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HJ :

FILE NO. 2

Jackson

PROPOSED AMENDMENTS

Section 45.50.501 - POWERS OF ATTORNEY GENERAL

(a) The attorney general may make rules and regulations interpreting the provisions of Section 45.50.481 of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the federal courts in interpreting the provisions of Section 5 (a) (1) of the Federal Trade Commission Act (15 U.S.C., 45 (a) (1)), as from time to time amended.

(b) It is the intent of the legislature that in construing Section 45.50.481 of this act due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45 (a) (1)), as from time to time amended; and

(c) In any action instituted under this act it shall be an absolute defense to show that the challenged practices are subject to, and comply with statutes administered by the Federal Trade Commission, or any rules, regulations or decisions interpreting the substantive law of such statutes.

Alaska Retail Association

Section 45.50.550 - PRIVATE AND CLASS ACTIONS

When any person in any action brought by the attorney general under section 45.50.520 of this title, has been enjoined from committing any act or practice, whether after final adjudication or by consent decree; any person claiming to have been adversely affected by the act or practice giving rise to such injunction may bring suit and recover actual damages, and the costs of suit, including reasonable attorneys' fees, and when appropriate additional damages, restitution, reformation, rescission and other equitable relief.

Alaska Retail Association

Jackson

PROPOSED AMENDMENTS TO CSSR 302

Section 45.50.41. DECEPTIVE TRADE PRACTICES DEFINED

(1) A person engages in a deceptive trade practice when in the course of business, vocation or occupation, he knowingly:

(1) falsely passes off property or a service as that of another;

(2) makes a false representation as to the source, sponsorship, approval or certification of property or services;

(3) makes a false representation as to his affiliation, connection or association with, or certification by another;

(4) uses deceptive representations or designations of geographic origin in connection with property or services;

(5) makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of property or services, or a false representation as to the sponsorship, approval, status, affiliation or connection of a person with the property or services;

(6) represents that a property is original or new if it is not;

(7) represents that a property or service is of a particular standard, quality or grade, or that a property is of a particular style or model, if he knows or should know that it is of another;

(8) disparages the property, services or business of another by false or misleading representation of fact;

(9) advertises property or services with intent not to sell the property or services as advertised;

(10) advertises property or services with the intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) advertise under the guise of obtaining sales personnel when in fact the primary purpose is to first sell property or services to the sales personnel applicant; or

(12) makes false or misleading statements of fact concerning the price of property or services, or the reasons for, existence of, or amounts of price reductions.

(b) The deceptive trade practices set out in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under the laws of this state.

Sec. 45.50.491. EXCEPTIONS TO THE PROHIBITED TRADE PRACTICES.

The provisions of secs. 471 - 530 of this chapter do not apply to

(1) actions or transactions permitted under laws administered by a regulatory body or officer acting under the laws of this state or the United States; or

(2) acts by any person in the publication or dissemination of an advertisement, supplied by another when the person has no knowledge of the false, misleading, or deceptive character of the advertisement.

Sec. 45.50.550. LIABILITY FOR ACTIONS OF EMPLOYEE.

The provisions of this chapter apply to a person whose employees

engage in deceptive trade practices in the course of and scope of employment with said person under sec. 431 of this chapter.

New section - fit in toward the end of the bill

Sec. _____ LIMITATION OF ACTIONS. No action may be brought under this act more than one year after discovery of the unlawful conduct which is the subject of the suit.

Certain sections should be renumbered to conform to changes in section numbers.

BUI

STATEMENT OF RANDOLF H. AIRES BEFORE
ALASKA HOUSE COMMERCE COMMITTEE
CONCERNING S.B. 352 AND RELATED BILLS

I am Randolph H. Aires, an attorney in the Pacific Coast Legal Department of Sears, Roebuck and Co. I appreciate the opportunity to appear before your Committee, both on behalf of my company and on behalf of the Alaska Retail Association, to express the retailing industry's concerns with all three consumer protection bills before your Committee and with CSSB 352 in particular.

The retail industry, which acts as the purchasing agent for the consumer, believes that the interests of its customers are paramount. The words "consumer protection" are magic words these days, and we believe that the honest and legitimate merchants in your communities have a lot to gain from good consumer legislation. Thus we support and will continue to support good and reasonable consumer legislation.

You know, we are all consumers, and I am still young enough to remember painfully how I was taken advantage of as a young newly married person, before going to law school, by a door-to-door salesman with a glib line and plenty of high pressure. The misrepresentations he made really hit me the morning after we signed the contract, and I wish that a law such as your door-to-door solicitation bill being considered here tonight would have been available to me then, so that I could have rescinded that sale.

Your proposed door-to-door solicitation law is just one of twenty significant consumer protection features contained in the Uniform Consumer Credit Code, presently before the Alaska Legislature. We support the UCCC and we hope that it will be studied seriously some time later in the year.

Now, in these three consumer protection acts before you, we're dealing with deceptive trade practices. The twelve enumerated practices in CSSB 352 are practices which we feel should be dealt with in proper legislation.

We believe that a customer who feels he has been defrauded, and who cannot obtain satisfaction through the normal complaint procedure is entitled to a remedy. President Nixon's Special Assistant for Consumer Affairs, Mrs. Virginia Knauer, who has received so much publicity recently, has pointed out that the remedy should be "convenient, expeditious, and effective."

We submit that the consumer class action provision contained in CSSB 352 and H.B. 446 would not provide that type of remedy to the consumer. We believe that indiscriminate class action legislation will create more evils than it will remedy.

Class actions do not result in a speedy and efficient determination of claims. Ask any attorney who has been involved with one. On the contrary, notice requirements, unwieldy pre-trial procedures required when there are numerous litigants, protracted trials, difficult damages determinations, and a heavy burden of management which is placed on the courts, all lead to excessively long and complex proceedings benefitting only the lawyers. I know that you are attempting to deal with the problem of overburdened courts in Alaska this year.

Up to now, courts all over the country have been reluctant to permit traditional class actions, under the existing restrictive rules of civil procedure and court rules allowing class actions, because these actions are likely to benefit practically nobody other than the lawyers who bring them and because they often create lawsuits without merit

where none would have previously existed.

Now we have this new approach which has appeared on the scene - the proposed statutory consumer class action. It first came on the scene last year in the Federal Congress with people such as Senator Tidings championing it. This year we are seeing it at the state legislative level. To my knowledge no state has passed a consumer class action law so far this session.

What are the dangers as we see them with the consumer class action? It is relatively simple for an enterprising attorney (there are many) to marshal an expansive list of plaintiffs through the class action notice provision. You can develop hundreds and thousands of unknown clients just like that. The potential of high legal fees will cause many attorneys to bring unwarranted class actions relating to technical violations of law and against innocent businessmen. The class action might be brought against a businessman who would be willing to resolve, on an informal basis, a valid claim of a consumer. But when maybe only one out of the hundreds or thousands who might be in the so called "class" has a valid claim and the others don't, how could you possibly settle with the lawyer representing the amorphous class?

Add to this the fact that in your bills before you, each so called "injured person" will recover at least two hundred dollars. There is no certainty concerning this provision, but there is the possible interpretation that the two hundred dollar minimum for each person applies to the consumer class action as well as to the private individual action. If this is true, even the people with valid claims may be damaged only in the amount of several dollars, and yet each person in the class would be asking for two hundred dollars or more, whether they have a valid claim or not. It doesn't

take much imagination to see the potential for severe harassment against the legitimate retailer under these conditions.

In class actions such as these, the lawyer becomes less counsel and more the participating litigant and real party in interest, because the financial interest of the attorney for the class may be far more substantial than the interest of any member of the class.

We believe that consumer class actions could impose great economic consequences for the defendant. A class action, even if completely unwarranted, necessitates substantial time and expense in the preparation of a defense. This type of harassment could drive some completely honest small businessmen right out of business.

The astute lawyer will obviously search for defendants who can be subjected to large damage recoveries rather than the judgment proof "fly-by-night" operators who prey upon the unsophisticated. That's the tragedy of this whole misguided concept of consumer class actions in bills such as are before you.

Here are some examples of technical violations which could be used against a legitimate enterprise in a consumer class action: an unintentional omission of an address in a guaranty form; a mistake in using the term "regular price" when an article was actually "originally" rather than "regularly" offered at such price; the designation of a product as "imported" but with the omission of the specific country of origin, even though such country produces goods of desirability to the consumers; the advertising of a television picture tube as "23 inch" without referring to it as a "diagonal measurement."

There has been no demonstrated need for a consumer class

action statute, especially here in Alaska, as distinguished from other forms of remedies presently available. Before jumping into this type of legislation, we believe that experimentation and pilot programs involving other methods could be pursued.

Section 45.50.511 of CSSB 352, which gives the Attorney General basic powers, provides that the court may make any order or judgment necessary to restore to the individual money or property acquired because of a deceptive trade practice. So the court would be equipped to take care of the individual without the necessity of the individual bringing his own lawsuit.

Furthermore, small claims courts are available in Alaska for amounts up to \$500.00 in damages, where the individual can go into court without the expense and need of an attorney.

The Federal Trade Commission and the Attorney General's office should be available to a consumer who has been defrauded. There is increased emphasis being placed in this direction. In the State of Washington, there are presently three or four attorneys in the Consumer Protection Division of the Attorney General's office, doing their thing for the consumers, and they are quite active. We have no objection to this kind of strict enforcement at the governmental level.

The whole point of all of this is that much more study should be made of this whole area of how to give the consumer a fast and judicious remedy to take care of his small grievances, and it would be quite unwise, in our judgment, to pass this kind of legislation at this time.

We respectfully submit that if the Alaska Legislature is prepared and determined, however, to deal with this complex

subject at this time, the best approach is that being followed by the Nixon Administration at the Federal level. That approach, put into effect at the state level, would involve your Attorney General and his staff, who would effectively prosecute violators of these deceptive trade practices, and if successful, the individual could bring his lawsuit based on the violation and get all the relief necessary from the court. We have given you a suggested amendment to this effect. This approach, we submit, would prevent the harassment from unwarranted private and class actions, and at the same time give the consumer who has a valid grievance his day in court.

Another proposed amendment which we have given to you deals with the rule making powers of the Attorney General under such a law as CSSB 352. Our concern in this area is that we don't feel that merchants should be subject to separate and possibly conflicting interpretations and rulings on what constitutes a deceptive trade practice and on any related matters. Deceptive trade practices listed in your bills, particularly in CSSB 352, are keyed into the Federal Trade Commission Act dealing with deceptive trade practices. We propose that it should be made clear that it is the intent of the Alaska Legislature that the construction of your act will depend in large part upon the interpretation of the Federal Trade Commission and the federal courts who have operated in this area for many years.

Further, we think it should be an absolute defense to an action brought under this act if it can be shown conclusively that the conduct complained of was authorized by the Federal Trade Commission or any rules, regulations or decisions interpreting the Federal Trade Commission Act. This is only fair.

We suggest that four other amendments be considered for

CSSB 352,

Seven of the twelve defined deceptive trade practices have a requirement for intent or knowledge on the part of the person or company perpetrating the practice. It is difficult to know why this distinction has been made. We feel that all twelve defined practices should have this knowledge or intent requirement. The requirement is particularly necessary because some of those definitions are so broad and open to interpretation.

We suggest that the exception provided in Section 45.50.491 (2) should be extended to any person who merely uses some advertising matter which is supplied to him by his supplier, and not just to the newspaper, radio and television people.

We feel that it is only reasonable that a statute of limitations be placed in this bill or any other bill of this nature, granting a one year statute of limitations after the discovery of the unlawful conduct involved.

We recommend that Section 45.50.550 of CSSB 352, dealing with the liability for actions of employees, be clarified to state that the deceptive trade practice perpetrated by the employee would have to arise in the course of and in the scope of his employment with the employer. Otherwise, broadly read, this could apply to something the employee did when he wasn't working for his employer, such as on a moonlighting situation, or it could apply to something which the employee did without any authority, or in connection with some type of activity not in the scope of his assigned duties.

With the adoption of the amendments which we have recommended and given to you, we could support CSSB 352. If H.B. 444 and H.B. 446 are considered by the House, our comments concerning CSSB 352 will apply with equal force to

those bills. Further, we would want some other minor modifications to H.B. 444, and we feel that H.B. 446 would have to be drastically changed before we could support it. In particular, I refer to the sections in H.B. 446 dealing with the Attorney General's regulations, the powers of receivership, the forfeiture of the corporate franchise, and the civil and criminal penalties provided therein.

Since you are also considering tonight H.B. 411 and S.F. 188, I would like to state that we are in favor of both of these consumer bills.

Thank you. I will be glad to try to answer any questions you may have.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

SB-352

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

May 23, 1970

Barry:

Your HCS for SB 239 is attached. I made the two changes we discussed earlier this morning. In addition, I put the whole thing in a separate chapter in Title 11, ~~X~~ and I deleted "or organization" from the phrase "person or organization" several places because that is taken care of in the definition of "person" in AS 01.10.060(7).

I don't know why a minimum ~~x~~ imprisonment is specified in proposed AS 11.22.050(a), 070(b), 080(b), 090(b) and 100(a). It isn't necessary in order to make the crime a felony, the effect of specifying the minimum can be avoided by suspending part of the sentence, and the statement of it implies a legislative intent to limit judicial discretion in sentencing.

Also, it looks to me like the list in proposed AS 11.22.080(a) should read "stolen, forged, expired or revoked", especially since there is a reference to secs. 10 -- 60.

A.
Art

FOR IMMEDIATE RELEASE

SENATOR PHILLIPS INTRODUCES CONSUMER PROTECTION

BILL TO DISCOURAGE FRAUDULENT USE OF CREDIT CARDS

JUNEAU, ALASKA -- A credit card crime act designed to protect credit card holders in Alaska from fraud will be introduced in the current session of the legislature by Senator Vance Phillips (R) of (hometown). The proposed legislation is needed and timely, Senator Phillips said, because the growing use of credit cards in today's economy is rapidly making obsolete the existing outdated state laws by which fraudulent users are punished for their crimes.

Laws similar to that proposed for Alaska by Senator Phillips have been adopted, in recent months, by California, Florida, Virginia, New Jersey, North Carolina and Mississippi, and are being introduced in current legislative sessions in many other states, among them New York, Massachusetts, Connecticut, Indiana, Georgia, Arkansas, Pennsylvania, Maryland, Arizona, New Hampshire, New Mexico, and Washington.

They are based on a model credit card act drafted over a year ago by a team of researchers at Columbia University Law School, on a grant from American Express Company. The Columbia Law research team examined the statutes of all 50 states with respect to their punishment of credit card crimes and found them, for the most part, inadequate and out of date.

(more)

According to Senator Phillips, the current credit card popularity is a post-World War II phenomenon of huge dimensions, involving a tremendous number of transactions in credit buying by consumers for goods and services from airlines, banks, oil companies, restaurants, hotels and motels, department stores, and many other businesses. A credit card is, in effect, sort of a continuing "letter of credit", the Senator pointed out. Since these convenient little cards potentially can represent vast amounts of consumer buying power, it is imperative that those who own them are protected. Under antiquated laws presently on the books in most states, Senator Phillips said, the theft or other fraudulent possession or use of a credit card is punishable only as a misdemeanor, implying nothing more than the intrinsic value of the plastic rectangle -- in other words, a penny or two. This, he said, is tantamount to a \$1,000 bill being worth only the paper it's printed on.

In citing the tremendous rise in credit card buying in the U.S., and thus to underscore his growing concern for adequate legislation to protect the many legitimate cardholders in this state, Senator Phillips cited these facts:

1. There are currently over 200 million credit cards issued in the U.S. annually, and the figure increases by approximately 25% each year.
2. Credit card losses are estimated currently at about \$50 million per year, and this is pure guesswork. Many authorities, however, view this figure as far below \$50 million; perhaps by as much as double the amount.

(more)

3. Losses are sustained by gasoline companies, retail establishments, banks, airlines, auto rentals, and major national "travel and entertainment" credit card companies (American Express, Diners Club, etc.) and their customers.

4. The principal perpetrators of frauds, according to police authorities, are (a) individual criminals, (b) organized crime. In the case of individual fraud, credit cards are usually stolen or picked up when lost and then used illegally for direct purchases.

5. Over the past few years, organized crime appears to have moved into the credit racket generally in a major way. Cards are stolen (sometimes even on order) by criminals in jobs where they serve the public, and sold quickly to syndicate outlets for relatively large (\$50 - \$250) amounts of money. The crime organization then transfers the cards to its "agents", who use them to purchase expensive airline tickets and other merchandise and services for fast re-sale to third parties.

(more)

6. Many major cities and their law enforcement agencies have entered into cooperative agreements on credit card fraud investigation and apprehension. Local police and District Attorneys' offices work closely with credit card companies' investigation and security departments, such as the American Express security force headed by Milton Lipson, a former Secret Service agent who directs the work of 300 investigators and staff personnel around the world.

7. Department stores, which generally absorb credit (or charge) card losses, are also heavily hit. Here prosecution is particularly difficult, since a high percentage of these credit card frauds are actually committed by relatives of the card holder. Some department stores will pay a reward -- to persons other than their own personnel -- for the return of stolen credit cards. For instance, one big New York store pays \$25 apiece for its returned stolen cards -- no questions asked.

8. What the credit card thief can expect from American Express, they claim, is swift prosecution. The company makes it a policy to carry all cases through to the courts. One cannot get out of an indictment involving

(more)

8. (continued)

American Express credit cards simply by paying off the amount of the fraud. However, both companies do offer rewards to service establishments who pick up lost or stolen credit cards from illegal users. American Express, for example, offers anywhere from \$25 to \$100 for cards returned by retail establishments, and can go even higher when a conviction results. This practice helps to take such cards out of circulation, and generally sharpens the awareness of establishments to credit card fraud attempts.

9. American Express and Diners Club emphasize that their security forces are in existence solely for the protection of their customers. Neither company's security force plays any part in checking or investigating the credit of valid card holders or applicants.

10. Corrective measures recommended by most issuers of credit cards are: a) Improved laws to tighten the loopholes in current statutes and interstate regulations; b) Faster communications between businessmen, credit card companies and law enforcement agencies; c) Better credit card care by card holders.

11. The Senator's proposed legislation will help improve the state's laws; the credit card industry is at work on

(more)

11. (continued)

faster intercommunication; and to ensure better care by cardholders, he recommends the following procedures:

- a. Keep them on your person -- don't leave them lying around, any more than you'd be careless about cash.
- b. Check frequently to make sure you have all your cards in your possession. If one is missing, report its loss immediately to the issuer -- first by phone or wire, then by letter.
- c. Keep a record of all numbers and issuers of cards, in order to hasten and simplify reporting a loss.
- d. Screen your cards. Decide which ones are valuable enough to serve most of your needs. Destroy those that you really don't need or could lead to trouble for you if lost or stolen.
- e. Destroy outdated or unwanted cards by cutting them in half.
- f. Always make sure your card is returned after you've made a purchase with it.

#

AMERICAN EXPRESS

AMERICAN EXPRESS COMPANY, GENERAL COUNSEL'S OFFICE, 65 BROADWAY, NEW YORK, N. Y. 10006
TELEPHONE (212) 944-2000

GENERAL COUNSEL'S OFFICE

February 10, 1969.

Senator Vance Phillips
Pouch V
Juneau, Alaska.

Dear Senator,

Mr. Jack Fones has asked that I send you a copy of the Model Credit Card Crime Act as drafted by Professors Weinstein and Farer of Columbia University Law School. Enclosed you will find a copy of the first 45 pages of the Study which contains the draft of the statute and comments.

Yours very truly,

Rita Berkowitz

Rita Berkowitz
Attorney.

RB/SK.

AMERICAN EXPRESS

AMERICAN EXPRESS COMPANY, GENERAL COUNSEL'S OFFICE, 65 BROADWAY, NEW YORK, N. Y. 10006
TELEPHONE (212) 944-2000

GENERAL COUNSEL'S OFFICE

February 20, 1969.

Senator Vance Phillips
Alaska State Senate
Pouch "V"
Juneau, Alaska 99801.



Dear Senator Phillips,

Re: State Credit Card Crime Act - Alaska

Mr. Jack Fones has asked me to review the draft of the Bill which you sent to him.

The draft provides general proscriptions of the variety of credit card abuses that have been the center of massive criminal activities for many years. I think that the enactment of such legislation would greatly benefit the citizens of Alaska. I see from the draft you have omitted the Presumptions which are an important aspect of the Model Act. I would like to suggest that the Presumptions be added to the following Sections:

Add to Section 11.20.710. "A person who has in his possession or under his control credit cards issued in the names of two or more other persons is presumed to have violated this section".

Add to Section 11.20.770. "A person who possesses two or more credit cards which are so signed is presumed to have violated this section".

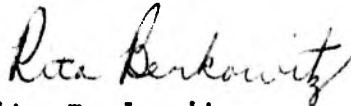
Add a new section which would define the importance of these Presumptions which would read: "When this Act establishes a Presumption with respect to any fact which is an element of a crime, it has the following consequences:

1. When there is sufficient evidence of the facts which give rise to the Presumption to go to the jury, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

2. When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the Presumption as sufficient evidence of the presumed fact".

If there is anything that we at American Express Company or any of the others in the credit card industry can do to be of assistance to you in the promotion of this legislation, please feel free to contact me.

Yours very truly,



Rita Berkowitz
Attorney

c.c. Mr. Jack Fones

RB/SK.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

STATE CREDIT CARD CRIME ACT

Jack B. Weinstein,
Tom J. Farer

Law School,
Columbia University,
December, 1966

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by
American Express Company

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STATE CREDIT CARD CRIME ACT

SUMMARY

- Section 1. Definitions
- (a) Cardholder
 - (b) Credit Card
 - (c) Expired credit card
 - (d) Issuer
 - (e) Receives
 - (f) Revoked credit card
- Section 2. False statement as to financial condition or identity.
- Section 3. Theft of credit card by taking or retaining possession; theft of credit card lost, mislaid, or delivered by mistake; purchase or sale of credit card; obtaining control of credit card as security for debt; dealing in credit cards of another; forgery of credit card; signing credit card of another.
- (a) Theft by taking or retaining possession of card taken.

- (b) Theft of credit card lost, mislaid, or delivered by mistake.
- (c) Purchase or sale of credit card of another.
- (d) Obtaining control of credit card as security for debt.
- (e) Dealing in credit cards of another.
- (f) Forgery of credit card.
- (g) Signing credit card of another.

Section 4. Fraudulent use of or representation of authority to use illegally obtained or illegally possessed credit card, forged credit card or revoked, expired or fictitious credit card.

Section 5. Fraud by person authorized to provide goods or services.

- (a) Illegally obtained or illegally possessed credit card; forged, revoked or expired credit card.
- (b) Misrepresentation to issuer.

Section 6. Possession of machinery, plates, or other contrivance or incomplete credit cards.

Section 7. Receipt of money, goods, services or anything else of value obtained in violation of Section 4.

Section 8. Defenses not available.

Section 9. Presumptions.

Section 10. Penalties.

(a) One year or \$1000.

(b) Three years or \$3000.

Section 11. Act not exclusive.

Section 12. Severability.

STATE CREDIT CARD CRIME ACT

SECTION 1. Definitions

(a) Cardholder. "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(b) Credit Card. "Credit card" means any instrument or device, whether known as a credit card, credit plate, 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.

(c) Expired credit card. "Expired credit card" means a credit card which is no longer valid because the term shown on it has elapsed.

(d) Issuer. "Issuer" means the business organization or financial institution which issues a credit card or its duly authorized agent.

(e) Receives. "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan.

(f) Revoked credit card. "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

SECTION 2. False statement as to financial condition or identity.

A person who makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting his identity or that of any other person, firm or corporation, or his financial condition or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card, violates this section and is subject to the penalties set forth in subsection (a) of section 10 of this act.

SECTION 3. Theft of credit card by taking or retaining possession; theft of credit card lost, mislaid or delivered by mistake; purchase or sale of credit card; obtaining control of credit card as security for debt; dealing in credit cards of another; forgery of credit card; signing credit card of another.

(a) Theft by taking or retaining possession of card taken. A person who takes a credit card from the person, possession, custody or control of another without the cardholder's consent or who, with knowledge that it has been so

taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in subsection (a) of section 10 of this act. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common law larceny by trespassory taking, common law larceny by trick, embezzlement, or obtaining property by false pretense, false promise or extortion.

A person who has in his possession or under his control credit cards issued in the names of two or more other persons is presumed to have violated this subsection.

(b) Theft of credit card lost, mislaid, or delivered by mistake. A person who receives a credit card 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 or to sell it or to transfer it to a person other than the issuer or the cardholder is guilty of credit card theft and is subject to the penalties set forth in subsection (a) of section 10 of this act.

(c) Purchase or sale of credit card of another. A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act.

(d) Obtaining control of credit card as security for debt. A person who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else

of value, or any other person, obtains control over a credit card as security for debt violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act.

(e) Dealing in credit cards of another.

A person, other than the issuer, who during any twelve-month period, receives credit cards issued in the names of two or more persons which he has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of section 2 of this act or subsection (c) or (d) of this section violates this subsection and is subject to the penalties set forth in subsection (b) of section 10 of this act.

(f) Forgery of credit card. A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card is guilty of credit card forgery and is subject to the penalties set forth in subsection (b) of section 10 of this act. A person other than the purported issuer who possesses two or more credit cards which are falsely made or falsely embossed is presumed to have violated this subsection. A person "falsely makes" a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued. A person "falsely embosses" a credit card

when, without the authorization of the named issuer, he completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(g) Signing credit card of another.

A person other than the cardholder or a person authorized by him who, 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 credit card, violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act. A person who possesses two or more credit cards which are so signed is presumed to have violated this subsection.

SECTION 4. Fraudulent use of or representation of authority to use illegally obtained or illegally possessed credit card, forged credit card or revoked, expired or fictitious credit card.

A person, who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, (i) uses for the purpose of obtaining money, goods, services or anything else of value a credit card obtained or retained in violation of section 3 of this act or a credit card which he knows is forged, expired or revoked, or (ii) obtains money,

goods, services or anything else of value by representing without the consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act, if the value of all money, goods, services and other things of value obtained in violation of this subsection does not exceed \$500 in any six-month period; and is subject to the penalties set forth in subsection (b) of section 10 of this act, if such value does exceed \$500 in any six-month period. Knowledge of revocation shall be presumed to have been received by a cardholder four days after it has been mailed to him at the address set forth on the credit card or at his last known address by registered or certified mail, return receipt requested, and, if, the address is more than five hundred miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received ten days after mailing by registered or certified mail.

SECTION 5. Fraud by person authorized to provide goods or services.

(a) Illegally obtained or illegally possessed credit card; forged, revoked or expired credit card. A person who is authorized by an issuer to furnish money, goods, services

or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who, with intent to defraud the issuer or the cardholder, furnishes money, goods, services or anything else of value upon presentation of a credit card obtained or retained in violation of section 3 of this act or a credit card which he knows is forged, expired or revoked violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act, if the value of all money, goods, services and other things of value furnished in violation of this subsection does not exceed \$500 in any six-month period; and is subject to the penalties set forth in subsection (b) of section 10 of this act if such value does exceed \$500 in any six-month period.

(b) Misrepresentation to issuer. A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished violates this subsection and is subject to the penalties set forth in subsection (a) of section 10 of this act, if the difference between the value of all money, goods, services and anything else of value actually furnished and the value represented

to the issuer to have been furnished does not exceed \$500 in any six-month period; and is subject to the penalties set forth in subsection (b) of section 10 of this act if such difference does exceed \$500 in any six-month period.

SECTION 6. Possession of machinery, plates or other contrivance or incomplete credit cards. .

A person other than the cardholder possessing two or more incomplete credit cards, with intent to complete them without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the preparation of such credit cards, violates this subsection and is subject to the penalties set forth in subsection (b) of section 10 of this act. A credit card is "incomplete" if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted or written on it.

SECTION 7. Receipt of money, goods, services or anything else of value obtained in violation of section 4.

A person who receives money, goods, services or anything else of value obtained in violation of section 4 of this

act, knowing or believing that it was so obtained violates this section and is subject to the penalties set forth in subsection (a) of section 10 of this act. A person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired in violation of section 4 of this act without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of section 4 of this act.

SECTION 8. Defenses not available.

In any prosecution for violation of this act, the state is not required to establish and it is no defense:

- (i) that a person other than the defendant who violated this act has not been convicted, apprehended or identified; or
- (ii) that some of the acts constituting the crime did not occur in this state or were not a crime or elements of a crime where they did occur.

SECTION 9. Presumptions.

When this act establishes a presumption with respect to any fact which is an element of a crime, it has the following consequences:

(i) when there is sufficient evidence of the facts which give rise to the presumption to go to the jury, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(ii) when the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

SECTION 10. Penalties.

(a) One Year or \$1000. A person who is subject to the penalties of this subsection shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) Three years or \$3000. A person who is subject to the penalties of this subsection shall be fined not more than \$3,000 or imprisoned not more than three years, or both.

SECTION 11. Act not exclusive.

This act shall not be construed to preclude the ap-

plicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this act, unless such provision is inconsistent with the terms of this act.

SECTION 12. Severability.

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Notes to State Credit Card Crime Act

The notes which follow are descriptive of the proposed State Credit Card Crime Act. Extensive citations of the statutes and cases applicable to credit cards which were considered in drafting this act are set out in the accompanying memorandum on "Credit Card Frauds: The General Criminal Law", the "Tabular Analysis of American Criminal Law Statutes Specifically Covering Credit Cards," texts of the American credit card statutes, the summaries of reported state and federal criminal cases on credit cards and case abstracts.

SECTION 1. Definitions

(a) Cardholder. The cardholder is defined as the person or organization named on the credit card. It includes individual members or agents of a business organization who receive credit cards in their own names at the request of their company. A credit card issued to a named person at the request of his company is intended to be included as one issued at the request of the "cardholder" since the application for the card is made at his express or implied "request." See subdivision (b) of this section.

(b) Credit Card.^{*} The credit card is defined in the broadest way to include cards and tokens issued by the supplier of goods or services (often referred to as a two-party device) and cards and tokens issued by an issuer which does not itself supply the goods and services (often referred to as a three-party device). Examples of the former category are department store charge plates and credit cards issued by an airline; food or services are supplied by the issuer which bills the cardholder directly. Examples of the latter category include cards issued by American Express and Diners Club; the credit card is issued by one agency and is used by the cardholder to make purchases of goods and services at retail establishments listed in the issuer's directory or displaying its insignia; the seller of the goods sends vouchers signed by the cardholder to the issuer; the issuer reimburses the seller and bills the cardholder.

^{*} As originally prepared the Act defined a credit card as one "issued at the request of the cardholder". Defined

(footnote cont'd)

thusly, the Act would have been inapplicable to crimes committed through use of a credit card which had been issued without obtaining an application from the cardholder.

On further consideration it was decided to delete this requirement. The person who fraudulently uses a credit card does not know how that card was issued and is guilty of a crime in any event. He should not fortuitiously receive immunity from prosecution by virtue of the fact that the card he used was issued without application.

Should a legislature decide that credit cards should not be issued without an application, it should specifically legislate on this subject rather than create an inconsistency in the criminal law.

(c) Expired credit card. A cardholder should not be penalized for using an expired card unless he has actual knowledge of its expiration. The simplest and safest way to remind him is to place on the face of the credit card either the terms during which it will be effective (for example, 1966-67) or the specific date of expiration. Either will suffice. Credit cards which do not have a term shown on their face cannot be "expired" under this act, although they may be expired under other provisions of criminal or civil law. See section 11, supra, on lack of exclusivity of this act. A credit card without a term on its face can, under this act, be terminated by revocation, pursuant to subdivision (f), or by destruction.

(d) Issuer. This term covers both the two-party and three-party categories described in the notes to subdivision (b) of this section as well as authorized agents.

(e) Receives. This definition was designed to preclude judicial application of restrictive common law distinctions among the terms "acquisition of title," "possession," "custody" and "control"

in defining the various kinds of credit card fraud which are the target of subsections (a), (d) and (e) of section 3. Such a broad approach is consistent with that of the Model Penal Code which states "that the essential idea sought to be expressed is acquisition of control whether in the sense of physical dominion or of legal power to dispose." American Law Institute, Model Penal Code, Tentative Draft No. 2, 94-95 (1954).

(f) Revoked credit card. Under this definition, a credit card can be revoked without notice, but its subsequent use does not in itself violate this act unless the user knew of the revocation. Where notice of revocation has been sent to the cardholder in the manner prescribed in section 4, he will, after the stated period, be presumed to know about the revocation. The effect of presumptions under this act is set forth in section 9, infra.

SECTION 2. False statement as to financial condition or identity.

Section 2 in substance duplicates criminal provisions adopted by a number of states, See, e.g., Ore. Rev. Stat. § 165.615. It is applicable without regard to whether or not the card has

actually been issued. Perhaps its most significant aspect is the intentional omission from its coverage of a person who allegedly makes a false statement with respect to his "intent to pay." A substantial majority of the states have refused to hold that a false statement concerning future action (which is sometimes called a false promise) constitutes a fraudulent misrepresentation. Some ten jurisdictions, including California, have adopted the view that a present intention not to perform a promised future action should be punished as a misrepresentation of a material fact, namely the promisor's state of mind.

It cannot be denied that a misrepresentation of intent is a misrepresentation of a fact, state of mind. Nevertheless, for the purposes of this proposed credit card statute, such a misrepresentation is not made criminal. This restriction avoids the danger of a factfinder's improperly imputing a fraudulent state of mind to a person on the basis of his subsequent use of the card. The factfinder's inevitable temptation is to apply some kind of reasonable man standard. So, if the defendant has run up vast bills immediately after obtaining a credit card, he could be found guilty of defrauding

the issue. But in fact he may have simply been dazzled by his sudden ability to participate fully without ready cash in the affluent society. It is doubtful that a man should be subjected to criminal penalties because euphoria overcomes prudence. In any event, this is the kind of normal commercial risk which an issuer can guard against fairly effectively by careful credit checks. Section 2 is directed at the person who seeks to frustrate the issuer's effort to assure that the card is being placed in sober, safe hands.

Adoption of this proposed credit card statute would not affect the applicability to credit card matters of general statutes covering misrepresentations of present intention in the states which follow the minority rule. See section 11, infra, on lack of exclusivity of this act.

SECTION 3. Theft of credit card by taking or retaining possession; theft of credit card lost, mislaid or delivered by mistake; purchase or sale of credit card; obtaining control of credit card as security for debt; dealing in credit cards of another; forgery of credit card; signing credit card of another.

(a) Theft by taking or retaining possession of

card taken. This subsection is directed against a wide range

of unlawful activities which fall within a variety of traditional criminal law categories. The object is to avoid the many technical distinctions among various types of larcenous activity that have evolved over the centuries and have more than once provided lacunae through which the criminal is able to slip after apprehension. More specifically, it eliminates all distinctions based on the location of legal title or the identity of the party deprived of possession or control. It should also be noted that larcenous intent - which is commonly an element of crimes against property - need not be proved for credit card theft. In the case of a taker, the prosecution only must prove the taking without consent; in the case of the receiver from the taker, the prosecution must establish receipt with knowledge of the unlawful taking and intent to use, sell or transfer the card.

Any state having a broad definition of larceny may

substitute its inclusive term for the listing of common law crimes

American Law Institute, Model Penal Code, Proposed Official Draft (1962),
in this subsection. See, e.g., ~~§~~ section 223.1; New York Penal

Law, section 155.00 (effective September 1, 1967).

In terms of culpability, there seems no material difference between the following cases all of which fall within this subsection:

(i) X, a cardholder, gives his card to Y, a girl friend for her personal use. Y then sells the card to Z and tells X that her pocketbook was snatched. In most, if not all, jurisdictions, Y would be guilty of embezzlement; she is guilty under subsection (a). Z would in some states be a receiver of "stolen property." But in others, property obtained by embezzlement is not deemed "stolen". Z is guilty under subsection (a). Both Y and Z are also guilty under subsection (c).

(ii) Y picks the cardholder's pocket or burglarizes the cardholder's premises and obtains his credit card. This simple theft is covered by subsection (a).

(iii) If Y, a pickpocket or burglar who took the credit card from the cardholder's possession, transfers it to Z and Z knows it was acquired illegally, Z is guilty of credit card theft under subsection (a) if he had any intent to use the card. Since it is clear from the face of the card that X has no right to transfer it, Z's unexplained possession of a stolen credit card probably would

permit the case to go to the jury on the issue of knowledge; some independent evidence of intent to use, sell or transfer would be required and it might be supplied by prior or subsequent criminal activities in connection with credit cards.

If Y or Z has in his possession credit cards issued in the names of two or more other persons, then the case will go to the jury even if the defendant has some explanation, unless a reasonable man would have to accept the explanation as precluding culpability. The effect of presumptions under this act is set forth in section 9, infra.

(b) Theft of credit card lost, mislaid or delivered by mistake.

In its purpose and reach, this subsection is modeled upon the equivalent provision, section 223.5, of the Model Penal Code.

American Law Institute, Model Penal Code, Proposed Official Draft (1962). The draftsmen's comments with respect to that section are apposite here:

1. Assumption of Control Required.

Theft penalties are not imposed on persons who merely learn of the whereabouts of lost

property but do not assume some control over it.

If it is desirable to provide criminal sanctions to compel people to communicate helpful information to the owners of lost property, this should be done by separate legislation not carrying the moral imputation of theft and presumably with lower sanctions. Mere handling of a lost article for purposes of examination would not be an assumption of control within this section. The likelihood of restoration to the owner will often be increased rather than diminished by non-interference of casual finders.

2. Omission as Essence of the Crime.

Even though a finder may take possession with intent to keep the property from the owner, he is not liable to conviction under this section if within a reasonable time he acts to restore the property to the owner. Thus essentially finders are punished for failure to act rather than for an initial misappropriation.

Common law theory of larceny as an infringement of another's possession required a determination of the actor's state of mind at the moment of finding, for an honest state of mind at that point would preclude the felony convictionThe realistic objective in this area is not to prevent the initial appropriation but to compel subsequent acts to restore to the owner. Therefore the section permits conviction even where the original taking was honest in the sense that the finder then intended to restore, but subsequently changed his mind; and it bars conviction where the finder acts with reasonable promptness to restore the property, even though he may have entertained a fraudulent purpose at some time during his possession.

3. Negligent Failure to Restore Not Theft.

Statutes dealing with theft by finders commonly refer to failure to take measures to restore where there is reasonable means of identifying or locating the owner, without expressly requiring the actor to be aware of the

reasonably available information or means...Section

206.5 [section 223.5 of Proposed Official Draft (1962)]

is limited to purposeful omission to take steps to re-
store. No one should be punished as a thief merely be-
cause he stupidly or carelessly failed to follow a course
of action which would have been apparent to another.

American Law Institute, Model Penal Code, Tentative Draft
No. 2, pp. 83-84 (1954).

The Model Penal Code has adopted a slightly harsher
← test than this proposed credit card statute in that it
← imposes liability for "failure to take reasonable measures
← to restore" as well as for intent to use. Because of
← proof problems, in practice the distinction is likely
← to be of limited significance.

(c) Purchase or sale of credit card of another.

This subdivision covers transfer of a credit card for consideration
of any kind. Only wholly gratuitous transfers are exempted. There
can be no lawful objective in buying a credit card from a person

other than the issuer or in selling it. If the cardholder sells it, he does so with knowledge not merely that he is violating a contractual agreement, but that he is subjecting the issuer and an unpredictable number of merchants to potential liabilities which they have expressly sought to avoid by the issuer's evaluating the cardholder's credit prior to issuance of his credit card. Moreover, the person purchasing the card must either fear that he would be unable to obtain a card from the issuer or may intend to use the card in such a way that it would be awkward or dangerous for the issuer to know his true identity.

In this latter regard, subsection (c) is a complement of section 2. It would be anomalous to penalize a man for seeking to trick the issuer directly but to offer no deterrent to the man who, fearing that he will be unable to deceive the issuer, obtains a card by purchase from a party other than the issuer. In such a case, it is not unlikely that the card was obtained originally at the instance of the purchaser and that the card-holder was intended to serve merely as a conduit.

This subdivision section covers the return of a credit card to the issuer or cardholder in exchange for some consideration but does not apply to a reward given to a person who, for example, finds a card and returns it without demanding consideration.

(d) Obtaining control of credit card as security for debt.

The characteristic person to whose activities this subsection applies is the unscrupulous factor or "loan shark" who, with fraudulent intent, forces a cardholder in serious financial straits to acquire goods with the card or to transfer the card to him. Compare the definition of extortion in subsection (a) which is broad enough to be interpreted to cover this subsection. See also the broad definition of "receives" in subsection (e) of section 1.

The problem is explicitly covered to give notice that this dangerous activity is criminal. A typical fact pattern is one in which the creditor permits the cardholder to retain possession of the credit card but compels him to purchase large quantities of goods for which he will not be able to pay the issuer and then either to turn the goods over to the creditor or to convert them into cash which the creditor then takes as partial or complete payment of the debt.

(e) Dealing in credit cards of another.

The fraudulent use of credit cards threatens to become a big and well organized business. Pickpockets and other thieves are encouraged to steal credit cards by the knowledge that they can be disposed of for ready cash, thus avoiding the risk, attendant on any attempted use, of apprehension by an observant merchant. The dealer is a particular threat to the efficacy of this important commercial device not merely because he encourages theft, but also because he is an expert in the use and disposal of credit cards and goods and services illegally obtained by means of their use. He will often be familiar with the uses which offer the least danger of apprehension and the maximum opportunity to secure valuable goods and services. Moreover, he will often be part of a highly developed organization which is capable of moving the card quickly from place to place to permit full exploitation before word of its loss has reached all merchants, and which also has facilities for disposing of goods so obtained.

In most states, statutes penalizing receiving or dealing in stolen goods require the prosecution to establish the dealer's actual knowledge that the goods were obtained by means of a larcenous taking. This does not seem inappropriate where there is a legitimate market in the goods; but there cannot be such a market for credit cards. Therefore this act merely requires the jury to find that the defendant had reason to know that the credit cards in his possession were taken or retained in violation of section 2 or by means of credit card theft. Again, because of the intrinsic illegitimacy of any traffic in credit cards, this subsection does not require the state to prove that the dealer or receiver intended to use or sell the credit cards over which he has obtained control.

For the reasons indicated above, the dealer is more dangerous to society (and, being a "business man", more susceptible to deterrence) than the man who picks pockets or snatches purses. Hence, even if a dealer also participates in the original taking, he should be subject to the more

severe penalties of subsection (b) of section 10. See the notes to section 8, defenses not available, infra, for a discussion of culpability of a dealer defendant who is also a thief.

(f) Forgery of credit card.

Credit card forgery is normally an act of a professional criminal. An effective forgery requires careful preparation and some considerable skill. It is a substantial threat to commercial confidence. Hence the forger is a serious obstacle to the exchange of goods and services. But forgery can be profitable, so there must be ample deterrence.

A forger may produce a completely false credit card or he may alter a card that was actually issued. Both cases are covered by this subsection. Many issuers manufacture cards which are complete except for a few items which depend on the identity of the cardholder and the date of the card's issuance to him. Matter such as the name and address of the cardholder and the date of expiration will subsequently be embossed on the card after an application has been accepted and just prior to issuance. A fraudulent embossment consists of placing such matter on the face

of cards without the consent of the issuer. Normally the cards will have been stolen from the issuer or its manufacturer where the issuer does not manufacture the cards itself.

It is possible that a man in possession of one falsely made or issued card could have found it or otherwise acquired it innocently. But it is extremely unlikely that a man in possession of two or more such cards is unconnected with their creation. Thus it seems highly reasonable to apply a presumption in such a case. The effect of presumptions under this act is set forth in section 9, infra.

Subsection (g). Signing credit card of another.

A principal means of obstructing the fraudulent use of a card is to provide space on the card for the signature of the cardholder and to require such signature as a pre-condition to its use. Some cardholders carelessly neglect to sign their cards. Other cards may, for one reason or another, never reach the cardholder. A person finding or otherwise coming into possession of an unsigned card is likely to recognize that for a time it will not be difficult

to impersonate the real cardholder if he signs the cardholder's name in his own handwriting. Persons who sign with the intent to use the card to obtain goods and services are manifestly preparing to defraud either the issuer or the merchant from whom they propose to obtain goods and services; they should be subjected to criminal penalties. But in many instances they will not be professional criminals, but, rather, fairly ordinary men overcome by sudden temptation. Therefore, they are subject to the lesser penalties of subsection (a) of section 10.

SECTION 4. Fraudulent use of or representation of authority to use illegally obtained or illegally possessed credit card, forged credit card or revoked, expired or fictitious credit card.

The section is designed to penalize use of cards obtained in violation of prior sections of the act. It also penalizes the practice of charging goods and services to the credit card of another by calling the party dispensing such goods and services and impersonating the legitimate holder.

Some false pretenses statutes appear to require that the fraudulent misrepresentations have been made to

the party who will bear the ultimate loss as a consequence of the misrepresentation. A person, unlawfully using a credit card which is not issued by the merchant but by a third party (the "three-party" credit cards described in the notes to subdivision (b) of section 1), may thus evade criminal liability. This act rejects that distinction which seems to have evolved at a time when the three-party arrangement was not envisaged.

Statutes designed to protect the integrity of telephone credit cards are widespread. See, e.g., Hawaii Rev. Laws §309 B-1 (supp. 1965). Section 4 is designed to cover the case of a caller giving the telephone operator someone else's telephone credit card number or name or telephone number in order to have a call placed without paying for it.

Throughout this statute an attempt has been made to penalize more heavily the professional criminal. Here and in section 5 this distinction is expressed in terms of the quantity of goods and services obtained within a six-month period. It is, without doubt, a very rough rule of thumb; but it is consistent with the traditional manner of distinguishing the petty from the

serious crime. Adequate discretion is granted the sentencing judge to meet the particular punishment needs of any defendant, see section 10, infra.

A presumption with respect to receipt of notice of revocation can be found in a number of existing credit card statutes. See, e.g., Idaho Code Ann. § 18-3117. The time periods specified, which must elapse before the presumption becomes effective, are at least as generous as those found in existing statutes. See, e.g., Ind. Ann. Stat. § 10-2132. The presumption itself rests on two related considerations: first, in the vast majority of cases, registered or certified letters are accepted and signed for by the person to whom they are addressed or someone in immediate contact with him; second, if the case prosecuted is one of those few exceptional instances where the card-holder received no notice, the cardholder is in a far better position to explain why he did not receive notice. For instance, if he shows that he had moved to a new address before the letter is presumed to have arrived or that he was traveling at the time of presumptive arrival,

he would rebut the presumption.

It should be noted that the cardholder is not guilty under section 4 of illegally using a credit card which has been revoked if he had no intent to defraud. The definition of a presumption in section 9 would permit the court to dismiss the case if it were satisfied that a reasonable man would have to have a reasonable doubt that the defendant was aware of the revocation or that, if he were aware, that he had any intent to defraud. A verdict on these issues could never be directed in favor of the state. The effect of a presumption under this act as set forth in section 9, infra.

SECTION 5. Fraud by person authorized to provide goods or services.

Few, if any, credit card statutes manifest recognition that persons authorized by an issuer to provide goods and services on the strength of the issuer's card properly presented by a cardholder sometimes play a role in credit card frauds. Subsection (a) focuses on collusive arrangements between the merchant and a party using a credit card in violation of the provisions of section 4. Subsection (b) deals with a variety of

recorded situations. Perhaps the most common one is the sales voucher which is altered or added to after the cardholder has signed. It is not unusual for the cardholder to sign before the voucher is completely filled in. This is particularly true of the tip, because some cardholders will pay the tip in cash. After a cardholder has signed, a waiter may simply fill in the blank in a manner he deems appropriately generous.

Another problem may arise in the case of the merchant who is on the edge of bankruptcy. In order to raise cash quickly, he may attempt to sell each article in the store several times. To do so he may obtain the assistance of one or two friends with credit cards. They will sign a sales slip but will not receive the stipulated goods or services. Then they will report that their card was lost or stolen. The goods will meanwhile be sold to another party. In this manner their value is effectively doubled or tripled. Another dangerous scheme is to imprint several sales slips with the card of an unsuspecting cardholder. After he leaves, the merchant may fill in the slips and forge the cardholder's

signature. It is sought to distinguish, by means of different penalties, between the petty abuse and sustained unlawful activity.

See the discussion of grading of penalties in the notes to section 4.

SECTION 6. Possession of machinery, plates or other contrivance or incomplete credit cards.

Section 6 permits the indictment of forgers who are caught before they are able to consummate their plans for manufacture and distribution. Since forgery includes the unauthorized completion of cards that were manufactured by the issuer, a necessary step in certain conspiracies to forge is the acquisition of incomplete cards. Since, as one would expect, incomplete cards are very carefully safeguarded by issuers, possession of two or more of such cards by one other than an agent of the issuer is a natural basis for grave suspicion and gives rise to a presumption. The effect of a presumption under this act is set forth in section 9, infra.

SECTION 7. Receipt of money, goods, services or anything else of value obtained in violation of section 4.

Section 7 is the natural complement of section 4.

A well-organized conspiracy for the fraudulent use of a credit card will normally have as its objective the conversion of large quantities of valuable goods into cash. Such a plan requires a receiver who is prepared to avoid asking awkward questions as consideration for an unusually attractive price.

Probably the most massive conspiracy involving credit cards is directed towards the procurement and sale of transportation services. The following is a typical case. A credit card is stolen in a Los Angeles hotel room and turned over to a dealer. His agent immediately takes the card to the airport and procures thousands of dollars worth of tickets from different airlines. Card and tickets may then be flown to New York where another spate of ticket buying occurs. Although tickets purchased with credit cards cannot be exchanged for cash, they can be exchanged for tickets to other destinations. In New York and certain other cities it is known in some quarters that discount tickets can be obtained by dialing a given number. Sale is normally effected unobtrusively in a bar or other public place. It appears that in many states a person

acquiring such tickets under these circumstances has no obligation to inquire as to their source and the basis for the very great discount offered. The circumstances are sufficiently suspicious to justify an obligation of reasonable inquiry.

SECTION 8. Defenses not available.

Persons accused of being receivers or dealers in stolen property, and persons accused of other activities illegal under this act, have sometimes raised one of the contentions which are listed in sub-paragraph (1) as invalid defenses. The state must prove beyond a reasonable doubt that the credit card was obtained under circumstances which constitute a violation of this act to prosecute a receiver of the card under section (a) of section 3 or a dealer under subsection (e) of section 3. To require, in addition, that the state have apprehended, identified, or convicted the thief or embezzler before it can prosecute the dealer would be absurd. It would be equivalent to holding that because one member of a conspiracy has escaped--for example, by fleeing the jurisdiction--it would be unsporting to try his confederates.

A defendant could not claim he was not guilty under one provision of this act because he was also guilty under another. For example, a dealer could not successfully demonstrate that he was not guilty of violating subdivision (e) of section 3 because he participated in the original taking from the cardholder in violation of subdivision (a) of section 3. The act has been drafted with the intention of avoiding such an interpretation. See notes to subsection (e) of section 3, supra.

Application of this act to credit cards obtained under circumstances which constitute a violation of this act but not the criminal law of the jurisdiction in which the taking occurred is important principally because of the growing international movement of credit cards and the concomitant growth of international criminal conspiracies sensitive to the opportunities it presents for fast profits. This situation as covered by sub-paragraph (ii).

The issue is particularly important in a case where a violation of section 4, for fraudulent case, depends upon proof of a violation of section 3, for credit card theft. The businessman

or tourist may have his pocket picked in Cairo, Bangkok, Istanbul or a host of other exotic places. A card so obtained is very unlikely to find its way back to the United States except through professional criminal channels. It would be virtually impossible to establish what the law of say Saudi Arabia is with respect to credit cards. Even if the taking of a credit card actually violated the foreign law, the difficulty of proving that law to the satisfaction of the factfinder may be insuperable. Some courts might indulge in the assumption that the law of the foreign jurisdiction is the same as the law of the forum, but it does not seem appropriate for criminal liability to flow from what will often be a mere fiction. It seems far preferable to face the problem directly.

SECTION 9. Presumptions.

The definition of a presumption and its effect follows subdivision (5) of section 1.12 of the Model Penal Code. American Law Institute, Model Penal Code, Proposed Official Draft (1962).

SECTION 10. Penalties.

The penalties provided are comparable to the penalties recommended in the Model Penal Code for grand and petty larceny. They do, however, give the court a wider range of discretion than does the Code. Section 10 does not, for example, distinguish between first and second offenders. However, such a distinction may be read into the act in any state where it is included in the criminal code. In any event, it seems reasonable to assume that the courts will recognize this and other sentencing distinctions which have evolved over the years by statute and judicial decision as guides to the allocation of punishment in particular cases.

SECTION 11. Act not exclusive.

At the present time there is a split of authority as to the exclusivity of credit card statutes in cases where they are silent on the question. There is no good reason why such an act should be held exclusive either with respect to substantive crimes or penalties. If a state should decide that the taking of any property, in a defined way, as by robbery committed with a gun,

is peculiarly reprehensible or dangerous to society, it should not be prevented from imposing a more severe penalty where the thing taken is a credit card because of the existence of a specific credit card statute.

It is not altogether clear just what exclusivity would mean. At its most absurd, it would prevent the application of the general criminal law to any transaction involving credit cards. Thus a form of larcenous taking which by inadvertence had not been covered by the credit card statute might seem immune to penal sanction. Such a result would, of course, be intolerable. The statute should only be found to preempt the field in cases where the general criminal law is in direct conflict. An example would be a rule that a false representation must be made to the party who will suffer loss if it is to be indictable. With respect to credit cards, that approach has, of course, been supplanted.

This act assumes the applicability of the usual state statutory and case law general concepts dealing with such matters as conspiracy, attempts and principals. In a state such as Wyoming which does not have a general attempts statute, but deals

with attempts in the definitions of each crime, appropriate changes in this act can be made to cover the particular state lacunas.

SECTION 12. Severability.

This is the usual severability clause used in acts drafted by the National Conference of Commissioners on Uniform State Laws.