WEST VIRGINIA CODE: §61-3-56

§61-3-56. Scanning device or reencoder fraud; felony; definitions; and penalties.

(a) As used in this section, the term:

(1) "Authorized user" means the person to whom a payment card is issued or any other person acting with the permission of the person to whom the card is issued;

(2) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator. A "merchant" also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money or anything else of value from the person;

(3) "Payment card" means a credit card, charge card, debit card, hotel key card, stored value card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value from a merchant;

(4) "Reencoder" 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 payment card; and

(5) "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.

(b) Any person who uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in a county or regional jail for not more than one year, or both.

(c) Any person who uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in a county or regional jail not more than one year, or both.

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(d) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who is convicted of the provisions of subsection (b) or (c) of this section who has previously been convicted of a violation of either subsection shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than three years or fined not more than $5,000, or both.

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