

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2379 Session of
1996

INTRODUCED BY LYNCH, D. W. SNYDER, ITKIN, McGEEHAN, FARGO,
MAITLAND, HALUSKA, EGOLF, TRELLO, NICKOL, WAUGH, SAYLOR,
READSHAW, MILLER, CLARK, FEESE, SCHULER, BELFANTI,
E. Z. TAYLOR, BAKER, WOGAN, CORRIGAN, J. TAYLOR, TIGUE,
ALLEN, HENNESSEY, BROWNE AND MERRY, FEBRUARY 6, 1996

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 6, 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;

16 (ii) the [card] access device belongs to another
17 person who has not authorized its use;

1 (iii) the [card] access device has been revoked or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

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

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

12 (3) [publishes a credit card or code of an existing,
13 canceled, revoked, expired, or nonexistent credit card, or
14 the numbering or coding which is employed in the issuance of
15 credit cards, with knowledge or reason to believe that it
16 will be used to avoid the payment for any property or
17 services.] possesses an access device that is counterfeit or
18 belongs to another person who has not authorized its
19 possession.

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

23 (1) An actor is presumed to know an access device is
24 counterfeit if the card is in his name but he did not submit
25 an application to an issuing company which resulted in the
26 issuance of that access device.

27 (2) An actor using or possessing an access device that
28 has another person's name printed, embossed or otherwise
29 appearing thereon is presumed to know that the access device
30 belongs to another person who has not authorized the actor to

1 use or possess that access device.

2 (3) Knowledge of revocation or cancellation shall be
3 presumed to have been received by an access device holder
4 seven days after it has been mailed to him at the address set
5 forth on the access device application or, if a change of
6 address has been provided to the issuing company and the
7 company has started billing at that new address, then at the
8 new address.

9 (b) Defenses.--It is a defense to prosecution under
10 [subparagraph (a)(1)(iv) of this section] subsection (a)(1)(iv),
11 if the actor proves by a preponderance of the evidence that he
12 had the intent and ability to meet all obligations to the issuer
13 arising out of his use of the [card] access device.

14 (c) Grading.--

15 (1) An offense under [this section] subsection (a)(1)
16 falls within the following classifications depending on the
17 value of the property or service secured or sought to be
18 secured by means of the [credit card] access device:

19 [(1)] (i) if the value involved exceeds \$500, the
20 offense constitutes a felony of the third degree; or

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

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

27 (2) Amounts involved in unlawful use of [a credit card]
28 an access device pursuant to [one] a scheme or course of
29 conduct, whether from the same issuers or several issuers,
30 may be aggregated in determining the classification of the

offense.

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

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

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

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

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

"Counterfeit access device." An access device not issued by an issuing company in the ordinary course of business.

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

"Publishes." The communication of information to any one or more persons, either orally in person, or by telephone, radio or television or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book.

(e) Venue.--Any offense committed under subsection (a)(1) [of this section] may be deemed to have been committed at either

1 the place where the attempt to obtain property or services is
2 made, or at the place where the property or services were
3 received or provided, or at the place where the lawful charges
4 for said property or services are billed.

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

6 § 4106.1. Unlawful device-making equipment.

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

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

12 (2) possesses device-making equipment.

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

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

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

26 "Device-making equipment." Any equipment, mechanism or
27 impression designed or primarily used for making an access
28 device.

29 "Produce." Includes design, alter, authenticate, duplicate
30 or assemble.

1 "Traffic." Sell, give or otherwise transfer to another or
2 obtain control of with intent to dispose of or transfer.
3 Section 3. This act shall take effect in 60 days.