For the purposes of this section, the term "scheme or artifice to defraud"**
11 **includes a scheme or artifice to deprive another of the intangible right of honest services.**

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