

## No. 1998-149

## AN ACT

HB 148

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for propulsion of missiles into an occupied vehicle or onto a roadway; defining the offense of theft from a motor vehicle; further providing for credit card fraud; defining the offense of unlawful device-making equipment; further providing for control of alarm devices and automatic dialing devices; providing penalties; and exempting certain volunteers from paying fees for reports of criminal history record information.

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

Section 1. Section 2707(b) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2707. Propulsion of missiles into an occupied vehicle or onto a roadway.

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(b) Roadways.—Whoever intentionally throws, shoots, drops or causes to be propelled any solid object, from an overpass or any other location adjacent to *or on* a roadway, onto or toward said roadway[,] shall be guilty of a misdemeanor of the second degree.

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

§ 3934. *Theft from a motor vehicle.*

(a) *Offense defined.*—A person commits the offense of theft from a motor vehicle if he unlawfully takes possession of, carries away or exercises unlawful control over any movable property of another from a motor vehicle with the intent to deprive him thereof.

(b) *Grading.*—

(1) *An offense under this section is:*

(i) *a misdemeanor of the third degree if the amount involved was less than \$50; or*

(ii) *a misdemeanor of the second degree if the amount involved was \$50 or more but less than \$200; or*

(iii) *a misdemeanor of the first degree if the amount involved was greater than \$200.*

(2) *When the offense is a third or subsequent offense within a five-year period, regardless of the amount involved and regardless of the grading of the prior offenses, an offense under this section is a misdemeanor of the first degree.*

Section 3. Section 4106 of Title 18 is amended to read:

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

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

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

(i) the [card is stolen, forged or fictitious] *access device is counterfeit, altered or incomplete;*

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

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

(iv) for any other reason his use of the [card] *access device* is unauthorized by the issuer or the [person to whom issued] *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 [a credit card with the knowledge or reason to believe that it will be used to obtain property or services without payment of the lawful charges therefor;] 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) [publishes a credit card or code of an existing, canceled, revoked, expired, or nonexistent credit card, or the numbering or coding which is employed in the issuance of credit cards, with knowledge or reason to believe that it will be used to avoid the payment for any property or services.] *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 [subparagraph (a)(1)(iv) of this section,] *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 [card] *access device.*

(c) Grading.—

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

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

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

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

**(2)** Amounts involved in unlawful use of [a credit card] *an access device* pursuant to [one] *a* scheme or course of conduct, whether from the same [issuers] *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:

**“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 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 [orally] in person, [or] by telephone, radio [or], *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) [of this section] 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.

Section 4. Title 18 is amended by adding a section to read:

**§ 4106.1. Unlawful device-making equipment.**

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

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

(2) possesses device-making equipment.

(b) *Grading.*—An offense under subsection (a)(1) is a felony of the third degree. An offense under subsection (a)(2) is a misdemeanor of the first degree.

(c) *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 initiate a transfer of funds.

“Device-making equipment.” Any equipment, mechanism or impression designed or capable of being used for making an access device.

“Produce.” Includes design, alter, authenticate, duplicate or assemble.

“Traffic.” Sell, give or otherwise transfer to another or obtain control of with intent to dispose of or transfer.

Section 5. Section 7511(e) of Title 18 is amended to read:

§ 7511. Control of alarm devices and automatic dialing devices.

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(e) Local regulation of installers.—

(1) General rule.—Except as set forth in paragraph (2), nothing in this section shall prohibit a municipality from requiring any individual who installs [alarms] or inspects alarm devices in such municipality to acquire a license, meet educational requirements or pass an examination relating to competence to perform such installations. Nothing in this section shall preclude municipalities from doing any of the following:

(i) Denying or revoking local permits for failure to comply with local ordinances.

(ii) Levying lawful taxes and fees.

(iii) Requiring the purchase of a business privilege license.

(2) Limitation.—A municipality may not require a licensed electrical contractor to acquire a separate or additional license or certification to install [alarms] or inspect alarm devices if the electrical contractor is

licensed by the municipality and has passed an examination in the National Electrical Code, a similar code or local electrical code and has at least two years' experience as an electrical contractor.

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Section 6. Section 9121(b)(1) of Title 18 is amended to read:

§ 9121. General regulations.

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(b) Dissemination to noncriminal justice agencies and individuals.—Criminal history record information shall be disseminated by a State or local police department to any individual or noncriminal justice agency only upon request. Except as provided in subsection (b.1):

(1) A fee may be charged by a State or local police department for each request for criminal history record information by an individual or noncriminal justice agency[.], *except that no fee shall be charged to an individual who makes the request in order to apply to become a volunteer with an affiliate of Big Brothers of America or Big Sisters of America.*

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Section 7. This act shall take effect in 60 days.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE