

## **FRAUDULENT ACCEPTANCE OF A CREDIT CARD BY A VENDOR**

G.L. c. 266, § 37B(h)

**The defendant is charged with fraudulently accepting a credit card as a vendor. To prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:**

***First*, that the defendant was a vendor;**

***Second*, that the defendant furnished (money) (goods) (services) (anything of value) upon presentation of a credit card;**

***Third*, that the card was (forged) (expired) (revoked) (stolen) (lost) (misaid) (misdeldivered) (unlawfully bought) (unlawfully sold) (unlawfully signed);**

***Fourth*, that the defendant knew the card was (forged) (expired) (revoked) (stolen) (lost) (misaid) (misdeldivered) (unlawfully bought) (unlawfully sold) (unlawfully signed); and**

***Fifth*, that the defendant had the intent to defraud at the time the defendant accepted the card and furnished the (money) (goods) (services) (anything of value).**

**To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant was a vendor. A vendor is a person authorized by the issuer of the credit card to furnish (money) (goods) (services) (anything of value) upon presentation of that credit card by the cardholder. The issuer is the bank or company that issued the credit card. 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.<sup>1</sup>**

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant furnished (money) (goods) (services) (anything of value) upon presentation of a card. To furnish is to provide another with what is requested or sought.**

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the card was (forged) (expired)**

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<sup>1</sup> Section 1 of G.L. c. 266, § 37, 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) (stolen) (lost) (misaid) (misdelayed) (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.**

[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 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.**

[Misaid] **A credit card is misaid when it is temporarily misplaced.**

[Misdelayed] **A credit card is misdelayed 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 fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew the card was (forged) (expired) (revoked) (stolen) (lost) (misaid) (misdeldivered) (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 and words, all the surrounding circumstances, and any reasonable inferences you draw from that evidence, to help you determine whether the defendant knew that the card was (forged)**

**(expired) (revoked) (stolen) (lost) (misaid) (misdemeanor) (unlawfully bought) (unlawfully sold) (unlawfully signed).**

**To prove the fifth 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.<sup>2</sup> You may examine the evidence in the case, all of the surrounding 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 five elements 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.**

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<sup>2</sup> 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).

## NOTES

1. **Value \$1200 or under; misdemeanor.** General Laws c. 266, § 37B(h) 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 (h); 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.*