

FRAUDULENT USE OF A FORGED, EXPIRED, OR REVOKED CREDIT CARD

G.L. c. 266, § 37B(f)

The defendant is charged with fraudulently using a (forged) (expired) (revoked) credit card with intent to defraud. To prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First*, that the defendant used a credit card for the purpose of obtaining (money) (goods) (services) (anything of value);**

***Second*, that the card was (forged) (expired) (revoked) (stolen) (lost) (misplaced) (misdemeanored) (unlawfully bought) (unlawfully sold) (unlawfully signed);**

***Third*, that the defendant knew the card was (forged) (expired) (revoked) (stolen) (lost) (misplaced) (misdemeanored) (unlawfully bought) (unlawfully sold) (unlawfully signed); and**

***Fourth*, that the defendant had the intent to defraud at the time they used the card.**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant used a credit card to obtain (money) (goods) (services) (anything of value). A credit card is a device that

enables the cardholder to obtain money, services, or things on credit without immediate payment or by debit from a cash account.¹ To use a credit card means to provide another with the card's information such as the account number, expiration date, or security code. This may be done orally, manually, or electronically. The cardholder is the (person) (entity) named on the face of the card to whom or for whose benefit the card was issued.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the card was (forged) (expired) (revoked) (stolen) (lost) (misplaced) (misdemeanored) (unlawfully bought) (unlawfully sold) (unlawfully signed).

[The following are optional common-sense definitions, to the extent further definition is needed and applicable to the facts at trial.]

[Forged] A card is forged when it is falsely made, altered, or signed by someone with the intent to defraud.

[Expired] A card is expired when it has passed the last date on which its use was authorized by the issuer.

¹ General Laws c. 266, § 37A provides a more expansive definition of a credit card than the one provided in this instruction: A credit card is "an instrument or device, whether known as a credit card, credit plate or other name, or the code of number used to identify that instrument or device or an account of credit or cash accessed by that instrument or device, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or by debit from a cash account."

- [Revoked] **A card is revoked when the issuer has withdrawn permission to use it.**
- [Stolen] **A card is stolen when it is taken from the cardholder or an authorized agent by another without consent and with the intent to permanently deprive the cardholder of the card.**
- [Lost] **A card is lost when its present location is not known by the cardholder or their authorized agent.**
- [Mislaid] **A card is mislaid when it is temporarily misplaced.**
- [Misdelaivered] **A card is misdelivered when it is delivered to a person other than the cardholder or a person authorized by the cardholder to receive it without the cardholder's consent.**
- [Bought] **A card is unlawfully bought when it is bought from a person other than the issuer or authorized agent.**
- [Sold] **A card is unlawfully sold when it is sold by a person other than the issuer or authorized agent.**
- [Signed] **A card is unlawfully signed when it is signed by a person other than the cardholder or a person authorized by the cardholder to sign the card.**

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew the card was (forged) (expired) (revoked) (stolen) (lost) (misplaced) (mishandled) (unlawfully bought) (unlawfully sold) (unlawfully signed). This requires you to make a decision about the defendant's state of mind at that time. You may examine any evidence regarding the defendant's actions or words, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence to help you determine whether the defendant acted knowing that the card was (forged) (expired) (revoked) (stolen) (lost) (misplaced) (mishandled) (unlawfully bought) (unlawfully sold) (unlawfully signed).

To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant engaged in this conduct with the intent to defraud. To act with an intent to defraud means to act knowingly with the aim of deceiving or cheating another. The purpose is often to bring about gain or benefit either for oneself or for another person or entity.² You may examine the evidence in the case, all the surrounding

² See *United States v. Phath*, 144 F.3d 146, 149 (1st Cir. 1998); *United States v. Leahy*, 445 F.3d 634, 644 (3d Cir. 2006).

circumstances, and any reasonable inferences you draw from that evidence, to help you determine whether the defendant intended to defraud.

See *Commonwealth v. O'Connell*, 438 Mass. 658, 664 (2003) (Commonwealth need not show intent to defraud particular person, but sufficient that defendant "intended to injure or defraud someone"; proof of intent to defraud may be inferred from the circumstances); *Commonwealth v. Segee*, 218 Mass. 501, 504 (1914) ("The false making or alteration with intent to defraud is the gist of the offense.")

If the Commonwealth has proven all four elements of the offense beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you must find the defendant not guilty.

NOTES

1. **Value \$1200 or under; misdemeanor.** General Laws c. 266, § 37B(f) provides: "... where the value of money, goods or services obtained in violation of this section is not in excess of \$1,200 [shall be punished] . . .". See G.L. c. 266, § 37C (f); if value exceeds twelve hundred dollars, it is a felony.

2. **"Anything else of value".** The term "anything else of value" is limited to that which can be exchanged for a financial payment. See *Commonwealth v. Escobar*, 479 Mass. 225, 229 (2018) (interpreting the term "anything of value" as it appears in G.L. c. 266, § 37E.) As in the identity fraud statute, the term "anything else of value" should be "interpreted to mean only those things that share the characteristics of the terms that appear before it, here, "money, ... goods, [or] services... all [which] refer to that which has a market or monetary value." *Id.*