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CHAPTER 14.

 FINANCIAL TRANSACTION CARD CRIME ACT

**SECTION 16‑14‑10.** Definitions.

The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) “Automated banking device” means any machine which when properly activated by a financial transaction card or personal identification code may be used for any of the purposes for which a financial transaction card may be used.

(2) “Cardholder” means the person or organization named on the face of a financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

(3) “Expired financial transaction card” means a financial transaction card which is no longer valid because the term shown on it has elapsed.

(4) “Financial transaction card” or “FTC” means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder;

(a) in obtaining money, goods, services, or anything else of value on credit;

(b) in certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business;

(c) in providing the cardholder access to a demand deposit account or time deposit account for the purpose of:

1. making deposits of money or checks therein;

2. withdrawing funds in the form of money, money orders, or traveler’s checks therefrom;

3. transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account;

4. transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein;

5. for the purchase of goods, services or anything else of value;

6. obtaining information pertaining to any demand deposit account or time deposit account.

(5) “issuer” means the business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(6) “Personal identification code” means a numeric or alphabetical code assigned to the cardholder of a financial transaction card by the issuer to permit authorized electronic use of that FTC.

(7) “Presenting” means those actions taken by a cardholder or any person to introduce a financial transaction card into an automated banking device, including utilization of a personal identification code, or merely displaying or showing a financial transaction card to the issuer, or to any person or organization providing money, goods, services, or anything else of value, or any other entity with intent to defraud.

(8) “Receives” or “receiving” means acquiring possession or control or accepting a financial transaction card as security for a loan.

(9) “Revoked financial transaction card” means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(10) “Acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that authorizes a merchant to accept payment by credit card for money, goods, services, or anything else of value.

**SECTION 16‑14‑20.** Financial transaction card or number theft.

A person is guilty of financial transaction card theft when he:

(1) takes, obtains, or withholds a financial transaction card or number from the person, possession, custody, or control of another without the cardholder’s consent and with the intent to use it; or who, with knowledge that it has been so taken, obtained, or withheld, receives the financial transaction card or number with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder;

(2) receives a financial transaction card or number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder;

(3) is not the issuer, and sells a financial transaction card or number or buys a financial transaction card or number from a person other than the issuer;

(4) is not the issuer, and during any twelve‑month period, receives financial transaction cards or numbers issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute a violation of item (3) of this section and Section 16‑14‑60(A)(3).

A person who commits financial transaction card or number theft is guilty of a felony and, upon conviction, must be sentenced as provided in Section 16‑14‑100(B).

**SECTION 16‑14‑30.** Possession of two or more cards issued to other persons prima facie evidence of violation.

When a person has in his possession or under his control financial transaction cards issued in the names of two or more other persons other than members of his immediate family, such possession shall be prima facie evidence that such financial transaction cards have been obtained in violation of Section 16‑14‑20(a).

**SECTION 16‑14‑40.** Financial transaction card forgery.

(a) A person is guilty of financial transaction card forgery when:

(1) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely makes or falsely embosses a purported financial transaction card or utters such a financial transaction card;

(2) With intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, he falsely encodes, duplicates or alters existing encoded information on a financial transaction card or utters such a financial transaction card;

(3) He, not being the cardholder or a person authorized by him with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a financial transaction card.

(b) A person falsely makes a financial transaction card when he makes or draws, in whole or in part, a device or instrument which purports to be the financial transaction card of a named issuer but which is not such a financial transaction card because the issuer did not authorize the making or drawing, or alters a financial transaction card which was validly issued.

(c) A person falsely embosses a financial transaction card when, without authorization of the named issuer, he completes a financial transaction card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder.

(d) A person falsely encodes a financial transaction card when, without authorization of the purported issuer, he records magnetically, electronically, electro‑magnetically or by other means, information on a financial transaction card which will permit acceptance of that card by any automated banking device.

(e) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both.

**SECTION 16‑14‑50.** Possession of two or more cards falsely made or embossed prima facie evidence of violation.

(a) When a person, other than the purported issuer, possesses two or more financial transaction cards which are falsely made or falsely embossed, such possession shall be prima facie evidence that such cards were obtained in violation of Section 16‑14‑40(a)(1) or Section 16‑14‑40(a)(2).

(b) When a person, other than the cardholder or a person authorized by him possesses two or more financial transaction cards which are signed, such possession shall be prima facie evidence that such cards were obtained in violation of Section 16‑14‑40(a)(3).

**SECTION 16‑14‑60.** Financial transaction card fraud.

(a) A person is guilty of financial transaction card fraud when, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, he:

(1) uses for the purpose of obtaining money, goods, services, or anything else of value a financial transaction card obtained or retained, or which was received with knowledge that it was obtained or retained, in violation of Section 16‑14‑20 or 16‑14‑40 or a financial transaction card which he knows is forged, altered, expired, revoked, or was obtained as a result of a fraudulent application in violation of Section 16‑14‑40(c);

(2) obtains money, goods, services, or anything else of value by:

a. representing without the consent of the specified cardholder that he has permission to use it;

b. presenting the financial transaction card without the authorization or permission of the cardholder;

c. representing that he is the holder of a card and the card has not in fact been issued;

d. using a financial transaction card to knowingly and wilfully exceed:

(i) the actual balance of a demand deposit account or time deposit account;

(ii) an authorized credit line in an amount which exceeds the authorized credit line by five hundred dollars or fifty percent of the authorized credit line, whichever is greater, if the cardholder has not paid to the issuer of the financial transaction card the total amount of the excess over the authorized credit line within ten days after notice to the cardholder by certified mail to the last known address that the credit line has been exceeded. Failure to pay the amount in excess of the authorized credit line after the notice is prima facie evidence of an intent to defraud;

(3) obtains control over a financial transaction card as security for debt;

(4) deposits into his account or any account, by means of an automated banking device, a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other document not his lawful or legal property;

(5) receives money, goods, services, or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other document having been deposited into an account by means of an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document deposited was false, fictitious, forged, altered, or counterfeit or that the above deposited item was not his lawful or legal property.

A person who violates the provisions of this subsection except subsection (a)(2)d. is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both, if the value of all money, goods, services, and other things of value furnished in violation of this section or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars in any six‑month period. If the value exceeds five hundred dollars in a six‑month period, a person is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars or more than five thousand dollars or imprisoned not more than five years, or both.

A person who violates the provisions of subsection (a)(2)d. is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(b) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person is guilty of a financial transaction card fraud when, with intent to defraud the issuer or the cardholder, he:

(1) furnishes money, goods, services, or anything else of value upon presentation of a financial transaction card obtained or retained in violation of Section 16‑14‑20, or a financial transaction card which he knows is forged, expired, or revoked;

(2) fails to furnish money, goods, services, or anything else of value which he represents in writing to the issuer that he has furnished.

A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both, if the value of all money, goods, services, and other things of value furnished in violation of this section or if the difference between the value actually furnished and the value represented to the issuer to have been furnished in violation of this section, does not exceed five hundred dollars in any six‑month period. If the value exceeds five hundred dollars in a six‑month period, a person is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both.

(c) A person is guilty of financial transaction card fraud when, upon application for a financial transaction card to an issuer, he knowingly makes or causes to be made a false statement or report relative to his name, occupation, financial condition, assets, or liabilities; or wilfully and substantially overvalues any assets, or wilfully omits or substantially undervalues any indebtedness for the purpose of influencing the issuer to issue a financial transaction card. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(d) A cardholder is guilty of financial transaction card fraud when he wilfully, knowingly, and with an intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, submits, verbally or in writing, to the issuer or any other person, any false notice or report of the theft, loss, disappearance, or nonreceipt of his financial transaction card. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(e) In any prosecution for violation of Section 16‑14‑60, the State is not required to establish and it is no defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.

(f) For purposes of this section, revocation is construed to include either notice given in person or notice given in writing to the person to whom the financial transaction card or personal identification code was issued. Notice of revocation is immediate when notice is given in person. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to the person at his last address known to the issuer, is prima facie evidence that the notice was duly received after seven days from the date of the deposit in the mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice is presumed to have been received ten days after mailing by registered or certified mail.

(g)(1) A person who is authorized by an acquirer to furnish money, goods, services, or anything else of value upon presentation of a credit card or a credit card account number by a cardholder, or any employee of that person, who presents to the issuer or acquirer, for payment, a credit card transaction record of a sale, which sale was not made by that person or employee, violates this subsection and is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both.

(2) A person without the acquirer’s express authorization, employs, or solicits authorized merchants, or any agent or employee of the merchant, to remit to an issuer or acquirer, for payment, a financial transaction card record of a sale, which sale was not made by the merchant, his agent, or employee, is guilty of a felony and, upon conviction, is punishable as provided in Section 16‑14‑100(b).

**SECTION 16‑14‑70.** Criminal possession of financial transaction card forgery devices.

(A) A person is guilty of criminal possession of financial transaction card forgery devices when:

(1) he is a person other than the cardholder and possesses two or more incomplete financial transaction cards, with intent to complete them without the consent of the issuer;

(2) he possesses, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be financial transaction cards of an issuer who has not consented to the preparation of such financial transaction cards.

(B) A financial transaction card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, encoded, or written upon it.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both.

**SECTION 16‑14‑80.** Criminally receiving goods and services fraudulently obtained.

(A) It is unlawful for a person to receive money, goods, and services, or anything else of value fraudulently obtained in violation of Section 16‑14‑60(a) and with the knowledge or belief that the same were obtained in violation of Section 16‑14‑60(a).

(B) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, must be sentenced pursuant to Section 16‑14‑100(a) if the value of the money, goods, services, and anything else of value, is one thousand dollars or less in any six‑month period;

(2) felony and, upon conviction, must be sentenced pursuant to Section 16‑14‑100(b) if the value of the money, goods, services, or anything of value is more than one thousand dollars in any six‑month period.

**SECTION 16‑14‑90.** Presumption of knowledge that transportation ticket obtained at discount was fraudulently acquired.

It is permissible to infer that a person who obtains at a discount price a ticket issued by an airline, railroad, steamship, or other transportation company from other than an authorized agent of the company which was acquired in violation of Section 16‑14‑60(a) without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess knew that the ticket was acquired under circumstances constituting a violation of Section 16‑14‑60(a).

**SECTION 16‑14‑100.** Penalties for violation of Financial Transaction Card Crime Act.

(a) A crime punishable under this subsection is a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, and, upon conviction, the person must be fined not more than two thousand dollars or imprisoned not more than one year, or both.

(b) A crime punishable under this subsection is a felony and, upon conviction, the person must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both.