

CHAPTER 260
FORMERLY
HOUSE BILL NO. 246
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES INVOLVING USE OF PAYMENT CARDS OR CREDIT CARDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 904, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§904. Definition of ~~“credit card.”~~ “payment card.”

~~“Credit card” means a writing, number or other evidence of an undertaking to pay for property or services delivered or rendered to or upon order of a designated person or bearer. “Payment card” includes any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (“EBT”) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit, by the withdrawing of funds from a deposit account, or through the use of value stored on the card. “Payment card” also includes the number that is assigned to the card even if the physical card, instrument or device is not used or presented.~~

Section 2. Amend § 903, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 903 Unlawful use of ~~credit card~~ payment card; class G felony; class A misdemeanor

(a) A person is guilty of unlawful use of a ~~credit card~~ payment card when the person uses or knowingly permits or encourages another to use a ~~credit card~~ payment card for the purpose of obtaining ~~property or money, goods, services, or anything of value~~ knowing that:

- (1) The card is stolen, forged or fictitious; or
- (2) The card belongs to another person who has not authorized its use; or
- (3) The card has been revoked or canceled; or
- (4) For any other reason use of the card is unauthorized by the issuer.

(b) A person is guilty of unlawful use of a ~~credit card~~ payment card where such person knowingly:

(1) Makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises a ~~credit card~~ payment card with the intent that it be used or with the knowledge or reason to believe that it will be used to obtain ~~property or money, goods, services, or anything of value~~ without payment of the lawful charges therefor or without authorization of the card holder; or

(2) Publishes a ~~credit card~~ payment card or code of an existing, canceled, revoked, expired or nonexistent ~~credit card~~ payment card, or the numbering or coding which is employed in the issuance of ~~credit cards~~ payment cards, with the intent that it be used or with knowledge or reason to believe that it will be used either: to avoid the payment of ~~for any property or money, goods, services, or anything of value; or without authorization of the card holder~~. As used in this section “publishes” means the communication of information to any 1 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.

(c) (1) Except where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a ~~credit card~~ payment card is a class A misdemeanor unless the value of the ~~property or money, goods, services, or anything of value~~ secured or sought to be secured by means of the ~~credit card~~ payment card is \$1,500 or more, in which case it is a class G felony.

(2) Where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a ~~credit card~~ payment card is a class G felony unless the value of the ~~property or money, goods, services, or~~

anything of value secured or sought to be secured by means of the ~~credit card~~ payment card is \$1,500 or more, in which case it is a class F felony.

(d) Amounts involved in unlawful use of a ~~credit card~~ payment card pursuant to 1 scheme or course of conduct, whether from the same issuer or several issuers, may be aggregated in determining whether such unlawful use constitutes a class A misdemeanor or a class G felony under this section.

(e) A person may be prosecuted and convicted under this section in such county or counties within Delaware where the ~~property or~~ money, goods, services, or anything of value giving rise to the prosecution were solicited, ~~or where the property or services~~ were received, or were attempted to be received, or where the charges for the ~~property or~~ money, goods, services, or anything of value were billable in the normal course of business.

Section 3. Amend § 903A, Title 11 of the Delaware Code by making deletions as shown by strike through as follows and redesignating paragraphs (e)(2) and (e)(3) accordingly:

(e) As used in this section, the following definitions apply:

(1) ~~“Payment card” means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.~~

Section 4. Amend § 905, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 905. Intention and ability to meet obligations as affirmative defense

In any prosecution for unauthorized use of a ~~credit card~~ payment card under § 903(a)(4) of this title it is an affirmative defense that the accused had the intention and ability to meet all obligations to the issuer arising out of the use of the card.

Section 5. Amend § 914, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 914. Use of consumer identification information

(a) Except as provided in subsection (b) of this section, as a condition of accepting a ~~credit card~~ payment card as payment for consumer credit, goods, realty, or services, a person may not write down or request to be written down the address and/or telephone number of the ~~credit card~~ payment card holder on the ~~credit card~~ payment card transaction form.

(b) A person may record the address or telephone number of a ~~credit card~~ payment card holder if the information is necessary for:

- (1) The shipping, delivery or installation of consumer goods; or
- (2) Special orders of consumer goods or services.

(c) Violation of this section is an unclassified misdemeanor.

Section 6. Amend § 915, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 915. Use of ~~credit card~~ payment card information

(a) In this section, the following words have the meanings indicated:

- (1) “Draft” does not include a credit or debit card sales draft.
- (2) “Drawer” means the individual who makes or signs a check or other draft;

(b) Subject to the provisions of subsection (c) of this section, as a condition of accepting a check or other draft as payment for consumer credit, goods, realty or services, a person may not request or record the account number of any ~~credit card~~ payment card of the drawer of the check or other draft.

(c) The provisions of this section do not prohibit a person from:

- (1) Requesting the drawer to display a ~~credit card~~ payment card for purposes only of identification or credit worthiness;
- (2) Requesting or recording the type or issuer of a ~~credit card~~ payment card of the drawer; or
- (3) Recording the number and expiration date of a ~~credit card~~ payment card if the person requesting the information has agreed with the ~~credit card~~ payment card issuer to cash checks as a service to the issuer's cardholders and the issuer has agreed to guarantee payment of cardholder checks cashed by that person.

(d) Violation of this section is an unclassified misdemeanor

Section 7. Amend § 854, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) For the purposes of this section, “personal identifying information” includes name, address, birth date, Social Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, ~~credit card number, debit card number,~~ payment card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name or similar personal number, record or information.

Section 8. Severability. – If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Section 9. Effective date. – This act shall become effective immediately upon enactment.

Section 10. Amend § 1105(f), Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(f) The following shall be underlying offenses for the purposes of this section:

§ 903 Unlawful use of ~~credit~~ payment card

Section 11. Amend § 9401(2), Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(2) “Crime” means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

903. Unlawful use of ~~credit~~ payment card; class G felony; class A misdemeanor.

Approved June 19, 2014