

SENATE BILL NO. 38

BY SENATOR HENSGENS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact R.S. 14:70.4(D) through (G) and to enact R.S. 14:70.4(H), relative
3 to misappropriations without violence; to provide relative to the crime of access
4 device fraud; to provide relative to the possession of counterfeit or misappropriated
5 access devices; to add gift cards to the definition of access device; to provide for a
6 definition of gift card; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:70.4(D) through (G) are hereby amended and reenacted and R.S.
9 14:70.4(H) is hereby enacted to read as follows:

10 §70.4. Access device fraud

11 * * *

12 **D. No person shall knowingly and with the intent to defraud possess**
13 **fifteen or more counterfeit or misappropriated access devices.**

14 ~~D.E.~~ As used ~~herein~~ **in this Section:**

15 (1) "Access device" means a person's social security number, driver's license
16 number, birth date, mother's maiden name, checking account numbers, savings
17 account numbers, personal identification numbers, electronic identification numbers,
18 digital signatures, **gift card, account information related to a gift card,** or other
19 means of account access that can be used to obtain anything of value, whether
20 contemporaneously or not.

21 (2) "Counterfeit access device" means an access device that is fictitious,
22 altered, or forged.

23 (3) "Device-making equipment" means any instrumentality, mechanism, or
24 impression designed or primarily used for making an access device or counterfeit
25 access device.

26 **(4) "Gift card" means a card, code, or device that is issued to a consumer**

1 on a prepaid basis in a specified amount and is redeemable in exchange for
2 goods or services. The value of the gift is either the maximum face value of the
3 card when it is held for sale by the merchant or the actual value of the funds
4 deposited with the merchant at the time of the activation and purchase.

5 ~~(4)~~(5) "Transfer" means sell, give, provide, or transmit.

6 ~~E.F.~~(1) A person who commits the crime of access device fraud when the
7 misappropriation or taking amounts to a value of twenty-five thousand dollars or
8 more shall be imprisoned at hard labor for not more than twenty years, ~~or~~ fined not
9 more than fifty thousand dollars, or both.

10 (2) When the misappropriation or taking amounts to a value of five thousand
11 dollars or more, but less than a value of twenty-five thousand dollars, the offender
12 shall be imprisoned; with or without hard labor; for not more than ten years, ~~or~~ fined
13 not more than ten thousand dollars, or both.

14 (3) When the misappropriation or taking amounts to a value of one thousand
15 dollars or more, but less than a value of five thousand dollars, the offender shall be
16 imprisoned; with or without hard labor; for not more than five years, ~~or may be~~ fined
17 not more than three thousand dollars, or both.

18 (4) When the misappropriation or taking amounts to a value of less than one
19 thousand dollars, the offender shall be imprisoned for not more than six months, ~~or~~
20 fined not more than five hundred dollars, or both.

21 (5) Upon a third or subsequent conviction of theft, the offender shall be
22 imprisoned; with or without hard labor; for not more than two years, ~~or may be~~ fined
23 not more than two thousand dollars, or both.

24 ~~F.G.~~ In addition to any other penalty imposed under this Section, the court
25 shall order restitution as a part of the sentence. ~~Restitution may include payment for~~
26 ~~any cost incurred by the victim, including attorney fees, costs associated in clearing~~
27 ~~the credit history or credit ratings of the victim, or costs incurred in connection with~~
28 ~~any civil or administrative proceedings to satisfy any debt, lien, or other obligation~~
29 ~~of the victim arising as a result of the actions of the defendant~~ in accordance with
30 Code of Criminal Procedure Article 883.2.

1 ~~G.H.~~ When there has been a misappropriation or taking by a number of
2 distinct acts of the offender, the aggregate amount of the misappropriation or taking
3 shall determine the grade of the offense. For purposes of this Subsection, distinctive
4 acts of the offender do not have to involve the same victim.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____