WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4104

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

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Passed March 11, 2004

In Effect Ninety Days from Passage
ENROLLED

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:
(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 two thousand five hundred dollars 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 two thousand
five hundred dollars or confined in a county or regional jail not
more than one year, or both.

(d) Notwithstanding the provisions of subsections (b) and
(c) of this section, any person who is convicted of the provi-
sions 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 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 25th day of March 2004.

Governor