

(1) a court shall not place on probation any person convicted of a violation of this section;

(2) except as provided in paragraph (4), no term of imprisonment imposed on a person under this section shall run concurrently with any other term of imprisonment imposed on the person under any other provision of law, including any term of imprisonment imposed for the felony during which the means of identification was transferred, possessed, or used;

(3) in determining any term of imprisonment to be imposed for the felony during which the means of identification was transferred, possessed, or used, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this section; and

(4) a term of imprisonment imposed on a person for a violation of this section may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28.

(c) DEFINITION.—For purposes of this section, the term “felony violation enumerated in subsection (c)” means any offense that is a felony violation of—

(1) section 641 (relating to theft of public money, property, or rewards<sup>1</sup>), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), or section 664 (relating to theft from employee benefit plans);

(2) section 911 (relating to false personation of citizenship);

(3) section 922(a)(6) (relating to false statements in connection with the acquisition of a firearm);

(4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7);

(5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);

(6) any provision contained in chapter 69 (relating to nationality and citizenship);

(7) any provision contained in chapter 75 (relating to passports and visas);

(8) section 523 of the Gramm-Leach-Bliley Act (15 U.S.C. 6823) (relating to obtaining customer information by false pretenses);

(9) section 243 or 266 of the Immigration and Nationality Act (8 U.S.C. 1253 and 1306) (relating to willfully failing to leave the United States after deportation and creating a counterfeit alien registration card);

(10) any provision contained in chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) (relating to various immigration offenses); or

(11) section 208, 811, 1107(b), 1128B(a), or 1632 of the Social Security Act (42 U.S.C. 408, 1011,

1307(b), 1320a-7b(a), and 1383a) (relating to false statements relating to programs under the Act).

(Added Pub. L. 108-275, §2(a), July 15, 2004, 118 Stat. 831.)

#### REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (c)(10), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended. Chapter 8 of title II of the Act is classified generally to part VIII (§1321 et seq.) of subchapter II of chapter 12 of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Social Security Act, referred to in subsec. (c)(11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### § 1029. Fraud and related activity in connection with access devices

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices;

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

(5) knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than \$1,000;

(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

(A) offering an access device; or

(B) selling information regarding or an application to obtain an access device;

(7) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services;

(8) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a scanning receiver;

(9) knowingly uses, produces, traffics in, has control or custody of, or possesses hardware or software, knowing it has been configured to insert or modify telecommunication identifying information associated with or contained in a telecommunications instrument so that such instrument may be used to obtain telecommunications service without authorization; or

(10) without the authorization of the credit card system member or its agent, knowingly

<sup>1</sup>So in original. Probably should be “records”.

and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, 1 or more evidences or records of transactions made by an access device;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be subject to the same penalties as those prescribed for the offense attempted.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) PENALTIES.—

(1) GENERALLY.—The punishment for an offense under subsection (a) of this section is—

(A) in the case of an offense that does not occur after a conviction for another offense under this section—

(i) if the offense is under paragraph (1), (2), (3), (6), (7), or (10) of subsection (a), a fine under this title or imprisonment for not more than 10 years, or both; and

(ii) if the offense is under paragraph (4), (5), (8), or (9) of subsection (a), a fine under this title or imprisonment for not more than 15 years, or both;

(B) in the case of an offense that occurs after a conviction for another offense under this section, a fine under this title or imprisonment for not more than 20 years, or both; and

(C) in either case, forfeiture to the United States of any personal property used or intended to be used to commit the offense.

(2) FORFEITURE PROCEDURE.—The forfeiture of property under this section, including any seizure and disposition of the property and any related administrative and judicial proceeding, shall be governed by section 413 of the Controlled Substances Act, except for subsection (d) of that section.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term “access device” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money,

goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term “counterfeit access device” means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term “unauthorized access device” means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) the term “produce” includes design, alter, authenticate, duplicate, or assemble;

(5) the term “traffic” means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of;

(6) the term “device-making equipment” means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device;

(7) the term “credit card system member” means a financial institution or other entity that is a member of a credit card system, including an entity, whether affiliated with or identical to the credit card issuer, that is the sole member of a credit card system;

(8) the term “scanning receiver” means a device or apparatus that can be used to intercept a wire or electronic communication in violation of chapter 119 or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument;

(9) the term “telecommunications service” has the meaning given such term in section 3 of title I of the Communications Act of 1934 (47 U.S.C. 153);

(10) the term “facilities-based carrier” means an entity that owns communications transmission facilities, is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934; and

(11) the term “telecommunication identifying information” means electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title. For purposes of this subsection, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(g)(1) It is not a violation of subsection (a)(9) for an officer, employee, or agent of, or a person engaged in business with, a facilities-based carrier, to engage in conduct (other than trafficking) otherwise prohibited by that subsection for

the purpose of protecting the property or legal rights of that carrier, unless such conduct is for the purpose of obtaining telecommunications service provided by another facilities-based carrier without the authorization of such carrier.

(2) In a prosecution for a violation of subsection (a)(9), (other than a violation consisting of producing or trafficking) it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) that the conduct charged was engaged in for research or development in connection with a lawful purpose.

(h) Any person who, outside the jurisdiction of the United States, engages in any act that, if committed within the jurisdiction of the United States, would constitute an offense under subsection (a) or (b) of this section, shall be subject to the fines, penalties, imprisonment, and forfeiture provided in this title if—

(1) the offense involves an access device issued, owned, managed, or controlled by a financial institution, account issuer, credit card system member, or other entity within the jurisdiction of the United States; and

(2) the person transports, delivers, conveys, transfers to or through, or otherwise stores, secrets, or holds within the jurisdiction of the United States, any article used to assist in the commission of the offense or the proceeds of such offense or property derived therefrom.

(Added Pub. L. 98-473, title II, §1602(a), Oct. 12, 1984, 98 Stat. 2183; amended Pub. L. 99-646, §44(b), Nov. 10, 1986, 100 Stat. 3601; Pub. L. 101-647, title XII, §1205(f), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103-322, title XXV, §250007, title XXXIII, §330016(2)(I), Sept. 13, 1994, 108 Stat. 2087, 2148; Pub. L. 103-414, title II, §206, Oct. 25, 1994, 108 Stat. 4291; Pub. L. 104-294, title VI, §601(l), Oct. 11, 1996, 110 Stat. 3501; Pub. L. 105-172, §2(a)-(d), Apr. 24, 1998, 112 Stat. 53, 54; Pub. L. 107-56, title III, §377, Oct. 26, 2001, 115 Stat. 342; Pub. L. 107-273, div. B, title IV, §4002(b)(11), Nov. 2, 2002, 116 Stat. 1808.)

#### REFERENCES IN TEXT

Section 413 of the Controlled Substances Act, referred to in subsec. (c)(2), is classified to section 853 of Title 21, Food and Drugs.

The Communications Act of 1934, referred to in subsec. (e)(10), is act June 19, 1934, ch. 652, 48 Stat. 1964, as amended. Title III of the Act is classified generally to subchapter III (§301 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

#### AMENDMENTS

2002—Subsec. (c)(1)(A)(ii). Pub. L. 107-273, §4002(b)(11)(A), substituted “(9)” for “(9).”

Subsec. (e)(8). Pub. L. 107-273, §4002(b)(11)(B), inserted semicolon at end.

2001—Subsec. (h). Pub. L. 107-56 added subsec. (h).

1998—Subsec. (a)(8) to (10). Pub. L. 105-172, §2(a), added pars. (8) and (9), redesignated former par. (9) as (10), and struck out former par. (8) which read as follows: “knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses—

“(A) a scanning receiver; or

“(B) hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services, or”.

Subsec. (b)(1). Pub. L. 105-172, §2(b)(2), substituted “subject to the same penalties as those prescribed for the offense attempted” for “punished as provided in subsection (c) of this section”.

Subsec. (c). Pub. L. 105-172, §2(b)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The punishment for an offense under subsection (a) or (b)(1) of this section is—

“(1) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (3), (5), (6), (7), (8), or (9) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph;

“(2) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection (a)(1), (4), (5), (6), (7), or (8) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and

“(3) a fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph.”

Subsec. (e)(8). Pub. L. 105-172, §2(c), inserted “or to intercept an electronic serial number, mobile identification number, or other identifier of any telecommunications service, equipment, or instrument” before the period at end.

Subsec. (e)(9) to (11). Pub. L. 105-172, §2(d)(2), added pars. (9) to (11).

Subsec. (g). Pub. L. 105-172, §2(d)(1), added subsec. (g). 1996—Subsec. (a)(5). Pub. L. 104-294, §601(l)(1)(A), redesignated par. (5), relating to instruments that have been modified or altered to obtain unauthorized access to telecommunications services, as (7).

Subsec. (a)(6). Pub. L. 104-294, §601(l)(1)(C), in par. (6) relating to solicitations, struck out “or” at end.

Pub. L. 104-294, §601(l)(1)(A), redesignated par. (6), relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services, as (8).

Subsec. (a)(7). Pub. L. 104-294, §601(l)(1)(A), (C), redesignated par. (5), relating to instruments that have been modified or altered to obtain unauthorized access to telecommunications services, as (7), and struck out “or” at end. Par. transferred to appear in numerical order to reflect probable intent of Congress. Former par. (7) redesignated (9).

Pub. L. 104-294, §601(l)(1)(B), redesignated par. (7) as (9).

Subsec. (a)(8). Pub. L. 104-294, §601(l)(1)(A), (D), redesignated par. (6), relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services, as (8) and inserted “or” at end. Par. transferred to appear in numerical order to reflect probable intent of Congress.

Subsec. (a)(9). Pub. L. 104-294, §601(l)(1)(B), redesignated par. (7) as (9).

Subsec. (c)(1). Pub. L. 104-294, §601(l)(3)(A), substituted “(7), (8), or (9)” for “or (7).”

Subsec. (c)(2). Pub. L. 104-294, §601(l)(3)(B), substituted “(6), (7), or (8)” for “or (6).”

Subsec. (e)(7), (8). Pub. L. 104-294, §601(l)(2), redesignated par. (7), defining “scanning receiver”, as (8).

1994—Subsec. (a)(3). Pub. L. 103-322, §250007(1)(A), and Pub. L. 103-414, §206(a)(1), amended par. (3) identically, striking “or” at end.

Subsec. (a)(5). Pub. L. 103-414, §206(a)(2), added par. (5) relating to instruments that have been modified or altered to obtain unauthorized use of telecommunications services.

Pub. L. 103-322, §250007(1)(B), added par. (5) relating to transactions involving use of access devices issued to persons other than user.

Subsec. (a)(6). Pub. L. 103-414, § 206(a)(2), added par. (6) relating to scanning receivers or other hardware or software used to obtain unauthorized access to telecommunications services.

Pub. L. 103-322, § 250007(1)(B), added par. (6) relating to solicitations which offer access devices or information regarding access devices.

Subsec. (a)(7). Pub. L. 103-322, § 250007(1)(B), added par. (7).

Subsec. (c)(1). Pub. L. 103-322, § 330016(2)(I), substituted "fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment" for "fine of not more than the greater of \$10,000 or twice the value obtained by the offense or imprisonment".

Pub. L. 103-322, § 250007(2), substituted "(a)(2), (3), (5), (6), or (7)" for "(a)(2) or (a)(3)".

Subsec. (c)(2). Pub. L. 103-414, § 206(b), substituted "(a)(1), (4), (5), or (6)" for "(a)(1) or (a)(4)".

Pub. L. 103-322, § 330016(2)(I), substituted "fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment" for "fine of not more than the greater of \$50,000 or twice the value obtained by the offense or imprisonment".

Subsec. (c)(3). Pub. L. 103-322, § 330016(2)(I), substituted "fine under this title or twice the value obtained by the offense, whichever is greater, or imprisonment" for "fine of not more than the greater of \$100,000 or twice the value obtained by the offense or imprisonment".

Subsec. (e)(1). Pub. L. 103-414, § 206(c)(1), inserted "electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier," after "account number."

Subsec. (e)(5), (6). Pub. L. 103-322, § 250007(3)(A), (B), and Pub. L. 103-414, § 206(c)(2), (3), amended subsec. (e) identically, striking "and" at end of par. (5) and substituting "; and" for period at end of par. (6).

Subsec. (e)(7). Pub. L. 103-414, § 206(c)(4), added par. (7) defining "scanning receiver".

Pub. L. 103-322, § 250007(3)(C), added par. (7) defining "credit card system member".

1990—Subsec. (f). Pub. L. 101-647 inserted at end "For purposes of this subsection, the term 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

1986—Subsec. (f). Pub. L. 99-646 which directed that subsec. (f) be amended by substituting "chapter 224 of this title" for "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" was executed by making the substitution for "title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481)" to reflect the probable intent of Congress.

#### TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### REPORT TO CONGRESS

Section 1603 of Pub. L. 98-473 directed Attorney General to report to Congress annually, during first three years following Oct. 12, 1984, concerning prosecutions under this section.

### § 1030. Fraud and related activity in connection with computers

(a) Whoever—

(1) having knowingly accessed a computer without authorization or exceeding authorized

access, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y. of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

(2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—

(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(B) information from any department or agency of the United States; or

(C) information from any protected computer;

(3) intentionally, without authorization to access any nonpublic computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects that use by or for the Government of the United States;

(4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than \$5,000 in any 1-year period;

(5)(A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

(B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

(C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage and loss.<sup>1</sup>

(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

<sup>1</sup> So in original. The period probably should be a semicolon.