

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2379

Session of
1996

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ALLEN, HENNESSEY, BROWNE AND MERRY, FEBRUARY 6, 1996

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 11, 1996

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for credit card
3 fraud; defining the offense of unlawful device-making
4 equipment; and providing penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 4106 of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 4106. [Credit cards] Access device fraud.

10 (a) Offense defined.--A person commits an offense if he:

11 (1) uses [a credit card for the purpose of obtaining] an
12 access device to obtain or in an attempt to obtain property
13 or services with knowledge that:

14 (i) the [card is stolen, forged or fictitious]
15 access device is counterfeit, ALTERED OR INCOMPLETE; <—

16 (ii) the ~~[card]~~ access device belongs [CARD BELONGS] <—
17 ACCESS DEVICE WAS ISSUED to another person who has not

1 authorized its use;

2 (iii) the [card] access device has been revoked or
3 canceled; or

4 (iv) for any other reason his use of the [card]
5 access device is unauthorized by the issuer or the
6 [person to whom issued] DEVICE HOLDER; or <—

7 (2) publishes, makes, sells, gives, or otherwise
8 transfers to another, or offers or advertises, or aids and
9 abets any other person to use [a credit card with the
10 knowledge or reason to believe that it will be used to obtain
11 property or services without payment of the lawful charges
12 therefor] ~~an access device as specified in paragraph (1); or~~ <—

13 THEREFOR;] AN ACCESS DEVICE KNOWING THAT THE ACCESS DEVICE IS <—
14 COUNTERFEIT, ALTERED OR INCOMPLETE, BELONGS TO ANOTHER PERSON
15 WHO HAS NOT AUTHORIZED ITS USE, HAS BEEN REVOKED OR CANCELED,
16 OR FOR ANY REASON IS UNAUTHORIZED BY THE ISSUER OR THE DEVICE
17 HOLDER; OR

18 (3) [publishes a credit card or code of an existing,
19 canceled, revoked, expired, or nonexistent credit card, or
20 the numbering or coding which is employed in the issuance of
21 credit cards, with knowledge or reason to believe that it
22 will be used to avoid the payment for any property or
23 services.] possesses an access device that is counterfeit <—
24 KNOWING THAT IT IS COUNTERFEIT, ALTERED, INCOMPLETE or <—
25 belongs to another person who has not authorized its
26 possession.

27 (a.1) Presumptions.--For the purpose of this section as well
28 as in any prosecution for theft committed by the means specified
29 in this section:

30 (1) An actor is presumed to know an access device is

1 ~~counterfeit if the card is in his name but he did not submit~~ <—
2 ~~an application to an issuing company which resulted in the~~
3 ~~issuance of that access device.~~

4 ~~(2) An actor using or possessing an access device that~~
5 ~~has another person's name printed, embossed or otherwise~~
6 ~~appearing thereon is presumed to know that the access device~~
7 ~~belongs to another person who has not authorized the actor to~~
8 ~~use or possess that access device.~~, ALTERED OR INCOMPLETE IF <—
9 HE HAS IN HIS POSSESSION OR UNDER HIS CONTROL TWO OR MORE
10 COUNTERFEIT, ALTERED OR INCOMPLETE ACCESS DEVICES.

11 ~~(3) (2) Knowledge of revocation or cancellation shall~~ <—
12 ~~be presumed to have been received by an access device holder~~
13 ~~seven days after it has been mailed to him at the address set~~
14 ~~forth on the access device application or AT A NEW ADDRESS if~~ <—
15 ~~a change of address has been provided to the issuing company~~ <—
16 ~~and the company has started billing at that new address, then~~
17 ~~at the new address. ISSUER.~~ <—

18 (b) Defenses.--It is a defense to prosecution under <—

19 (1) IT IS A DEFENSE TO PROSECUTION UNDER [subparagraph <—
20 (a)(1)(iv) of this section] subsection (a)(1)(iv), if the
21 actor proves by a preponderance of the evidence that he had
22 the intent and ability to meet all obligations to the issuer
23 arising out of his use of the [card] access device.

24 (2) IT IS A DEFENSE TO PROSECUTION UNDER SUBSECTION <—
25 (A)(1)(II) IF THE ACTOR PROVES BY A PREPONDERANCE OF THE
26 EVIDENCE THAT HIS USE OF THE ACCESS DEVICE WAS WITH THE
27 DEVICE HOLDER'S AUTHORIZATION.

28 (c) Grading.--

29 (1) An offense under [this section] subsection (a)(1)
30 falls within the following classifications depending on the

1 value of the property or service [secured] OBTAINED or sought <—
2 to be [secured] OBTAINED by means of the [credit card] access <—
3 device:

4 [(1)] (i) if the value involved [exceeds \$500] WAS <—
5 \$500 OR MORE, the offense constitutes a felony of the
6 third degree; or

7 [(2)] (ii) if the value involved was \$50 or more but
8 less than \$500, the offense constitutes a misdemeanor of
9 the [second] first degree; or

10 [(3)] (iii) if the value involved was less than \$50,
11 the offense constitutes a [summary offense] misdemeanor
12 of the second degree.

13 (2) Amounts involved in unlawful use of [a credit card]
14 an access device pursuant to [one] a scheme or course of
15 conduct, whether from the same [issuers] ISSUER or several <—
16 issuers, may be aggregated in determining the classification
17 of the offense.

18 (3) An offense under subsection (a)(2) constitutes a
19 felony of the third degree.

20 (4) An offense under subsection (a)(3) constitutes a
21 misdemeanor of the third degree.

22 (5) EACH ACCESS DEVICE INVOLVED IN THE OFFENSE SPECIFIED <—
23 IN SUBSECTION (A)(2) OR (3) SHALL CONSTITUTE A SEPARATE
24 OFFENSE.

25 (d) Definitions.--As used in this section the following
26 words and phrases shall have the meanings given to them in this
27 subsection:

28 ["Credit card." A writing or number or other evidence of an
29 undertaking to pay for property or services delivered or
30 rendered to or upon the order of a designated person or bearer.]

1 "Access device." Any card, including, but not limited to, a
2 credit card, debit card and ~~automatic~~ AUTOMATED teller machine <—
3 card, plate, code, account number, personal identification
4 number or other means of account access that can be used, alone
5 or in conjunction with another access device, to obtain money,
6 goods, services or anything else of value or that can be used to
7 ~~initiate a transfer of funds.~~ TRANSFER FUNDS. <—

8 "ALTERED ACCESS DEVICE." A VALIDLY ISSUED ACCESS DEVICE
9 WHICH AFTER ISSUE IS CHANGED IN ANY WAY.

10 "Counterfeit access device." An access device not issued by
11 an ~~issuing company~~ ISSUER in the ordinary course of business. <—

12 ~~"Issuing company" or "issuer." The bank, credit card company~~ <—
13 ~~or other financial institution that issued the access device~~
14 ~~and/or whose name appears on the access device.~~

15 "DEVICE HOLDER." THE PERSON OR ORGANIZATION NAMED ON THE <—
16 ACCESS DEVICE TO WHOM OR FOR WHOSE BENEFIT THE ACCESS DEVICE IS
17 ISSUED BY AN ISSUER.

18 "INCOMPLETE ACCESS DEVICE." AN ACCESS DEVICE WHICH DOES NOT
19 CONTAIN ALL OF THE PRINTED, EMBOSSSED, ENCODED, STAMPED OR OTHER
20 MATTER WHICH AN ISSUER REQUIRES TO APPEAR ON A VALIDLY ISSUED
21 ACCESS DEVICE.

22 "ISSUER." THE BUSINESS ORGANIZATION OR FINANCIAL INSTITUTION
23 WHICH ISSUES AN ACCESS DEVICE OR ITS DULY AUTHORIZED AGENT.

24 "Publishes." The communication of information to any one or
25 more persons, either [orally] in person, [or] by telephone, <—
26 radio [or], OTHER TELECOMMUNICATION OR ELECTRONIC DEVICE, <—
27 television or in a writing of any kind, including without
28 limitation a letter or memorandum, circular or handbill,
29 newspaper or magazine article, or book.

30 (e) Venue.--Any offense committed under subsection (a)(1)

1 [of this section] may be deemed to have been committed at either
2 the place where the attempt to obtain property or services is
3 made, or at the place where the property or services were
4 received or provided, or at the place where the lawful charges
5 for said property or services are billed.

6 Section 2. Title 18 is amended by adding a section to read:

7 § 4106.1. Unlawful device-making equipment.

8 (a) Offense defined.--A person commits an offense if, with
9 intent to defraud or injure anyone, or with knowledge that he
10 may be facilitating a fraud or injury to be perpetrated by
11 anyone, he:

12 (1) produces or traffics in device-making equipment; or

13 (2) possesses device-making equipment.

14 (b) Grading.--An offense under subsection (a)(1) is a felony
15 of the third degree. An offense under subsection (a)(2) is a
16 misdemeanor of the first degree.

17 (c) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this
19 subsection:

20 "Access device." Any card, including, but not limited to, a
21 credit card, debit card and ~~automatic~~ AUTOMATED teller machine <—
22 card, plate, code, account number, personal identification
23 number or other means of account access that can be used, alone
24 or in conjunction with another access device, to obtain money,
25 goods, services or anything else of value or that can be used to
26 initiate a transfer of funds.

27 "Device-making equipment." Any equipment, mechanism or
28 impression designed or ~~primarily~~ CAPABLE OF BEING used for <—
29 making an access device.

30 "Produce." Includes design, alter, authenticate, duplicate

1 or assemble.

2 "Traffic." Sell, give or otherwise transfer to another or
3 obtain control of with intent to dispose of or transfer.

4 Section 3. This act shall take effect in 60 days.