

219B.65 [POSSESSING] [SELLING] [DELIVERING] A SKIMMING DEVICE.
FELONY.¹

The defendant has been charged with knowingly [possessing] [selling] [delivering] a skimming device.

For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly [possessed] [sold] [delivered] a skimming device. A skimming device is a self-contained device that (1) is designed to read and store in the device’s internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a financial transaction card or from another device that directly reads the information from a financial transaction card, and (2) is incapable of processing the financial transaction card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.²

NOTE WELL: Use the appropriate subsequent parenthetical phrase based on the offense charged in the indictment.

POSSESSION OF SKIMMING DEVICE

(A person possesses a skimming device when the person is aware of its presence, (the defendant knows that what the defendant possessed was a skimming device,)³ and has (either by [himself] [herself] or together with others) both the power and intent to control the disposition or use of the skimming device.

NOTE WELL: If constructive possession is an issue, or if an amplified definition of actual possession is needed, refer to N.C.P.I.—Crim. 104.41 for further instructions.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly possessed a skimming device, it would be your duty to return a verdict of guilty. If you do not so find

or have a reasonable doubt, it would be your duty to return a verdict of not guilty.)

[SALE] [DELIVERY] OF SKIMMING DEVICE

(For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly [sold] [delivered] a skimming device to (*name buyer or distributee*) (the defendant knowing that what the defendant [sold] [delivered] was a skimming device)⁴.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly [sold] [delivered] a skimming device to (*name buyer or distributee*), it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt, it would be your duty to return a verdict of not guilty.)

NOTE WELL: N.C. Gen. Stat. § 14-113.9(a)(6) provides that the prohibition against possessing, selling, or delivering a skimming device does not apply to an employee, officer, or agent of any of the following while acting within the scope of the person's official duties: (1) A law enforcement agency; (2) A State or federal court; (3) An agency or department of the State, local, or federal government; or (4) A financial or retail security investigator employed by a merchant. If the defendant presents evidence of one or more of these exceptions, the trial judge should instruct on the relevant subsection below with regards to the defendant's evidence as follows:

(If the defendant was a(n) [employee] [officer] [agent] of [a law enforcement agency] [a [State] [federal] court] [an [agency] [department] of the [State] [local] [federal] government] [a [financial] [retail] security investigator employed by a merchant], acting within the scope of the defendant's official duties when the defendant [possessed] [sold] [delivered] a skimming device, the defendant's [possession] [sale] [delivery] of the skimming device was lawful, and the defendant is not guilty.)

1. Effective December 1, 2021. S.L. 2021-68 amended N.C.G.S. § 14-113.9(a) to make it unlawful to knowingly possess, sell, or deliver a skimming device.

2. Definition effective December 1, 2021 pursuant to S.L. 2021-68. See N.C.G.S. § 14.113.8(11).

3. If the defendant contends that the defendant did not know the true identity of what he/she possessed, add the parenthetical language. See *State v. Boone*, 310 N.C. 284, 294, 311 S.E.2d 552, 559 (1984), *overruled on other grounds by State v. Oates*, 366 N.C. 264, 732 S.E.2d 571 (2012). See also *State v. Nobles*, 329 N.C. 239, 244, 404 S.E.2d 668, 671 (1991) (stating that “when the defendant introduces evidence of lack of guilty knowledge the court must charge on it”).

4. If the defendant contends that the defendant did not know the true identity of what he/she sold or delivered, add the parenthetical language. See *State v. Boone*, 310 N.C. 284, 294, 311 S.E.2d 552, 559 (1984), *overruled on other grounds by State v. Oates*, 366 N.C. 264, 732 S.E.2d 571 (2012). See also *State v. Nobles*, 329 N.C. 239, 244, 404 S.E.2d 668, 671 (1991) (stating that “when the defendant introduces evidence of lack of guilty knowledge the court must charge on it”).

