

**18 Pa.C.S. § 4106**

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**§ 4106. Access device fraud.**

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**(a) Offense defined.** — A person commits an offense if he:

(1) uses an access device to obtain or in an attempt to obtain property or services with knowledge that:

(i) the access device is counterfeit, altered or incomplete;

(ii) the access device was issued to another person who has not authorized its use;

(iii) the access device has been revoked or canceled; or

(iv) for any other reason his use of the access device is unauthorized by the issuer or the device holder; or

(2) publishes, makes, sells, gives, or otherwise transfers to another, or offers or advertises, or aids and abets any other person to use an access device knowing that the access device is counterfeit, altered or incomplete, belongs to another person who has not authorized its use, has been revoked or canceled or for any reason is unauthorized by the issuer or the device holder; or

(3) possesses an access device knowing that it is counterfeit, altered, incomplete or belongs to another person who has not authorized its possession.

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

(1) An actor is presumed to know an access device is counterfeit, altered or incomplete if he has in his possession or under his control two or more counterfeit, altered or incomplete access devices.

(2) Knowledge of revocation or cancellation shall be presumed to have been received by an access device holder seven days after it has been mailed to him at the address set forth on the access device application or at a new address if a change of address has been provided to the issuer.

**(b) Defenses.** — It is a defense to a prosecution under subsection (a)(1)(iv) if the actor proves by a preponderance of the evidence that he had the intent and ability to meet all obligations to the issuer arising out of his use of the access device.

**(c) Grading.**

**(1)** An offense under subsection (a)(1) falls within the following classifications depending on the value of the property or service obtained or sought to be obtained by means of the access device:

**(i)** if the value involved was \$ 500 or more, the offense constitutes a felony of the third degree; or

**(ii)** if the value involved was \$ 50 or more but less than \$ 500, the offense constitutes a misdemeanor of the first degree; or

**(iii)** if the value involved was less than \$ 50, the offense constitutes a misdemeanor of the second degree.

**(2)** Amounts involved in unlawful use of an access device pursuant to a scheme or course of conduct, whether from the same issuer or several issuers, 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.

**(5)** Each access device involved in the offense specified in subsection (a)(2) or (3) shall constitute a separate offense.

**(d) Definitions.** —

As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

*“Access device.”* —Any card, including, but not limited to, a credit card, debit card and automated 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 transfer funds.

*“Altered access device.”* —A validly issued access device which after issue is changed in any way.

*“Counterfeit access device.”* —An access device not issued by an issuer in the ordinary course of business.

*“Device holder.”* —The person or organization named on the access device to whom or for whose benefit the access device is issued by an issuer.

*“Incomplete access device.”* —An access device which does not contain all of the printed, embossed, encoded, stamped or other matter which an issuer requires to appear on a validly issued access device.

*“Issuer.”* —The business organization or financial institution which issues an access device or its duly authorized agent.

*“Publishes.”* —The communication of information to any one or more persons, either in person, by telephone, radio, other telecommunication or electronic device, 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) may be deemed to have been committed at either the place where the attempt to obtain property or services is made, or at the place where the property or services were received or provided, or at the place where the lawful charges for said property or services are billed.

## History

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Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1974-185 (S.B. 1552), P.L. 539, § 1, approved July 20, 1974, eff. in 60 days; Act 1998-149 (H.B. 148), P.L. 1103, § 3, approved Dec. 21, 1998, eff. in 60 days.

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