Bill as Introduced

SB 149-FN – AS INTRODUCED

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-1118
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:

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 care 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 care 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:

(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 misdemeanor in all other cases.

2 Effective Date. This act shall take effect January 1, 2004.

LBAO
03-1118
1/30/03

SB 149-FN - FISCAL NOTE

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

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

Jud

LBAO
03-1118
Revised 1/31/03

SB 149 FISCAL NOTE

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

FISCAL IMPACT:

The Judicial Branch, Judicial Council and the Department of Corrections have determined this bill will increase state expenditures by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on county and local expenditures or state, county and local revenues.

METHODOLOGY:

The Judicial Branch stated this bill adds criminal penalties for the illegal use of payment card scanning devices or reencoders. The use of one of these devices would be a class B felony if a person has one or more prior convictions. In all other cases, it would be a misdemeanor. This bill adds new crimes, but it is not possible to estimate how many new prosecutions will result, if any. The Judicial Branch currently sees the result of some of this illegal use in charges of theft or attempted theft when the device is used on a credit card to fraudulently obtain or attempt to obtain goods. This bill criminalizes the scanning even if the person who did the scanning did not use the result to commit an actual theft. On the assumption that this bill will not add many, if any additional prosecutions, the fiscal impact on the judicial branch will be minimal.

The Judicial Council stated this bill establishes new criminal penalties for the use of a credit card scanning device or reencoder to defraud. The criminal penalties established are a class B felony if a person has one or more prior convictions in this state or another state for the conduct described in this bill, or a misdemeanor in all other cases. It is assumed that the individual so charged has been determined to be indigent at which time the court will proceed to appoint an attorney to represent the defendant. If a public defender or contract attorney is appointed to the case, the fixed contract rate of $687.50 (rather than the previous $250 misdemeanor rate) will apply to each case so charged. If assigned counsel attorneys must be used, the $60 per hour rate will apply to the case, with a fee cap of $3,000, rather than $1,000 for the prior misdemeanor charge cap. This fee cap may be waived upon motion filed in advance with the court. If any "services other than counsel' are filed as a necessary part of the defense of a case, they would also be payable from Indigent Defense Funds. Since it is not possible to accurately predict the number of cases that may result from the enactment of this new felony B charge, the Council is unable to place an exact dollar figure on the potential fiscal impact of this bill.

The Department of Corrections estimates no more than three persons per year would be sentenced to a state prison as a result of this bill. At an average cost of incarceration at $24,866 per inmate per year, the Department estimates increased state expenditures of $74,598 per year.

The Department of Justice stated the Department seldom becomes involved in questions of law concerning theft, and it is assumed the Department would continue not to be involved. If the Department were involved, the number of instances would be negligible and the cost of prosecution would not increase as a direct result of this bill.

Committee Minutes

Judiciary Committee

Hearing Report

To: Members of the Senate

From: Susan Duncan
Senior Legislative Aide

Re: **SB 149-FN** – *AN ACT establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud*

Hearing date: February 20, 2003

Members present: Senators Peterson, Foster, Clegg and Roberge

Members absent: Senator Sapareto

Sponsor(s): Senators Morse and Below
Representatives Rausch and Nedeau

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

Who supports the bill: Senator Morse, Senator Below
Curtis Barry representing Retail Merchants
Henry Veilleux, NH Lodging & Restaurant Association

Who opposes the bill: No one spoke in opposition

Summary of testimony received:

- This legislation was filed at the request of the Retail Merchants Association.
- This type of fraud most often happens at gas stations and restaurants where there is high employee turnover.
- This type of fraud is the fastest growing type and has the potential to become even more prevalent.
- The distinction between impulse shoplifting, which tends to be small, and skimming is that significant bills can be run up on a credit card account before the "theft" is discovered.

- It can take an average of 18 months for a person to clear their name once a credit card theft has occurred.
- When this happened at a restaurant in Hanover, the employee skimmed at least 50 credit cards. The people whose credit cards were skimmed were credited with huge charges in Hong Kong. Subsequent investigation showed no specific provision in current statute in order to prosecute these cases.
- A small electronic device can be hidden in an employee's locker at a restaurant. They use the device to "record" all of the vital information from the credit card. The information is subsequently sold and fraudulently used to run up expenses. Sometimes the theft isn't detected or reported for months.
- It was asked if the committee might consider increasing the penalty to a Class A felony if over $1,000 was involved in the scam; such as a Class B in all cases except a Class A at higher amounts.
- Senator Clegg suggested adding the word "knowingly" in line 23 on page 1 of the bill. (The Committee agreed.)

Funding: See fiscal note

Action: During executive session following the hearing, Attorney Lehmann suggested language regarding "reasonably equivalent in NH or another jurisdiction" regarding the prior convictions language on II (a) of the legislation. The Committee agreed with this suggestion.

Senator Clegg moved Ought to Pass as amended. Senator Roberge seconded the amendment. The committee voted 4 to 0 in support of the motion. Senator Peterson will report the bill out of committee.

sfd
[file: SB 149-FN report]
Date: February 24, 2003

LYB

Date: February 20, 2003
Time: 3:40 p.m.
Room: State House Room 105-A

The Senate Committee on Judiciary held a hearing on the following:

SB 149-FN establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud

Members of Committee present:
Senator Peterson
Senator Foster
Senator Clegg
Senator Roberge
Senator Sapareto

The Chair, Senator Andrew R. Peterson, opened the hearing on SB 149 by calling on Senator Below, prime sponsor, to provide testimony.

Senator Clifton Below, D. 5: Thank you, Mr. Chairman and members of the Committee. I represent Senate District 5, which is fourteen towns in Grafton, Sullivan and Merrimack Counties, including the retail center of Lebanon and Hanover on the Vermont border. I'm bringing this in on behalf of myself and the prime sponsor. Senator Morse does represent the Salem area, which is obviously is a very large retailing area on the Massachusetts border.

What this bill would do is create criminal penalties for a form of credit card fraud called "skimming", the practice of electronically capturing credit card information without the cardholder's knowledge and with the intent to defraud. It is brought forward at the request of the Retail Merchants Association of New Hampshire.

Credit card skimming is a practice that has seen a big increase in the past two or three years. The technology was designed for legitimate business uses, but unfortunately, it has been increasingly used for criminal purposes. It's a crime, which is most often carried out in businesses where there is a high rate of employee turnover, such as gas stations or restaurants.

The Secret Service has stated that credit card skimming has escalated to account for a quarter of all fraud involving high tech devices now, compared to just 2 or 3% a few years ago. Credit card skimming is said to be the fastest growing form of credit card fraud in the United States today.

Although banks and credit cards generally absorb the losses generated in these cases, the way they offset it is by raising their interest rates and fees. Therefore, it is a crime that affects all of us and it would be wise to be aware of this potential for this type of fraud and its potential to grow in prevalence in New Hampshire.

In my area late last year a case unfolded at a Chinese restaurant in Hanover where an employee had been hired. Apparently, the employee may be sort of a professional credit card skimmer who showed up, probably misrepresented his own identity and went right to work skimming cards. At least fifty, I think, cases were accounted for in a short period of time before people started getting their bills and realized that there were huge charges rung up in Hong Kong where the numbers had been transmitted to and replicated. Cards had been recreated in the same image as the ones that were being used in Hanover, New Hampshire and were being used for a huge amount of activity in Hong Kong.

The investigation of this and I think Curtis Barry will submit a letter from the detective in the Hanover Police Department who investigated it. He became very concerned that there was not an explicit provision under New Hampshire law. There may be provisions, other provisions, theft by unauthorized taking, that could be brought to bear on this. But, what this bill would do is to make it a very explicit criminal activity that would kind of get right to the point in prosecuting these kinds of cases.

One suggestion or concern that you might consider is that I think a first case offense is simply a misdemeanor under the bill and I think it might be worth considering whether that should be advanced to a felony charge considering the seriousness and the potential damage for it. Also considering that we have an identity fraud chapter that was enacted in 1999 that creates a Class A felony if the value of property or services obtained exceeds $1,000 and a Class B felony in all other cases. When someone obtains personal records, identifying records, without their permission, with the intent to pose as such a person and I think this kind of skimming is a similar person. They may not be trying to pose as the person, but they certainly are trying to use their credit for illegal activity. So, I think that we may want to consider a Class B felony in all cases and perhaps a Class A if it exceeds a certain value in damages or theft.

Thank you, Mr. Chairman.

Senator Andrew R. Peterson, D. 11: Thank you, Senator Below. Questions from the Committee? Senator Clegg?

Senator Robert Clegg, Jr., D. 14: Senator Below, it was suggested that we add the word "knowingly". Do you have a problem with that?

Senator Clifton Below, D. 5: No, I don't have a problem with that. At what point in the bill?

Senator Robert Clegg, Jr., D. 14: Well, I guess on the first page of the bill, line 23, when the person knowingly and then does all that stuff.

Senator Clifton Below, D. 5: Right. I suppose it's possible that a waiter or a server, a person working could inadvertently think they are using the proper thing for the proper purpose of doing a proper charge and inadvertently did one of these activities.

Senator Robert Clegg, Jr., D. 14: Especially in a Chinese restaurant because some of those people haven't been here that long.

Senator Clifton Below, D. 5: Knowingly or intentionally.

Senator Robert Clegg, Jr., D. 14: I think it was suggested to us that it say knowingly.

Attorney Lehman: Ann Rice from the Attorney General's Office and I spoke about this. She feels more comfortable with putting knowingly in as the correct mental state. I think the fraud probably carries it.

Senator Clifton Below, D. 5: Okay. That sounds fine to me.

Senator Andrew R. Peterson, D. 11: Further questions from the Committee? Hearing none, thank you.

Senator Clifton Below, D. 5: Thank you.

Senator Robert Clegg, Jr., D. 14: Senator Below, you would probably like to know that Senator Boyce got a phone call from having lunch two days in a row in Paris.

Senator Clifton Below, D. 5: Wow! It is apparent the cost is to an individual. It's not that just that this has happened, but the cost is really your mental state, the disease that this has occurred and the fact that you have to go through the hassle of cleaning up your credit card and getting new cards and all that stuff. Big problems.

Senator Andrew R. Peterson, D. 11: I will call Curtis Barry from the Retail Merchants. Welcome.

Curtis Barry: Good afternoon, Mr. Chairman and members of the Committee. Thank you very much. My name is Curtis Barry from the Dupont Group and I am here representing the Retail Merchants Association of New Hampshire.

As Senator Below indicated, we requested this legislation. Several members had approached us this year with the request. I am going to hand out some packets. **Please see "The Dupont Group, Credit Card Skimming Talking Point" together with attachments, attached hereto and referred to collectively as Attachment #1.** I am going to refer to some of these documents in my testimony.

As Senator Below indicated, many of the statistics that are supplied to us, primarily by the Secret Service who handles these investigations and prosecutions on the federal level, indicate it is becoming more and more prevalent. One of the interesting things that we see and the Retail Merchants Association has requested legislation in the past relative to shoplifting that distinguishes between an impulse shoplifter and a professional shoplifter, people who run with organized gangs that do that sort of thing. I think this is headed in the same direction.

I have a poster here that will give you some idea of what these devices might look like. This is supplied by the Secret Service. They can be attached to a locker at the place of employment or on a belt. They are very small, about the size of a pager or palm pilot.

The difference between having someone's credit card stolen and having this happen to you is you, as the consumer, don't know it happens and, unless you follow your statement closely, you may not know that it has happened for a while and you won't report your credit card being stolen, you won't report someone having stolen your credit card information. So, the people who do steal this information and use it to purchase merchandize can run up incredible bills before they are discovered.

Anecdotally, there are many more instances than Senator Below alluded to. The incident in Hanover; there is an article from the *Union Leader* in December in your packet.

There's one incident that the *New York Times* reported on in January, towards the end of January, where police said they had uncovered an identify theft ring with ties to organized crime that used clerks and cashiers at pharmacies, shoe stores and other retail businesses to steal the credit card information. They captured the credit card data from literally thousands of people that came through their stores, downloaded it, ultimately sold them for $50 per name. The people who bought them then created the clone or the fake cards and sold those for $1,000 apiece. In arresting the ring leader and accomplices, the police found data from over 4,300 credit cards and cloning equipment and 200 cards that had been cloned but not sold yet.

Some additional statistics. The Department of Justice indicates that identity theft itself accounted for a majority of all consumer fraud reported in 2002 and over 43% of all these claims and $2 billion worth was attributed to credit card fraud related identify theft.

In 2003, there will be a projected one million victims of identify theft and over half of these will be credit card thefts.

As Senator Below also indicated, one of the problems with this is that I could take on average of a year and a half to clear a person's name and potentially cost them a significant amount of money in order to clear their information.

Why are people moving to this? It's easy. It's infrequent that you get caught. You don't use a weapon; therefore, typically, the sentences are light. Again, the rewards, if you will, of using this type of theft, in using stolen credit card information to steal merchandise or to purchase merchandise, is very high compared to other types of theft.

The anecdotal information that we have, other than the Hanover incident, tends to be inner city related. There is another incident where the Secret Service were contacted in New York where someone, an individual in Miami, had racked up, according to this article, a half million dollars worth of fraudulent charges against more than one hundred American Express accounts. The cards hadn't been reported stolen at that point, so it was obvious they were counterfeit. In tracing the records, it was discovered that every one of the victimized cardholders had recently dined at one of two New York City restaurants. When investigating, they found these similar devices in a locker about the size of a palm pilot and velcro tape used to attach it to the locker.

The problem that we foresee is, as investigations in the inner cities ramp up, the gangs will move north. We have seen the same thing happen with shoplifting. They start to move into southern New Hampshire. Again, what we are trying to do is create penalties to provide a deterrent from them coming to New Hampshire in the first place.

With shoplifting, we have seen incidents of people being caught and they have little wallet cards that describe the laws and the penalties in each individual state and they come to New Hampshire because we have a certain law that says, under a certain amount stolen, the penalties are light. We changed that last year. This is a very similar situation and we are asking to provide very severe penalties for the simple act of stealing the information.

In your packet is a letter...

Senator Andrew R. Peterson, D. 11: Curtis, we are...

Mr. Barry: Pressed for time? Okay.

Senator Andrew R. Peterson, D. 11: We are running into time constraints this afternoon. We had a tight schedule anyway. I wonder if you might summarize at some point so that we will be able to get to questions.

Mr. Barry: Absolutely. Let me then quickly address some of the things that were brought up. As far as changing the bill to knowingly, that's fine. There is another typo that I will point out to someone at a later point. At this point...

Senator Andrew R. Peterson, D. 11: A typo in the bill?

Senator Robert Clegg, Jr., D. 14: Where is it?

Mr. Barry: I will point that out. It is at the very top, I believe, of page 2. It uses the phrase, in II, payment care should read payment card.

Senator Andrew R. Peterson, D. 11: I see. It's on line 9 on page 1, care should be card?

Mr. Barry: Right.

Senator Andrew R. Peterson, D. 11: Thank you.

Mr. Barry: This packet also includes a list of states that have passed similar legislation.

Senator Robert Clegg, Jr., D. 14: It has authorized card user in number 12.

Senator Joseph A. Foster, D. 13: I noticed that, too.

Senator Andrew R. Peterson, D. 11: I've got these two. I think it is on the second page, it is okay. Proceed.

Mr. Barry: The last thing I would point out is that the packet includes a list of states that have passed and have pending similar legislation.

Senator Andrew R. Peterson, D. 11: Thank you. I saw that when I glanced through the packet. Are there other questions? Senator Foster?

Senator Joseph A. Foster, D. 13: What happens here, ultimately isn't it, that the retail merchant gets stuck because ultimately the cardholder calls in?

Mr. Barry: No. It is a different situation. Many times the card isn't reported stolen because you have no idea until thousands and thousands of dollars are racked up on your account. By then...

Senator Joseph A. Foster, D. 13: Am I right, though, that from time to time... So, it is both consumers and retail merchants?

Mr. Barry: Oh, absolutely. In cases when, and the bill also addresses re-encoding, that's a case where a merchant can get hurt, where merchandise is stolen with what in essence may be fraudulent identification, the account doesn't exist.

Senator Andrew R. Peterson, D. 11: Thank you. Further questions? Seeing none, thank you for your testimony.

Mr. Barry: Thank you, Mr. Chairman.

Senator Andrew R. Peterson, D. 11: Henry Veilleux, did you wish to speak on the bill?

Henry Veilleux: Henry Veilleux from the New Hampshire Lodging & Restaurant Association. Senator Below and Curtis Barry have done an excellent job of explaining the need for the bill. I would just put on record that the New Hampshire Lodging & Restaurant Association supports the bill.

Senator Andrew R. Peterson, D. 11: Thank you. I believe they did an excellent job as well. Are there other parties who wish to testify on this bill? I have others who signed up for the record as being in favor, but did not ask to speak. Seeing none, I will close the hearing at this time on SB 149.

Hearing concluded at 3:55 p.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary
2/21/03

1 Attachment

ATTACHMENT #1

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. S*kimmers* 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!

Union Leader
Saturday, December 21, 2002

Waiter investigated for credit card fraud

HANOVER (AP) — Police were investigating a criminal activity called skimming that involves stealing credit card numbers from customers and illegally charging their accounts.

Police said they have identified at least 15 victims who were customers at the Panda House restaurant, and expect more. A former waiter is being investigated.

Skimming is when someone uses a hand-held scanner to copy information from a credit card's magnetic strip. The information and credit card number can be used to make a counterfeit card.

The Secret Service, which is involved in the investigation, said it is common for skimmers to have national and international links, and "there do seem to be Asian gangs involved," said Ron Peimer, resident agent at the Secret Service's Manchester office. The Secret Service is part of the U.S. Treasury Department, and investigates monetary crimes, such as counterfeiting and credit card fraud.

Police Capt. Frank Moran said some victims might not come forward because they handle the problem through their credit card companies and then let it drop.

Although there have been many cases of skimming in New Hampshire, many of them are part of investigations that lead to and are prosecuted elsewhere.

"The reason the restaurants are most often involved with skimming is the card is out of your control for a few minutes," Peimer said.

Someone takes a restaurant patron's card to the credit card machine; on the way, the card could be swiped through another scanner.

Police said Wednesday that Panda House had been the target of a similar investigation in May 2000 that resulted in no prosecutions.

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

TITLE LXII
CRIMINAL CODE

CHAPTER 638
FRAUD

Identity Fraud

Section 638:26

638:26 Identity Fraud. –

I. A person is guilty of identity fraud when the person:

(a) Poses as another person with the purpose to defraud in order to obtain money, credit, goods, services, or anything else of value;

(b) Obtains or records personal identifying information about another person without the express authorization of such person, with the intent to pose as such person;

(c) Obtains or records personal identifying information about a person without the express authorization of such person in order to assist another to pose as such person; or

(d) Poses as another person, without the express authorization of such person, with the purpose of obtaining confidential information about such person that is not available to the general public.

II. (a) Identity fraud is:

(1) A class A felony if the value of the property or services obtained exceeds $1,000.

(2) A class B felony in all other cases.

(b) The value may be determined according to the provisions of RSA 637:2, V.

III. A person found guilty of violating any provisions of this section shall, in addition to the penalty under paragraph II, be ordered to make restitution for economic loss sustained by a victim as a result of such violation.

Source. 1999, 239:1, eff. Jan. 1, 2000.

Speakers

SENATE JUDICIARY COMMITTEE

Date 2/~~18~~20/03 Time ~~10:45 a.m.~~ 8:30 Public Hearing on **SB 149**

SB 149 - establishing criminal penalties for the use of a credit card scanning device or reencoder to defraud.

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☑	☐	Sen. Clifton	Below Duls.
☑	☑	☐	Curtis J. Barry	Retail Merchants Assoc. of NH
☑	☑	☐	Henry Veilleux	NH Lodging & Restaurant Association
☐	☑	☐	Rep. Jim Devereaux	District 97
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Testimony

Gail

February 26, 2003

TO: Members of the Judiciary Committee

FROM: Susan Duncan

RE: **Amendment #0412s to SB 149-FN**

Attached is a copy of the amendment that has gone into the Senate Calendar for session on March 6th.

Please carefully check the wording in the last section, beginning on line 17. When the bill was acted upon in committee, I did not catch each of the words from Attorney Lehmann. I asked the drafter in OLS to please check against the "DWI wording" (noted on Attorney Lehmann's copy of the bill). If this amendment is not correct, I can prepare a floor amendment to correct it.

Thanks for your help!

Susan

Senate Judiciary
February 26, 2003
2003-0412s
05/10

Amendment to SB 149-FN

Amend RSA 638:28, II and III as inserted by section 1 of the bill by replacing them with the following:

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.

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

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

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

(a) A class B felony if such person has one or more prior convictions under this section, has been convicted of a similar offense by a court of any other state in a criminal proceeding, or has been found to have committed a similar act by a court of any other state in a civil proceeding.

TITLE XXI
MOTOR VEHICLES

CHAPTER 263
DRIVERS' LICENSES

Effect of Reckless Driving or Driving While Under Influence of Alcohol or Drugs

Section 263:65

263:65 Revocation for Reckless Driving or Driving While Under Influence of Alcohol or Drugs. - Upon a conviction of a violation of RSA **265:79**, 82 or 82-a, the court shall report to the department and shall immediately revoke the license or driving privilege of the person so convicted, or the right of a nonresident so convicted to drive within the state of New Hampshire; and said court in the case of holders of New Hampshire licenses shall return such license with its findings marked thereon, together with the court return, to the department; and the department may revoke the license of any person who shall be convicted of a similar offense by a court of any other state in a criminal proceeding, or who shall be found to have committed a similar act by a court of any other state in a civil proceeding.

Source. 1905, 86:10. 1911, 133:19. 1921, 119:18. 1923, 24:1. PL 102:12. RL 118:13. 1951, 180:2, par. 13. 1951, 229:1. RSA 262:16. 1955, 109:3. 1963, 330:1. RSA 262-A:64. 1981, 146:1. 1983, 373:4. 1990, 219:7, eff. June 26, 1990.

The drafter mirrored the language in this statute.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 149

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

VOTE: 4-0

2003-0412s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Andrew R. Peterson
For the Committee

SB149 Docket

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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

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Docket Abbreviations