

FILED

2004 MAR 25 P 4: 11

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

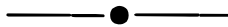
SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 4104**

(By Delegates Morgan, Kominar, Mahan,  
Stemple, Craig, Amores and Staton)



Passed March 11, 2004

In Effect Ninety Days from Passage

FILED

2004 MAR 25 P 4: 12

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COMMITTEE SUBSTITUTE

FOR

## H. B. 4104

(BY DELEGATES MORGAN, KOMINAR, MAHAN,  
STEMPLE, CRAIG, AMORES AND STATON)

[Passed March 11, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-56, relating to creating the crimes of scanning device and reencoder fraud; providing definitions; and establishing criminal penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3-56, to read as follows:

### ARTICLE 3. CRIMES AGAINST PROPERTY.

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

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

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

5 (2) "Merchant" means an owner or operator of any retail  
6 mercantile establishment or any agent, employee, lessee,  
7 consignee, officer, director, franchisee or independent contrac-  
8 tor of the owner or operator. A "merchant" also means a person  
9 who receives from an authorized user of a payment card, or  
10 someone the person believes to be an authorized user, a  
11 payment card or information from a payment card, or what the  
12 person believes to be a payment card or information from a  
13 payment card, as the instrument for obtaining, purchasing or  
14 receiving goods, services, money or anything else of value from  
15 the person;

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

21 (4) "Reencoder" means an electronic device that places  
22 encoded information from the magnetic strip or stripe of a  
23 payment card onto the magnetic strip or stripe of a different  
24 payment card; and

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

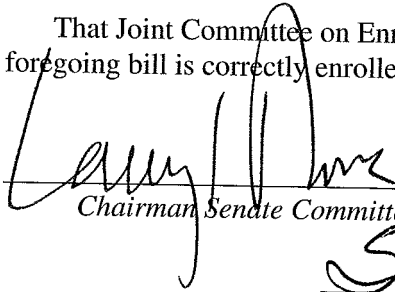
29 (b) Any person who uses a scanning device to access, read,  
30 obtain, memorize or store, temporarily or permanently, infor-  
31 mation encoded on the magnetic strip or stripe of a payment  
32 card without the permission of the authorized user of the  
33 payment card and with the intent to defraud the authorized user,

34 the issuer of the authorized user's payment card or a merchant  
35 is guilty of a misdemeanor and, upon conviction thereof, shall  
36 be fined not more than two thousand five hundred dollars or  
37 confined in a county or regional jail for not more than one year,  
38 or both.

39 (c) Any person who uses a reencoder to place information  
40 encoded on the magnetic strip or stripe of a payment card onto  
41 the magnetic strip or stripe of a different card without the  
42 permission of the authorized user of the card from which the  
43 information is being reencoded and with the intent to defraud  
44 the authorized user, the issuer of the authorized user's payment  
45 card or a merchant is guilty of a misdemeanor and, upon  
46 conviction thereof, shall be fined not more than two thousand  
47 five hundred dollars or confined in a county or regional jail not  
48 more than one year, or both.

49 (d) Notwithstanding the provisions of subsections (b) and  
50 (c) of this section, any person who is convicted of the provi-  
51 sions of subsection (b) or (c) of this section who has previously  
52 been convicted of a violation of either subsection shall be guilty  
53 of a felony and, upon conviction, shall be imprisoned in a state  
54 correctional facility for not less than one nor more than three  
55 years or fined not more than five thousand dollars, or both.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

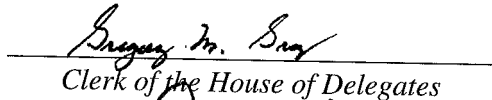
  
Chairman Senate Committee

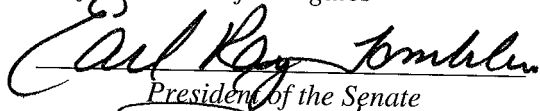
  
Chairman House Committee

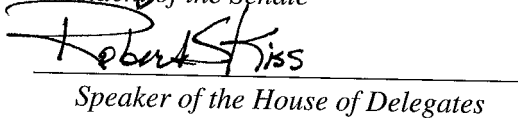
Originating in the House.

In effect ninety days from passage.

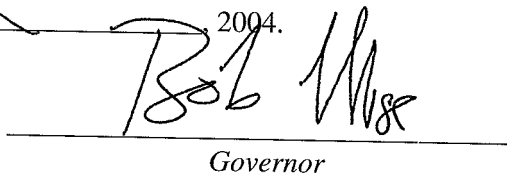
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 25<sup>th</sup>  
day of March 2004.

  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/19/04  
TIME 2:30 pm