

Chapter 138
FINANCIAL TRANSACTION CARDS

§ 138-1. Fraudulent use of financial transaction cards.

§ 138-2. Violations and penalties; attempt; parties to acts.

[HISTORY: Adopted by the Village Board of the Village of Iola 2-12-1996 as Title 9, Ch. 3, Sec. 9-3-11, of the 1996 Code. Amendments noted where applicable.]

§ 138-1. Fraudulent use of financial transaction cards.

A. Definitions. In this section, the following terms shall have the meanings indicated:

ALTER — Add information to, change information on or delete information from.

AUTOMATED FINANCIAL SERVICE FACILITY — A machine activated by a financial transaction card, personal identification code, or both.

CARDHOLDER — The person or organization named on the face of the financial transaction card to whom or for whose benefit the financial transaction card is issued by an issuer.

COUNTERFEIT — To manufacture, produce or create by any means a financial transaction card or purported financial transaction card without the issuer's consent or authorization.

EXPIRED CREDIT CARD — A financial transaction card which is no longer valid because the term shown thereon has elapsed.

FINANCIAL TRANSACTION CARD — An instrument or device issued by an issuer for the use of the cardholder in any of the following:

- (1) Obtaining anything on credit;
- (2) Certifying or guaranteeing the availability of funds sufficient to honor a draft or check; or
- (3) Gaining access to an account.¹

ISSUER — The business organization or financial institution which receives a financial transaction card or its duly authorized agent.

PERSONAL IDENTIFICATION CODE — A numeric, alphabetic or alphanumeric code or other means of identification required by an issuer to permit a card holder's authorized use of a financial transaction card.

¹ Editor's Note: An alternate definition of "financial transaction card," which immediately followed this definition, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

RECEIVES or RECEIVING — Acquiring possession or control or accepting as security for a loan.

REVOKED FINANCIAL TRANSACTION CARD — A financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

- B. False statements. No person shall make or cause to be made, whether directly or indirectly, any false statements in writing, knowing it to be false, respecting his or her identity or that of any other person or his or her financial condition or that of any other person or other entity for the purpose of procuring the issuance of a financial transaction card.
- C. Theft by taking card.
- (1) No person shall acquire a financial transaction card from the person, possession, custody or control of another without the cardholder's consent or with knowledge that it has been so acquired, receive the financial transaction card with intent to use it or sell it or to transfer it to a person other than the issuer. Acquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft. If a person has in his or her possession or under his or her control financial transaction cards issued in the names of two or more other persons, it is prima facie evidence that he or she acquired them in violation of this subsection.
 - (2) No person shall receive a financial transaction card that he or she knows to have been lost, mislaid or delivered under a mistake as to the identity or address of the cardholder and retain possession thereof, to transfer it to a person other than the issuer or the cardholder, or to use it. The possession of such a financial transaction card for more than seven days by a person other than the issuer or the cardholder is prima facie evidence that such person intended to sell, transfer or use it in violation of this subsection.
 - (3) No person other than the issuer shall sell a financial transaction card. No person shall buy a financial transaction card from a person other than the issuer.
 - (4) No person shall obtain control over a financial transaction card as security for debt.
 - (5) No person, other than the issuer, may, during any twelve-month period, receive a financial transaction card issued in the name of another person which he or she has reason to know was taken or retained in violation of this subsection or Subsection B. Possession of a financial transaction card with knowledge or reason to know that the financial transaction card was taken or retained in violation of this subsection or Subsection B is prima facie evidence of a violation of this paragraph.
- D. Forgery of financial transaction card.
- (1) No person shall alter or counterfeit a financial transaction card or purported financial transaction card or possess a financial transaction card or purported financial transaction card with knowledge that it has been altered or counterfeited. The possession by a person other than the purported issuer of two or more financial transaction cards which have been altered or counterfeited is prima facie evidence that the person knew the financial transaction cards to have been so altered or counterfeited.

- (2) No person other than the cardholder or a person authorized by him or her shall sign a financial transaction card. Possession by a person other than the intended cardholder or one authorized by the intended cardholder of a financial transaction card sign by such person is prima facie evidence that such person intended to defraud in violation of this subsection.

E. Fraudulent use.

- (1) No person shall:
 - (a) Use for the purpose of obtaining money, goods, service or anything else of value, a financial transaction card obtained or retained in violation of Subsection C or a financial transaction card which he or she knows is forged, expired or revoked; or
 - (b) Obtain money, goods, services or anything else of value by representing without the consent of a cardholder that he or she is the holder of a specified card or by representing that he or she is the holder of a card and such card has not, in fact, been issued.
- (2) Knowledge of revocation shall be presumed to have been received by a cardholder four days after it has been mailed to him or her at the address set forth on the financial transaction card or at his or her last known address by registered or certified mail, return receipt requested, and if the address is more than 500 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 10 days after mailing by registered or certified mail.
- (3) No cardholder shall use a financial transaction card issued to him or her or allow another person to use a financial transaction card issued to him or her with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person.
- (4) No person may deposit a stolen or forged instrument by means of an automated financial service facility with knowledge of the character of the instrument.
- (5) No person may knowingly receive anything of value from a violation of Subsection E(4) above.

F. Fraudulent use; other persons.

- (1) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person, shall furnish money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained under circumstances prohibited by Subsection C or a financial transaction card which he or she knows is forged, expired or revoked.
- (2) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person, shall fail to furnish money,

goods, services or anything else of value which he or she represents in writing to the issuer that he or she has furnished.

- (3) No person other than the cardholder shall possess an incomplete financial transaction card without the consent of the issuer. A financial transaction card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder has not yet been stamped, embossed, imprinted or written on it.
- (4) No person shall receive money, goods, services or anything else of value obtained under circumstances prohibited by this section, knowing or believing that it was so obtained. Any person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired under circumstances prohibited by this section 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 prohibited by this section.

G. Defenses not available. In any prosecution for violation of this section, it is not a defense:

- (1) That a person other than the defendant has not been convicted, apprehended or identified; or
- (2) 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.

§ 138-2. Violations and penalties; attempt; parties to acts.

A. Penalty. In addition to the general penalty provisions of this Code in Chapter 1, General Provisions, § 1-17, or any other penalty imposed for violation of any section of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates § 201-11 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin Statutes. Nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this chapter to the District Attorney's office in the interest of justice.

B. Attempt.

- (1) Whoever attempts to commit an act prohibited by this chapter of the Code of Ordinances of the Village of Iola may be required to forfeit amounts not to exceed $\frac{1}{2}$ the maximum penalty for the completed act.
- (2) An attempt to commit an act prohibited by the ordinances in this Code requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he or she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he or she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

C. Parties to acts prohibited in this chapter.

- (1) Whoever is concerned in the commission of an act prohibited by this chapter of this Code of Ordinances is a principal and may be charged with and convicted of the commission of said act although he or she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.
- (2) A person is concerned in the commission of an act prohibited by these ordinances if he:
 - (a) Directly commits the act; or
 - (b) Intentionally aids and abets the commission of it; or
 - (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.

