

**Ala. Code 1975, § 13A-8-113(a)(3)**  
**Encoded Data Fraud**  
**(Credit or Debit Card)**

The defendant is charged with encoded data fraud.

A person commits the crime of encoded data fraud if he/she knowingly and with the intent to commit an unlawful act or to defraud, possesses a purported credit or debit card that was not legitimately issued by a financial institution, company, governmental agency, or other card issuer.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The defendant possessed a purported credit or debit card that was not legitimately issued by a financial institution, company, governmental agency, or other card issuer, **[Insert description]**;
- (2) The Defendant did so with the intent to commit an unlawful act or to defraud; **(AND)**
- (3) The Defendant did so knowingly.

**[Read as appropriate]:**

To *access* means to gain entry to, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer system, or computer network. [13A-8-111(1)]

A *computer* is an electronic, magnetic, optical, electrochemical, or other high speed data processing device or system that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device. [13A-8-111(2)]

A *computer network* is the interconnection of two or more computers or computer systems that transmit data over communication circuits connecting them. [13A-8-111(3)]

A *computer program* is an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions. [13A-8-111(4)]

A *computer security system* is the design, procedures, or other measures that the person responsible for the operation and use of a computer employs to restrict the use of the computer to particular persons or uses or that the owner or licensee of data stored or maintained by a computer in which the owner or licensee is entitled to store or maintain the data employs to restrict access to the data. [13A-8-111(5)]

*Computer services* are the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer

time, data processing, and storage functions. [13A-8-111(6)]

*Computer software* is a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specific functions. [13A-8-111(7)]

*Computer system* is a set of related or interconnected computer or computer network equipment, devices and software. [13A-8-111(8)]

*Data* is a representation of information, knowledge, facts, concepts, or instructions, which are prepared and are intended for use in a computer, computer system, or computer network. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit. [13A-8-111(9)]

*Electronic mail message* is a message sent to a unique destination that consists of a unique user name or mailbox and a reference to an Internet domain, whether or not displayed, to which such message can be sent or delivered. [13A-8-111(10)]

*Exceeds authorization of use* is accessing a computer, computer network, or other digital device with actual or perceived authorization, and using such access to obtain or alter information that the accessor is not entitled to obtain or alter. [13A-8-111(11)]

A *financial instrument* includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computer system representation thereof. [13A-8-111(12)]

*Harm* is a partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct. [13A-8-111(13)]

An *identification document* is any document containing data that is issued to an individual and which that individual, and only that individual, uses alone or in conjunction with any other information for the primary purpose of establishing his or her identity or accessing his or her financial information or benefits.

Identification documents specifically include, but are not limited to, the following:

- a. Government issued driver's licenses or identification cards.
- b. Payment cards such as credit cards, debit cards, and ATM cards.
- c. Passports.
- d. Health insurance or benefit cards.
- e. Identification cards issued by educational institutions.
- f. Identification cards for employees or contractors.
- g. Benefit cards issued in conjunction with any government supported aid

program.

h. Library cards issued by any public library.

[13A-8-111(14)]

*Identifying information* are specific details that can be used to access a person's financial accounts, obtain identification, or to obtain goods or services, including, but not limited to:

- a. Social Security number.
- b. Driver's license number.
- c. Bank account number.
- d. Credit card or debit card number.
- e. Personal identification number (PIN).
- f. Automated or electronic signature.
- g. Unique biometric data.
- h. Account password.

[13A-8-111(15)]

An *integrated circuit card* is also known as a smart card or chip card, a pocket sized, plastic card with embedded integrated circuits used for data storage or special purpose processing used to validate personal identification numbers (PINs), authorize purchases, verify account balances and store personal records. When inserted into a reader, it transfers data to and from a central computer. [13A-8-111(16)]

An *owner* is an owner or lessee of a computer or a computer network, or an owner, lessee, or licensee of computer data, computer programs, or computer software. [13A-8-111(17)]

*Property* includes a financial instrument, data, databases, data while in transit, computer software, computer programs, documents associated with computer systems and computer programs, or copies whether tangible or intangible. [13A-8-111(18)]

*Radio Frequency Identification (RFID)* is a technology that uses radio waves to transmit data remotely from an RFID tag, through a reader, from identification documents. It is used in contactless integrated circuit cards, also known as proximity cards. [13A-8-111(19)]

*Radio Frequency Identification (RFID) Tags* are also known as RFID labels and are the hardware for an RFID system that electronically stores and processes information, and receives and transmits the signal. [13A-8-111(20)]

A *reencoder* is an electronic device that places encoded information from the magnetic strip, integrated circuit, RFID tag of an identification document onto the

magnetic strip, integrated circuit, or RFID tag of a different identification document. [13A-8-111(21)]

A *scanning device* is 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, integrated circuit, or RFID tag of an identification document. [13A-8-111(22)]

A *virus* means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files. [13A-8-111(23)]

A *web page* is a location that has a single uniform resource locator or other single location with respect to the Internet. [13A-8-111(24)]

**[Read as appropriate]:** If any credit or debit card contains conflicting identifying information, this conflict shall create a rebuttable presumption of intent to commit an unlawful act or to defraud and that the credit or debit card was not legitimately issued. [13A-8-113(a)(3)]

A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of the offense of encoded data fraud, then you shall find the defendant guilty of encoded data fraud.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of encoded data fraud, then you shall find the defendant not guilty of encoded data fraud.

### **Use Notes**

The following terms are not defined in this article but are defined in the theft and forgery chapters. Those definitions are included here for reference.

*Intent to defraud* is a purpose to use deception, or to injure another person's interest which has value. [13A-9-1(8)]

*Credit card* means any instrument or device, including a card to obtain telecommunication services, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, welfare card, a card used to facilitate the transfer of government benefits such as an electronic benefit transfer card (EBT card) or similar card, or a debit card, or by any other name, including an account number, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, including telecommunication services, on credit or for use in an automated banking device to obtain any of the services offered through the device.

[13A-9-14(c)]

*Debit card* means any instrument or writing or other evidence known by any name issued with or without fee by an issuer for the use of a depositor in obtaining money, goods, services, or anything else of value, payment of which is made against funds previously deposited in an account with the issuer.

[13A-9-14(d)]

*Government* is the United States, any state or any county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

[13A-9-1(11) & 13A-8-1(6)]

*Financial Institution* is a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment. [13A-8-1(4)]

The possession of each credit or debit card shall be charged as a separate count. [13A-8-113 (b)]

[Approved October 18, 2019].