

ACT 198

H.B. NO. 1715

A Bill for an Act Relating to Fraudulent Use of Credit Cards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to address the fraudulent use of debit cards. With the implementation of the electronic benefits transfer (EBT) system for the issuance of the food stamps and financial assistance benefits, which includes the aid to families with dependent children (AFDC), general assistance (GA), and the aid to the aged, blind, and disabled (AABD) programs, an EBT card will be issued to all eligible public assistance and food stamp households. The EBT card is a debit card and the statutes are being amended to address the consequences of the fraudulent use of debit cards by broadening the existing definition of credit cards.

SECTION 2. Section 346-34, Hawaii Revised Statutes, is amended to read as follows:

“**§346-34 Frauds, penalties.** (a) Any recipient who buys or disposes of real property or any person who knowingly aids or abets a recipient in the purchase or sale of real property without the consent of the department of human services shall be guilty of [fraud.] a petty misdemeanor.

(b) If, at any time while the recipient of public assistance is receiving public assistance, the recipient’s living requirements are reduced and the recipient wilfully fails to report the reduction within thirty days from the date of the reduction to the department, or the recipient acquires from any source real property, funds, income, or other resources and wilfully fails to report the amount acquired together with the

source of the resources to the department within thirty days of receipt of the resources, or prior to spending or otherwise disposing of all or any portion of the resources, the recipient shall be guilty of [fraud and shall be subject to the penalties provided by this section.] a petty misdemeanor.

(c) No person shall knowingly obtain or attempt to obtain, or aid or abet another person in obtaining or attempting to obtain, any food commodity under a food distribution program or any food stamp or coupon under a food stamp plan[,] or an electronic benefits transfer card or similar debit-card-type device, to which the person or the other person is not entitled to receive or use under any law, or under any rule adopted pursuant to section [[346-14(11)[]] or chapter 91.

(d) No person shall knowingly give, sell, trade, or otherwise dispose of to another person not entitled to receive or use the same pursuant to any law, or pursuant to any rule adopted pursuant to section [[346-14(11)[]] or chapter 91:

- (1) Any food [commodity] exceeding \$300 in value received under a food distribution program[;] or any food of any value received under a food distribution program if that food is sold or traded by the recipient;
- (2) Any food stamp or coupon received under a food stamp plan; [or]
- (3) Any food commodity received wholly or partially in exchange for a food stamp or coupon received under a food stamp plan[.]; or
- (4) Any electronic benefits transfer card or similar debit-card-type device through which food stamp benefits may be obtained by the food stamp household.

(e) No person shall knowingly buy or give any other consideration in exchange for any food stamp or coupon issued under a food stamp plan or through any electronic benefits transfer card or similar debit-card-type device through which food stamp benefits may be obtained by the food stamp household except in compliance with any law or any rule adopted pursuant to section [[346-14(11)[]] or chapter 91.

(f) No person shall knowingly obtain or attempt to obtain emergency assistance under section 346-65 to which the person is not entitled. No person shall knowingly aid or abet another person in obtaining or attempting to obtain emergency assistance to which that other person is not entitled. No person shall expend emergency assistance granted to the person for other than the purpose approved by the department to eliminate or alleviate the emergency situation.

(g) No person shall knowingly transfer assets from that person's name to another person's or entity's name for the purpose of qualifying for public assistance under this chapter or chapter 346D. It shall be prima facie evidence of such a transfer if there was a transfer of assets for less than fair market value of the assets within the federally required time period, or "lookback" period, from the date of the application for public assistance.

(h) [Any] A person convicted under [this section] subsections (c), (d), (e), (f), or (g) shall be guilty of a misdemeanor; provided that [a];

- (1) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps or coupons with a value which exceeds \$300 shall be guilty of a class C felony; [provided further that a] and
- (2) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps [or], coupons [with a value which exceeds \$20,000], an electronic benefits transfer card, or a debit card shall be guilty of a class B felony[.] if the benefit to which the person is not entitled exceeds \$20,000.

Any portion of assistance obtained by any fraudulent device, and any assistance paid after receipt of resources which have not been reported to the department as required in this section shall be recoverable by the State for the use of the department as a

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debt due the State, or, restitution of the amount may be ordered by the court following conviction.

(i) The term “recipient” includes any person to whom a grant of public assistance is made by direct payment, and any person for whose use and benefit a grant of public assistance is made by payment to a relative or other person. Prosecution under this section shall not be considered an exclusive remedy but shall be in addition to any other criminal, civil, or administrative remedy or sanction authorized by law.”

SECTION 3. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “credit card” to read as follows:

““Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value[, on credit].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 1997.)