

House Bill 192 (AS PASSED HOUSE AND SENATE)

By: Representatives Powell of the 32nd and Taylor of the 79th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
2 relating to illegal use of financial transaction cards, so as to revise definitions; to provide for
3 the prosecution of the unlawful use of government purchasing cards; to provide for venue;
4 to amend Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to
5 general provisions regarding counties, municipal corporations, and other governmental
6 entities, so as to provide for the limitation and regulation of the use of government
7 purchasing cards and government credit cards by elected officials of counties, municipal
8 corporations, local school systems, and consolidated governments; to provide for the
9 promulgation of certain policies; to provide for access to certain records; to provide for
10 certain powers for certain local authorities; to provide a definition; to make certain findings;
11 to provide for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Article 3 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
15 illegal use of financial transaction cards, is amended by revising Code Section 16-9-30,
16 relating to definitions, as follows:

17 "16-9-30.

18 As used in this article, the term:

19 (1) 'Acquirer' means a business organization, government, financial institution, or an
20 agent of a business organization, government, or financial institution that authorizes a
21 merchant to accept payment by financial transaction card for money, goods, services, or
22 anything else of value.

23 (2) 'Automated banking device' means any machine which when properly activated by
24 a financial transaction card and personal identification code may be used for any of the
25 purposes for which a financial transaction card may be used.

26 (3) 'Cardholder' means the person, government, or organization ~~named on the face of a~~
 27 ~~financial transaction card~~ to whom or for whose benefit the financial transaction card is
 28 issued by an issuer.

29 (4) 'Expired financial transaction card' means a financial transaction card which is no
 30 longer valid because the term for which it was issued has elapsed.

31 (5) 'Financial transaction card' or 'FTC' means any instrument or device, whether known
 32 as a credit card, credit plate, bank services card, banking card, check guarantee card, debit
 33 card, or by any other name, issued with or without fee by an issuer for the use of the
 34 cardholder:

35 (A) In obtaining money, goods, services, or anything else of value;

36 (B) In certifying or guaranteeing to a person or business the availability to the
 37 cardholder of funds on deposit that are equal to or greater than the amount necessary
 38 to honor a draft or check payable to the order of such person or business; or

39 (C) In providing the cardholder access to a demand deposit account, savings account,
 40 or time deposit account for the purpose of:

41 (i) Making deposits of money or checks therein;

42 (ii) Withdrawing funds in the form of money, money orders, or traveler's checks
 43 therefrom;

44 (iii) Transferring funds from any demand deposit account, savings account, or time
 45 deposit account to any other demand deposit account, savings account, or time deposit
 46 account;

47 (iv) Transferring funds from any demand deposit account, savings account, or time
 48 deposit account to any credit card accounts, overdraft privilege accounts, loan
 49 accounts, or any other credit accounts in full or partial satisfaction of any outstanding
 50 balance owed existing therein;

51 (v) For the purchase of goods, services, or anything else of value; or

52 (vi) Obtaining information pertaining to any demand deposit account, savings
 53 account, or time deposit account.

54 (5.1) 'Financial transaction card account number' means a number, numerical code,
 55 alphabetical code, or alphanumeric code assigned by the issuer to a particular financial
 56 transaction card and which identifies the cardholder's account with the issuer.

57 (5.2) 'Government' means:

58 (A) Every state department, agency, board, bureau, commission, and authority;

59 (B) Every county, municipal corporation, school system, or other political subdivision
 60 of this state;

61 (C) Every department, agency, board, bureau, commission, authority, or similar body
 62 of each such county, municipal corporation, school system, or other political
 63 subdivision of this state; and

64 (D) Every city, county, regional, or other authority established pursuant to the laws of
 65 this state.

66 (6) 'Issuer' means the business organization or financial institution or its duly authorized
 67 agent which issues a financial transaction card.

68 (7) 'Personal identification code' means a numeric or alphabetical code, signature,
 69 photograph, fingerprint, or any other means of electronic or mechanical confirmation
 70 used by the cardholder of a financial transaction card to permit authorized electronic use
 71 of that financial transaction card.

72 (8) 'Presenting' means those actions taken by a cardholder or any person to introduce a
 73 financial transaction card into an automated banking device with or without utilization
 74 of a personal identification code or merely displaying or showing, with intent to defraud,
 75 a financial transaction card to the issuer or to any person or organization providing
 76 money, goods, services, or anything else of value or to any other entity.

77 (8.1) 'Purchasing card,' 'PCard,' or 'P-Card' means a type of financial transaction card
 78 allowing persons, governments, or business organizations to use financial transaction
 79 infrastructure.

80 (9) 'Receives' or 'receiving' means acquiring possession of or control of or accepting a
 81 financial transaction card as security for a loan.

82 (10) 'Revoked financial transaction card' means a financial transaction card which is no
 83 longer valid because permission to use it has been suspended or terminated by the issuer."

84 **SECTION 2.**

85 Said article is further amended by revising Code Section 16-9-33, relating to financial
 86 transaction card fraud, as follows:

87 "16-9-33.

88 (a) A person commits the offense of financial transaction card fraud when, with intent to
 89 defraud the issuer; a person or organization providing money, goods, services, or anything
 90 else of value; or any other person; or cardholder, he such person:

91 (1) Uses for the purpose of obtaining money, goods, services, or anything else of value:

92 (A) A financial transaction card obtained or retained or which was received with
 93 knowledge that it was obtained or retained in violation of Code Section 16-9-31
 94 or 16-9-32;

- 95 (B) A financial transaction card which he or she knows is forged, altered, expired,
 96 revoked, or was obtained as a result of a fraudulent application in violation of
 97 subsection (d) of this Code section; or
- 98 (C) The financial transaction card account number of a financial transaction card which
 99 he or she knows has not in fact been issued or is forged, altered, expired, revoked, or
 100 was obtained as a result of a fraudulent application in violation of subsection (d) of this
 101 Code section;
- 102 (2) Obtains money, goods, services, or anything else of value by:
- 103 (A) Representing without the consent of the cardholder that he or she is the holder of
 104 a specified card;
- 105 (B) Presenting the financial transaction card without the authorization or permission
 106 of the cardholder or issuer;
- 107 (C) Falsely representing that he or she is the holder of a card and such card has not in
 108 fact been issued; or
- 109 (D) Giving, orally or in writing, a financial transaction card account number to the
 110 provider of the money, goods, services, or other thing of value for billing purposes
 111 without the authorization or permission of the cardholder or issuer for such use;
- 112 (3) Obtains control over a financial transaction card as security for debt;
- 113 (4) Deposits into his or her account or any account by means of an automated banking
 114 device a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any
 115 other such document not his or her lawful or legal property; or
- 116 (5) Receives money, goods, services, or anything else of value as a result of a false,
 117 fictitious, forged, altered, or counterfeit check, draft, money order, or any other such
 118 document having been deposited into an account via an automated banking device,
 119 knowing at the time of receipt of the money, goods, services, or item of value that the
 120 document so deposited was false, fictitious, forged, altered, or counterfeit or that the
 121 above-deposited item was not his lawful or legal property.
- 122 (b) A person who is authorized by an issuer to furnish money, goods, services, or anything
 123 else of value upon presentation of a financial transaction card by the cardholder or any
 124 agent or employee of such person commits the offense of financial transaction card fraud
 125 when, with intent to defraud the issuer or the cardholder, he or she:
- 126 (1) Furnishes money, goods, services, or anything else of value upon presentation of a
 127 financial transaction card obtained or retained in violation of Code Section 16-9-31 or a
 128 financial transaction card which he or she knows is forged, expired, or revoked;
- 129 (2) Alters a charge ticket or purchase ticket to reflect a larger amount than that approved
 130 by the cardholder; or

- 131 (3) Fails to furnish money, goods, services, or anything else of value which he or she
132 represents in writing to the issuer that he or she has furnished.
- 133 (c) Conviction of the offense of financial transaction card fraud as provided in subsection
134 (a) or (b) of this Code section is punishable as provided in subsection (a) of Code
135 Section 16-9-38 if the value of all money, goods, services, and other things of value
136 furnished in violation of this Code section or if the difference between the value actually
137 furnished and the value represented to the issuer to have been furnished in violation of this
138 Code section does not exceed \$100.00 in any six-month period. Conviction of the offense
139 of financial transaction card fraud as provided in subsection (a) or (b) of this Code section
140 is punishable as provided in subsection (b) of Code Section 16-9-38 if such value
141 exceeds \$100.00 in any six-month period.
- 142 (d) A person commits the offense of financial transaction card fraud when, upon
143 application for a financial transaction card to an issuer, he or she knowingly makes or
144 causes to be made a false statement or report relative to his or her name, occupation,
145 employer, financial condition, assets, or liabilities or willfully and substantially overvalues
146 any assets or willfully omits or substantially undervalues any indebtedness for the purpose
147 of influencing the issuer to issue a financial transaction card. Financial transaction card
148 fraud as provided in this subsection is punishable as provided in subsection (b) of Code
149 Section 16-9-38.
- 150 (e) A cardholder commits the offense of financial transaction card fraud when he or she
151 willfully, knowingly, and with an intent to defraud the issuer; a person or organization
152 providing money, goods, services, or anything else of value; or any other person submits
153 verbally or in writing to the issuer or any other person any false notice or report of the theft,
154 loss, disappearance, or nonreceipt of his or her financial transaction card and personal
155 identification code. Conviction of the offense of financial transaction card fraud as
156 provided in this subsection is punishable as provided in subsection (b) of Code
157 Section 16-9-38.
- 158 (f) A person authorized by an acquirer to furnish money, goods, services, or anything else
159 of value upon presentation of a financial transaction card or a financial transaction card
160 account number by a cardholder or any agent or employee of such person, who, with intent
161 to defraud the issuer, acquirer, or cardholder, remits to an issuer or acquirer, for payment,
162 a financial transaction card record of a sale, which sale was not made by such person,
163 agent, or employee, commits the offense of financial transaction card fraud. Conviction of
164 the offense of financial transaction card fraud as provided in this subsection shall be
165 punishable as provided in subsection (b) of Code Section 16-9-38.
- 166 ~~(g) In any prosecution for violation of this Code section, the state is not required to~~
167 ~~establish that all of the acts constituting the crime occurred in this state or within one city,~~

168 ~~county, or local jurisdiction, and it is no defense that some of the acts constituting the crime~~
 169 ~~did not occur in this state or within one city, county, or local jurisdiction. Except as~~
 170 ~~otherwise provided by Code Section 17-2-2, for purposes of venue the crime defined by~~
 171 ~~this Code section shall be considered as having been committed in the county where the~~
 172 ~~commission of the crime commenced~~ Reserved.

173 (h) For purposes of this Code section, revocation shall be construed to include either notice
 174 given in person or notice given in writing to the person to whom the financial transaction
 175 card and personal identification code was issued. Notice of revocation shall be immediate
 176 when notice is given in person. The sending of a notice in writing by registered or certified
 177 mail or statutory overnight delivery in the United States mail, duly stamped and addressed
 178 to such person at his or her last address known to the issuer, shall be prima-facie evidence
 179 that such notice was duly received after seven days from the date of deposit in the mail. If
 180 the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal
 181 Zone, and Canada, notice shall be presumed to have been received ten days after mailing
 182 by registered or certified mail or statutory overnight delivery."

183 **SECTION 3.**

184 Said article is further amended by revising Code Section 16-9-37, relating to unauthorized
 185 use of financial transaction card, as follows:

186 "16-9-37.

187 (a) Any person who has been issued or entrusted with a financial transaction card for
 188 specifically authorized purposes, provided such authorization is in writing stating a
 189 maximum amount charges that can be made with the financial transaction card, and who
 190 uses the financial transaction card in a manner and for purposes not authorized in order to
 191 obtain or purchase money, goods, services, or anything else of value shall be punished as
 192 provided in subsection (a) of Code Section 16-9-38.

193 (b) Any person who has been issued or entrusted with a financial transaction card by a
 194 government for specifically limited and specifically authorized purposes, provided such
 195 limitations and authorizations are in writing, and who uses the financial transaction card
 196 in a manner and for purposes not authorized shall be punished as provided in subsection (b)
 197 of Code Section 16-9-38."

198 **SECTION 4.**

199 Said article is further amended by adding a new Code section to read as follows:

200 "16-9-40.

201 (a) In any prosecution for a violation of this article, the state is not required to establish
 202 that all of the acts constituting the crime occurred in this state or within one city, county,

203 or local jurisdiction, and it is no defense that some of the acts constituting the crime did not
 204 occur in this state or within one city, county, or local jurisdiction. Except as otherwise
 205 provided by Code Section 17-2-2, for purposes of venue, the crime defined by this Code
 206 section shall be considered as having been committed in the county where the commission
 207 of the crime commenced.

208 (b) In any prosecution for a violation of this article by a public official or government
 209 employee, using government funds or a financial transaction card issued to such official
 210 or government employee by or on behalf of government, the crime shall be considered to
 211 have been committed in the county in which such public official holds office or such
 212 government employee is employed."

213 SECTION 5.

214 Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to general
 215 provisions regarding counties, municipal corporations, and other governmental entities, is
 216 amended by adding a new Code section to read as follows:

217 "36-80-24.

218 (a) An elected official of a county, municipal corporation, local school system, or
 219 consolidated government shall be prohibited from the use of a government purchasing card
 220 or a government credit card unless:

221 (1) Such purchases are solely for items or services that directly relate to such official's
 222 public duties; and

223 (2) Such purchases are in accordance with guidelines adopted by the county, municipal
 224 corporation, local school system, or consolidated government.

225 (b) Documents related to such purchases incurred by such elected officials shall be
 226 available for public inspection.

227 (c) No such county, municipal corporation, local school system, or consolidated
 228 government shall issue government purchasing cards or government credit cards to elected
 229 officials on or after January 1, 2016, until the governing authority of such county,
 230 municipal corporation, local school system, or consolidated government, by public vote,
 231 has authorized such issuance and has promulgated specific policies regarding the use of
 232 such government purchasing cards or government credit cards for elected officials of such
 233 county, municipal corporation, local school system, or consolidated government. Such
 234 policies shall include the following:

235 (1) Designation of officials who shall be authorized to be issued such government
 236 purchasing cards or government credit cards;

237 (2) A requirement that, before being issued a government purchasing card or government
 238 credit card, authorized users shall sign and accept an agreement with the county,

239 municipal corporation, local school system, or consolidated government issuing the
 240 government purchasing card or government credit card that such users will use such cards
 241 only in accordance with the policies of the issuing governmental entity;
 242 (3) Transaction limits for the use of such cards;
 243 (4) A description of purchases that shall be authorized for use of such cards;
 244 (5) A description of purchases that shall not be authorized for use of such cards;
 245 (6) Designation of a government purchasing card or government credit card
 246 administrator;
 247 (7) A process for auditing and reviewing purchases made with such cards; and
 248 (8) Procedures for addressing a violation of such purchasing card or credit card policies
 249 and imposing penalties for violations including, but not limited to, revocation of
 250 purchasing card or credit card privileges. Nothing in such procedures or any
 251 administrative action taken pursuant thereto shall preclude any other civil or criminal
 252 remedy under any other provision of law."

253 **SECTION 6.**

254 Said chapter is further amended by adding a new Code section to read as follows:

255 "36-80-25.

256 (a) As used in this Code section, the term 'project' means and includes hospitals, health
 257 care facilities, dormitories, office buildings, clinics, housing accommodations, nursing
 258 homes, rehabilitation centers, extended care facilities, and other health related facilities,
 259 whether public or private.

260 (b) To the extent that the Constitution of Georgia permits the General Assembly by law
 261 to further define the powers and duties of any local government authority, as defined in
 262 Code Section 36-80-16, whose purpose includes the public purpose of developing or
 263 promoting trade, commerce, or industry, and to enlarge or restrict the same, each such local
 264 government authority is authorized and shall have the power to finance (by loan, grant,
 265 lease, or otherwise), refinance, construct, erect, assemble, purchase, acquire, own, repair,
 266 remodel, renovate, rehabilitate, modify, maintain, extend, improve, install, sell, equip,
 267 expand, add to, operate, or manage projects and to pay the cost of any project from the
 268 proceeds of revenue bonds of such a local government authority or any other funds of such
 269 local government authority, or from any contributions or loans by persons, corporations,
 270 limited or general partnerships, or other entities, all of which such a local government
 271 authority is authorized to receive, accept, and use. To the extent that any project serves
 272 a governmental function, the General Assembly finds and determines that such a project
 273 by its nature comprises both public and private components that are integrated so as to

274 produce the desired public purpose and that therefore carrying out such a project is proper
275 and authorized for such a local government authority under the Constitution of Georgia."

276 **SECTION 7.**

277 All laws and parts of laws in conflict with this Act are repealed.