Bill as Introduced

CHAPTER 210

SB 149-FN - FINAL VERSION

03/06/03 0412s

29may03... 1557h

2003 SESSION

03-1118

05/10

SENATE BILL ***149-FN***

AN ACT establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

SPONSORS: Sen. Morse, Dist 22; Sen. Below, Dist 5; Rep. Rausch, Rock 77; Rep Nedeau, Belk 30

COMMITTEE: Judiciary

ANALYSIS

This bill establishes criminal penalties for the use of a credit card scanning device or reencoder to defraud the credit card's authorized user, the issuer of the credit card, or a merchant.

Explanation: Matter added to current law appears in ***bold italics.***

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/06/03 0412s

29may03... 1557h

03-1118

05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT establishing criminal penalties for the use of a credit card scanning device or reencoder to

defraud.

Be it Enacted by the Senate and House of Representatives in General Court convened:

210:1 New Subdivision; Fraud; Illegal Use of Payment Card Scanning Device or Reencoder. Amend RSA 638 by inserting after section 27 the following new subdivision:

Illegal Use of Payment Card Scanning Device or Reencoder

638:28 Definitions. In this subdivision:

I. "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.

II. "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.

III. "Payment card" means a credit card, charge card, debit 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.

IV. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. A merchant includes 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.

638:29 Use of Scanning Device or Reencoder to Defraud Prohibited.

I. A person is guilty of the crime of using a scanning device or reencoder to defraud when the person knowingly:

(a) 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; or

(b) 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.

II. Using a scanning device or reencoder to defraud is:

(a) A class B felony if such person has one or more prior convictions in this state or another state for the conduct described in this section.

(b) A class B felony if such person used a scanning device or reencoder to defraud 2 or more times in violation of this section.

(c) A misdemeanor in all other cases.

210:2 Effective Date. This act shall take effect 60 days after its passage.

(Approved: June 30, 2003)

(Effective Date: August 29, 2003)

Amendments

Rep. Nedeau, Belk. 30
May 8, 2003
2003-1557h
05/04

Amendment to SB 149-FN

Amend RSA 638:29, II as inserted by section 1 of the bill by replacing it with the following:

II. Using a scanning device or reencoder to defraud is:

(a) A class B felony if such person has one or more prior convictions in this state or another state for the conduct described in this section.

(b) A class B felony if such person used a scanning device or reencoder to defraud 2 or more times in violation of this section.

(c) A misdemeanor in all other cases.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect 60 days after its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 149 Date 4/22/2003

Committee C Jar RS

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Rep Stephen [illegible]	Dist. 30	279-4794	[illegible]	✓	
Henry Veilleux	2 Eagle Sq.	228-2966	NH Lodging & Restaurant Assoc	✓	
Sen Chuck Morse		Dist 22			

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON SB 149

BILL TITLE: **establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.**

DATE: **April 22, 2003**

LOB ROOM: **204** **Time Public Hearing Called to Order:** 11:30 Am

Time Adjourned: 11:55 Am.

(please circle if present)

Committee Members: Reps. Welch, Tholl, Fesh, Jones, Kennedy, K. Gilbert, Nedeau, Stevens, Weare, Bemis, Bicknell, Fisk, Oliver, D. Smith, Winchell, Knowles, Callaghan, Movsesian, Berube, Pantelakos and T. Robertson.

Bill Sponsors: Sen. Morse, Sen. Below, Rep. Rausch, Nedeau

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Morse, sponsor, supporting
-25% of high tech fraud is accomplished through credit card skimming

Sen. Below, sponsor, supporting
-bill specifically addresses "skimming"

*Curtis Barry, representing Retail Merchants Asso of NH.
-supporting
-supplied written testimony

Respectfully submitted,

Stanley E. Stevens

Rep. Stanley E. Stevens, Clerk

Sub-Committee:
Chairman, Rep. Nedeau
Winchell, Jones, Stevens

Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON SB 149-FN

BILL TITLE: establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

DATE: 05-08-03

Subcommittee Members: Reps. Nadeau, Winchell, Jones

Comments and Recommendations: Curtis Barry-Dupont Group passed out info. regarding penalties. see #1 attached.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, (OTP/A) ITL, Interim Study (Please circle one.)

Moved by Rep. Jones

Seconded by Rep. Winchell

Vote: 3-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Jones
Subcommittee Chairman/Clerk

Constance A. Jones

Notes: attachment #2

attachment # 1

638:29 Use of Scanning Device or Reencoder to Defraud Prohibited.

II. Using a scanning device or reencoder to defraud is:

(a) A misdemeanor.
(b) A class B felony if such person used a scanning device or reencoder to defraud 2 or more times in violation of this paragraph
(c) A class B felony if such person has had one or more prior convictions in this state or another state for the conduct described in this paragraph.

2 Effective Date. This act shall take effect sixty days after passage.

Attachment #2.

11:20 A.M. May 8, 2003 SB149FN

Present: Nadeau, Winchell, Jones Reps.

Curtis Barry, DuPont Group.

- Discussed increasing penalties for Credit Card Scanning. See Attachment #1.

- We all felt penalties should be severe.

- Also Act should take effect 60 days after passage.

- We will change (b) to 2 or more rather than 5 or more.

- The amendment will replace all of Section II of the Bill.

- Note, unless otherwise specified "misdemeanor" is considered "Class A."

Vote taken on OTP/A — unanimous.

Hearing closed at 11:25 A.M.

Constance A. Jones

5-13-03
10:30

Winchell moves OTP/A 1557-h
Bednell

4-0

Testimony

HB 149

The Dupont Group

Knowledge Creating Value

Credit Card Skimming
Talking Points

Curtis J. Barry on behalf of the
Retail Merchants Association of N.H.

***Skimming* is an increasingly popular method of stealing credit card account information.**

An electronic credit card reader captures information encoded in the magnetic stripe on the back of bank cards. *Skimmers* can hold information from hundreds of credit cards. That information is downloaded to a computer and then uploaded to a bogus or "clone" card.

The victim won't know that his credit card information has been stolen until the next bill arrives.

Crime Ring Bribes Retail Clerks to Furnish Shoppers' Data

The *New York Times* reported on January 25 that police said they'd uncovered an identify-theft ring with ties to organized-crime figures that used clerks and cashiers at pharmacies, shoe stores and other city-area retail businesses to steal credit card numbers.

The dishonest retail workers captured credit card data from thousands of unaware customers, downloaded it into laptops and ultimately sold it to the ring for $50 per name. The "clone" or fake cards were resold for $1,000 apiece and used to fraudulently obtain merchandise. In arresting the ringleader and four accomplices, police found data from over 4,300 credit cards, cloning equipment and 200 cloned cards.

Identity Theft Statistics

The *2001 Department of Justice (DOJ) Uniform Crime Report states that* Identity Theft accounted for the majority of all consumer fraud reported in 2002, over 43% of all claims (Approximately 700,000 consumers); $2 billion was attributed to credit card fraud-related identity theft.

Of the projected 1 million victims of Identity Theft in 2003, over half of those will be victims of credit card theft.

It takes 1-1/2 years to clear a person's name and costs the victim $1,000 out-of-pocket.

Reasons why people are moving to this type theft:

- Only 1 out of 100 get caught.
- No weapon is used.
- Because no weapon is used, sentencing or judgment against them is small, therefore perpetrators don't take the penalties seriously.
- While a bank robbery averages $1,500, a nice Identity Theft nets on average $26,000.
- Because penalties are relatively light and it's a subject frequently in the news, normal everyday people are trying it; this type of theft has spawned impulse crooks!

Continued on reverse

'03 SB 149
Talking Points
PAGE 2

- SB 149 was introduced at the request of the Retail merchants Association and its 800+ members.

- Current NH statutes are not clear for prosecuting this particular act, and experience tells us it is difficult to engage the assistance of the federal government (Secret Service) unless the individual case is large enough.

- While there have been incidents in New Hampshire, this is currently primarily an inner-city problem, but N.H. retailers don't the problem to spread to this state in epidemic proportions.

- Crime rings that engage in this and other illegal activity know what the laws are. They may avoid New Hampshire is we impose a sentence stiff enough.

- RMANH supports a change to a class B felony for multiple offenses, not prior convictions.

TOWN of HANOVER
HANOVER, NEW HAMPSHIRE 03755
P.O. BOX 483 603/643-4123

February 14, 2003

Senator Sheila Roberge
Chair, Senate Judiciary Committee
Room 105
State House
Concord, NH 03301

Re: Senate Bill 149-FN

Dear Senator Roberge,

As the Detective Captain at the Hanover Police Department I wanted to share some thoughts about Senate Bill 149-FN and its application by law enforcement. In December 2002 I investigated a large scale credit card "skimming" matter that originated at the Panda House restaurant in Hanover, NH. ("Skimming" refers to the practice of stealing the electronically stored data from credit card magnetic strips, with the ultimate purpose of manufacturing counterfeit credit cards.) In the course of my investigation I learned that a server at the Panda House using a handheld scanning device had skimmed the credit cards of over fifty customers. As a result counterfeit cards were produced and used in many states, and in Hong Kong. Due to highly questionable adherence of employment laws by the management of the Panda House restaurant, the identity of the particular server has not been determined.

The Hanover Police Department has investigated two large scale "skimming" cases, (both stemming from the Panda House restaurant), over the last two years. In both instances we have solicited, and received the assistance of the U.S. Secret Service. Through my contact with the agents from the U.S. Secret Service I know that "skimming" is wide-scale, often has links to organized crime, and is highly profitable.

Currently the NH Criminal Code does not appear to have any statute specifically directed at "skimming". I assume some application of Theft by Unauthorized Taking, RSA 637:3, or Criminal Liability for the Conduct of Another, (Accomplice to Credit Card Fraud), RSA 626:8 would probably be employed if a State prosecution was pursued today. With this in mind I am a supporter of the Senate Bill 149-FN. The Bill appears to be clearly written, necessary, and enforceable.

It is my opinion that the chances of identifying, apprehending, and prosecuting persons for "skimming" are not good. The proceeds from the crime are high. As a deterrent to engaging in this type of crime, I would like to suggest some consideration

toward amending the proposed Bill so that the level of crime for a first time offender would be a class B felony, (it is currently proposed as a misdemeanor).

Sincerely,

Frank Moran
Captain
Hanover Police Department
46 Lyme Road
Hanover, NH 03755
(603) 643-2222

Credit Card Skimming
(Updated 10/01/02)
State Laws Passed and Pending

State Laws Addressing Skimming Legislation:

1. Arizona
2. California
3. Florida
4. Idaho
5. Illinois
6. Missouri
7. Nebraska

Skimming Bills Pending in the Following States:

1. Kentucky
2. Michigan
3. New Jersey
4. North Carolina
5. Virginia

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on SB 149-FN

BILL TITLE: **establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.**

DATE: May 13, 2003

LOB ROOM: 204

Amendments:

Sponsor: Rep. Nedeau — OLS Document #: 2003 1557h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Bicknell — AMENDMENT ONLY

Seconded by Rep. Nedeau

Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Bicknell

Seconded by Rep. Nedeau

Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 16-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

Bill #: SB149-FN Title: _____

PH Date: ___/___/___ Exec Session Date: 5/13/03

Motion: OTP/A Amendment #: 2003-1557h

MEMBER	YEAS (Amend)	YEAS (OTP)	NAYS
Welch. David A. Chairman	✓	✓	
Tholl. John E. V Chairman	✓	✓	
Fesh. Bob M			
Jones. Constance A			
Kennedy. Richard E	✓	✓	
Gilbert. Karl I	✓	✓	
Nedeau. Stephen H	✓	✓	
Stevens. Stanley E	✓	✓	
Weare. E Albert	✓	✓	
Bemis. Alan B	✓	✓	
Bicknell. Elbert I	✓	✓	
Fish. Douglas K	✓	✓	
Oliver. James H	✓	✓	
Smith. Donald C	✓	✓	
Winchell. George D			
Knowles. William V	✓	✓	
Berube. Roger R	✓	✓	
Callaghan. Frank D	✓	✓	
Movsesian. Lori A			
Pantelakos. Laura C			
Robertson. Timothy N	✓	✓	
	14	16	0 0

OTPA BICKNELL 2003-1557h
AND NEDEAU

TOTAL VOTE:
Printed: 1/6/2003

CONSENT 16-0

Committee Report

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **SB 149-FN**

TITLE: establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

DATE: May 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill adds 2 sub-sections to the present fraud statutes, RSA 638:1-27. New subsection 638:28 deals exclusively with further definitions as to what a scanning or recorder device is, as well as "payment card and merchant". New sub-section 638:29-I, and II, outlines the elements of the crime that a person with intent to defraud uses a card or a scanner or recording device to obtain encoded information, without that person's authority. It was felt that current law did not adequately address the use of such devices. SB 149-FN enhances our present fraud statutes and makes it a prohibited act to use these devices to defraud others. The penalty is set at a class B felony for any second or subsequent conviction and keeps it a misdemeanor in all other cases.

Vote ~~11-0.~~ 16-D

Rep. Elbert I. Bicknell
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Criminal Justice and Public Safety

SB 149-FN, establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud. **OUGHT TO PASS WITH AMENDMENT**

Rep. Elbert I. Bicknell for Criminal Justice and Public Safety: This bill adds 2 sub-sections to the present fraud statutes, RSA 638:1-27. New subsection 638:28 deals exclusively with further definitions as to what a scanning or recorder device is, as well as "payment card and merchant". New sub-section 638:29-I, and II, outlines the elements of the crime that a person with intent to defraud uses a card or a scanner or recording device to obtain encoded information, without that person's authority. It was felt that current law did not adequately address the use of such devices. SB 149-FN enhances our present fraud statutes and makes it a prohibited act to use these devices to defraud others. The penalty is set at a class B felony for any second or subsequent conviction and keeps it a misdemeanor in all other cases. **Vote ~~11-0~~ 16-0.**

F

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **SB 149-FN**

TITLE: establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

DATE: May 13, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT 1557h

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill adds 2 sub-sections to the present fraud statutes, RSA 638:1-27. New subsection 638:28 deals exclusively with further definitions as to what a scanning or recorder device is, as well as "payment card and merchant". New sub-section 638:29-I, and II, outlines the elements of the crime that a person with intent to defraud uses a card or a scanner or recording device to obtain encoded information, without that person's authority. It was felt that current law did not adequately address the use of such devices. SB 149-FN enhances our present fraud statutes and makes it a prohibited act to use these devices to defraud others. The penalty is set at a class B felony for any second or subsequent conviction and keeps it a misdemeanor in all other cases.

Vote 11-0.

Rep. Elbert I. Bicknell
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

SB 149-FN adds 2 subsections to the present Fraud statutes of RSA 638:1-27), subsection 638:28 deals exclusively with further definitions as to what a scanning or recorder device is, as well as "payment card + merchant". In the following sub-section 638:29- ~~Effect~~ I + II The bill outlines the elements of the crime ~~as to the effect of the~~ that a person does to use a card in the intent on a scanner or recording device to ~~intentionally~~ defraud an other, without that persons authority. It was felt that current law did not ~~adequately~~ address the ~~actual~~ ~~overall~~ use ~~of~~ ~~not~~ ~~addressed~~ ~~in~~ ~~this bill~~ of such devices, SB 149-FN ~~is~~ enhances our present Fraud statutes + makes it a prohibited act to ~~the~~ use these devices to defraud others. The penalty is set at a class B felony for any second or subsequent conviction and keeps it a misdemeanor in all other cases.

Vote 11-0

SB149 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

Date	Body	Description
1/30/2003	S	Introduced and Ref. to Judiciary; SJ 3, Pg.38
2/7/2003	S	Hearing; === CANCELLED === February 18, 2003, Room 105-A, SH, 10:45 a.m.; SC9
2/18/2003	S	Hearing; === RESCHEDULED === February 20, 2003, Room 105-A, SH, 3:30 p.m.; SC10A
2/28/2003	S	Committee Report; Ought to Pass with Amendment{0412}, [03/06/03]; SC12, Pg.5-6
3/6/2003	S	Committee Amendment{0412}, AA, VV; SJ 7, Pg.71-72
3/6/2003	S	Ought to Pass with Amendment{0412}, MA, VV; Refer to Finance [Rule 26]; SJ 7, Pg.71-72
3/28/2003	S	Committee Report; Ought to Pass, [04/03/03]; SC16
4/3/2003	S	Ought to Pass, MA, VV; OT3rdg; SJ 11, Pg.243
4/3/2003	S	Passed by 3rd Reading Resolution; SJ 11, Pg.266
4/8/2003	H	03/26/2003 Introduced and ref to Crim Just & PSfty; HJ34, p1086
4/8/2003	H	Hearing Apr 22 11:30 RM204,LOB
4/29/2003	H	Subcom Work Session May 8 after session RM204,LOB
5/8/2003	H	Subcom Work Session May 13 10:15 RM203,LOB
5/13/2003	H	Maj Report OTP/AM for May 29 (Vote 11-0;CC)
5/13/2003	H	Prop Comm Am{1557}; HC 43, p1385
5/29/2003	H	Passed with Am; HJ 45, p1453 + 1477
6/5/2003	S	Sen. Peterson Concur with House Amendment, MA, VV; SJ 19, Pg.527-528
6/24/2003	S	Enrolled; SJ 20, Pg.828
6/24/2003	H	Enrolled;
6/30/2003	S	Signed by the Governor on 6/30/2003 Eff- 8/29/2003 Chap- 0210

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations