

See: Minutes of Subcommittee on
Grading and Sentencing
4/5/70, p. 52, Vol, X, Tape #57

Minutes of Commission
5/15/70, p. 57, Vol. IX, Tape #61

CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 18. FORGERY AND RELATED OFFENSES

Tentative Draft No. 1; June 1969

Reporter: Donald L. Paillette

Subcommittee No. 1

ARTICLE 18 . FORGERY AND RELATED OFFENSES

Tentative Draft No. 1; June 1969

INDEX

	<u>Page</u>
Section 1. Forgery and related offenses; definitions	1
Section 2. Forgery in the second degree. . . .	3
Section 3. Forgery in the first degree	7
Section 4. Criminal simulation	9
Section 5. Fraudulently obtaining a signature.	10
Section 6. Unlawfully using slugs.	11
Section 7. Fraudulent use of a credit card . .	13
Section 8. Negotiating a bad check	15

#####

ARTICLE 18. FORGERY AND RELATED OFFENSES

Tentative Draft No. 1; June 1969

Section 1. Forgery and related offenses; definitions. As used in this Article, unless the context requires otherwise:

(1) "Written instrument" means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible make is fictitious or because, if real, he did not authorize the making or drawing thereof.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of

anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

(7) To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

COMMENTARY - FORGERY; DEFINITIONS

This section substantially adopts the comprehensive definitions of New York Revised Penal Law section 170.00. Subsection (7) has been added by your reporter.

"Written instrument" includes every kind of writing or other article that may be the subject of forgery. Distinctions are made between the terms "complete written instrument" and "incomplete written instrument." Particularly important are the terms "falsely make," "falsely complete" and "falsely alter" which collectively constitute the crime of forgery.

The relationship of the draft provisions to existing law is discussed in the commentary to subsequent sections.

Section 2. Forgery in the second degree. A person commits the crime of forgery in the second degree if, with intent to injure or defraud, he:

- (1) Falsely makes, completes or alters a written instrument;
- or
- (2) Utters a written instrument which he knows to be forged.

COMMENTARY - FORGERY IN THE SECOND DEGREE

A. Summary

This section defines the basic offense of "forgery". Falsely making, completing or altering a written instrument or uttering same with knowledge that it is forged is punishable as forgery in the second degree.

Following the pattern of the proposed drafts for other crimes, the Article provides for two ascending degrees of forgery, scaled according to the type of writing forged.

B. Derivation

This section is adapted from New York Revised Penal Law section 170.05, but differs from that statute in one material aspect in that it incorporates "uttering" into the basic definition of the crime, whereas the New York Code (ss. 170.20, 170.25, 170.30) equates uttering with possession rather than forgery, but punishes it the same as its forgery counterpart.

C. Relationship to Existing Law

Forgery is defined at common law as the false making or materially altering, with intent to defraud, of any writing, which if genuine, might apparently be of legal efficacy or the foundation of a legal liability. Willetts v. Scudder, 72 Or 535, 144 P 87 (1914). The requisite intent is the intent to defraud. State v. Wheeler, 20 Or 192, 25 P 394 (1890). It is not necessary that anyone be actually defrauded or injured. State v. Leonard, 73 Or 451, 144 P 681 (1914). The prosecution need not prove an intent to defraud a particular person, a general intent to defraud being sufficient. State v. Frasier, 94 Or 90, 180 P 520 (1919); ORS 165.190. Forgery may be committed by the use of a fictitious or assumed name. State v. Kelliher, 49 Or 647, 88 P 867 (1907).

The term "falsely" does not refer to the contract or tenor of the instrument, or the fact stated in the writing. The writing itself must be false, i.e., not the true instrument which it purports to be. State v. Wheeler, supra. In order to establish that the instrument was falsely made the state must prove a lack of authority by the defendant, unless a fictitious name is used. State v. Fitzgerald, 186 Or 301, 205 P2d 549 (1949).

A receipt, canceled check or voucher may be the subject of forgery. State v. Frasier, supra. A note which on its face appears to be barred by the statute of limitations may be the subject of forgery because the note could become the foundation of a legal liability. State v. Dunn, 23 Or 562, 32 P 621 (1893).

The primary criminal code sections on forgery are ORS 165.105, 165.110 and 165.115. A score of other sections, some of which are duplicative, sound of forgery or counterfeiting.

C. Relationship to Existing Law

<u>ORS</u>	<u>Crime</u>	<u>Maximum Penalty</u>
165.105	Making, forging or counterfeiting writing or money	10 years
165.110	Forging note, draft or check	10 years
165.115	Uttering forged instrument	10 years
165.120	Possession of instrument with intent to utter or pass it	5 years
165.125	Making or possessing plate, tool, implement or material for forging instrument	5 years
165.130	Making or uttering false warehouse receipt	5 years
165.135	Connecting parts of bank notes or other instruments	10 years
165.145	Transmission and delivery of false and forged messages	1 yr., \$1,000 fine, or both
165.150	Forgery of railroad tickets	1 yr., \$1,000 fine, or both
165.155	Restoring or uttering canceled railroad ticket	1 yr., \$1,000 fine, or both

<u>ORS</u>	<u>Crime</u>	<u>Maximum Penalty</u>
165.160	Counterfeiting coins	10 years
165.165	Possession of counterfeiting equipment	10 years
165.175	Counterfeiting or removing serial number	6 mos., \$100 or both
165.180	Receiving or concealing article from which serial number has been removed	\$500 fine
165.185	Use of counterfeit label or empty container	6 mos., \$300 fine, or both
165.250	Destruction or falsification of corporate records or securities	1 yr., \$1,000 fine, or both
165.295	Unlawful possession, alteration or use of credit card	5 years
165.525	Manufacture or sale of slugs for coin boxes	6 mos., \$500 fine, or both
323.992	Counterfeiting cigarette tax stamps or meters	10 yrs., \$10,000 fine, or both
94.990	Forgery and fraud in registration of titles	10 yrs., \$1,000 fine, or both

Sections 1, 2 and 3 of the draft retain the crimes of forgery and uttering as now stated in the statutes, though with explicit definitions. The criminal intent, an "intent to injure or defraud," is identical to that set forth in the present statutes.

The definition of "written instrument" as proposed by the draft encompasses the kinds of documents now covered by ORS 165.105 and 165.110.

Whether the crimes of forgery and uttering or passing of forged instruments are separate and distinct offenses in Oregon is not clear. State v. Swank, 99 Or 571, 195 P 168 (1921), held that under the statute (OCLA 23-560, bisected in 1953 into ORS 165.105 and 165.115) the forgery of an instrument and the uttering of a forged instrument were separate and distinct crimes.

However, in the case of Dougharty v. Gladden, 217 Or 567, 341 P2d 1069 (1959), cert. den. 361 U.S. 867, the court held that OCLA 23-560 "clearly states but a single crime which may be committed by committing forgery or uttering, or both, as these crimes were known to the common law." The court distinguished the Swank case, saying that the discussion therein of forgery and uttering as separate offenses was in connection with OCLA 23-561 and 23-562 and applied only to the forging or uttering of an instrument purported to be executed by a sovereign entity "or any corporation, company or person duly authorized" by the sovereign entity to issue a bank bill, promissory note, draft, check, or other evidence of debt." See, Linde, Criminal Law - 1959 Oregon Survey, 39 Or L Rev 166, for a commentary on the two cases wherein he raises the question of whether Swank and Dougharty leave us with the possible situation in which forgery and uttering may be two different crimes if the instrument purports to have sovereign backing, but a single crime if it does not. The draft would clarify the law on the point in issue by providing that forgery is a single crime that may be committed by falsely making, completing, or altering a written instrument or by uttering a forged instrument with knowledge of its forged character.

Section 3. Forgery in the first degree. A person commits the crime of forgery in the first degree if he violates section 2 of this Article and the written instrument is or purports to be any of the following:

Existing Law
ORS
165.105
165.110
165.115

(1) Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency; or

(2) Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person; or

(3) A deed, will, codicil, contract, assignment, commercial instrument or other document which does or may evidence, create, transfer, alter, terminate, or otherwise affect a legal right, interest, obligation or status; or

(4) A public record.

COMMENTARY - FORGERY IN THE FIRST DEGREE

A. Summary

This section makes forgery more serious if the instrument is of the kind specified. Subsections (1) and (2) deal with instruments having an inherent pecuniary value, constituting part of a larger issue by a government or business entity. Subsection (3) covers instruments that directly affect a deed, will, contract or commercial instrument transactions. The Commission is of the opinion that the language "or otherwise affect a legal right, interest, obligation or status" is broad enough to include "plat, draft or survey of land"; therefore, the latter language from ORS 165.105 (7) has not been retained. Subsection (4) places public records within the ambit of first degree forgery.

B. Derivation

New York Revised Penal Law is the source of the section. Sections 170.10 and 170.15 have been combined. MPC section 224.1 is similar to the New York law in its grading of forgery. The more severe punishment is reserved for those cases in which the writing is or purports to be part of an issue of money, securities or other government issued instruments, or part of an issue of stock, bonds or other instruments representing claims against or interests in a commercial enterprise.

C. Relationship to Existing Law

The primary forgery statutes (ORS 165.105, 165.110, 165.115) each prescribe a maximum penalty of 10 years imprisonment, so it may be said that Oregon has no more than one degree of forgery. Orbiting these central forgery statutes, however, is a ring of satellite sections which provide for lesser penalties: Transmission of forged messages (ORS 165.145); forging railroad tickets (ORS 165.150); restoring or uttering canceled railroad ticket (ORS 165.155); counterfeiting serial number or article (ORS 165.175); counterfeiting label or trademark (ORS 165.185). Forgery of the kind of instruments not included in this section is covered by section 2 which consolidates the above sections.

Present law is not changed by the draft insofar as it concerns forgery of negotiable instruments, public records, contracts, wills and similar writings. These continue to be the highest degree of forgery. Counterfeiting of coins (ORS 165.160) is proscribed by subsection (1).

NOTE ON CRIMINAL POSSESSION OF FORGED INSTRUMENTS OR FORGERY

DEVICES. The preliminary drafts of this Article contained sections covering specific crimes of criminal possession of forged instruments and forgery devices. (See ORS 165.120, 165.165). These sections were deleted by the Commission because it believed that such conduct would be covered as an attempt under the Inchoate Crimes Article.

Section 4. Criminal simulation. A person commits the crime of criminal simulation if:

(1) With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or

(2) With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

COMMENTARY - CRIMINAL SIMULATION

This section is directed at fraudulent misrepresentation and simulation of antique or rare objects. It is taken from New York Revised Penal Law section 170.45 and is similar to MPC section 224.2. There is no Oregon statute covering "forgery" of "objects" other than writings; however the Commission believes that such a provision is a desirable one because, as the Michigan commentators state, "The preparation of this sort of object shows careful advance planning, and since the monetary stakes are often very high, it appears appropriate to penalize the preparation as such, particularly when apprehension of the criminal after the final frauds have been perpetrated is often very difficult." (Michigan Revised Criminal Code §4025, p. 272).

Section 5. Fraudulently obtaining a signature. A person commits the crime of fraudulently obtaining a signature if, with intent to defraud or injure another, he obtains the signature of a person to a written instrument by knowingly misrepresenting any fact.

COMMENTARY - FRAUDULENTLY OBTAINING A SIGNATURE

Section 5 covers conduct which is not forgery because the resulting written instrument is exactly what it purports to be--a document executed by one who has the authority to do so.

A signature is not "property" as defined in the Theft Draft (T.D. No. 1), so obtaining a signature by fraud would not amount to theft by deception.

The section is derived from New York Revised Penal Law section 165.20 and resembles Michigan Revised Criminal Code section 4030.

A phrase in the false pretenses statute (ORS 165.205), "or who obtains or attempts to obtain the signature of any person to any writing, the false making of which would be punishable as forgery," is the only existing Oregon law directed at the problem.

Section 6. Unlawfully using slugs. (1) A person commits the crime of unlawfully using slugs if:

(a) With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, he inserts, deposits or otherwise uses a slug in such machine; or

(b) He makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.

(2) Definitions. As used in this section:

(a) "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose, and in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.

(b) "Slug" means an object, article or device which, by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as a fraudulent substitute for a genuine coin, bill or token.

COMMENTARY - UNLAWFULLY USING SLUGS

A. Summary

The purpose of the section is to prevent the use of slugs or other devices in coin-operated machines and the professional manufacture of the slugs themselves. The culpability requirement that must accompany the use of a slug is an "intent to defraud the supplier" of property or services. (Subsection (1) (a)). The intent that must accompany the manufacture or possession of a slug is an "intent to enable a person to use it fraudulently in a coin machine."

"Coin machine" is defined broadly to include any type of vending machine or similar device designed to receive bills or tokens as well as coins, and which dispenses any property or service. "Slug", as the term is defined, includes, in addition to the familiar fake coin, any other device which is capable of being used in a coin machine as a fraudulent substitute for the genuine article.

B. Derivation

Subsection (1) is adapted from Michigan Revised Criminal Code section 4052, which, in turn, is based on New York Revised Penal Law section 170.55. Both of those states provide for two degrees of the crime, however, making it a more serious offense to possess or make slugs exceeding \$100 in "value" as they define the term. The proposed draft is limited to a single degree, which should be adequate to cover the problem in this state.

Subsection (2) is taken from New York Revised Penal Law section 170.50 with minor variations.

C. Relationship to Existing Law

Two existing statutes, ORS 165.525 and 165.530, now governing the problem will be repealed. The former statute prohibits the manufacture or sale of slugs, and the latter relates to possession of a "machine, appliance, contrivance or device" used or intended to be used to obtain a telephone or telegraphic service or any merchandise or service. ORS 165.530 also prohibits obtaining a service or merchandise without depositing money in the coin-collecting attachment. Such activity would amount to "theft of services" under the provisions of Tentative Draft No. 1 (July 1968).

Section 7. Fraudulent use of a credit card. (1) A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, he uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) The card is stolen or forged; or
(b) The card has been revoked or canceled; or
(c) For any other reason his use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a card, booklet or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

COMMENTARY - FRAUDULENT USE OF A CREDIT CARD

A. Summary

This section is intended to cover instances that probably do not constitute either theft or theft of services. Commentary to section 224.6 of the Model Penal Code indicates the reasons for having a separate statute on the subject:

"This is a new section to fill a gap in the law relating to false pretense and fraudulent practices. Sections 223.3 and 223.7 cover theft of property or services by deception. It is doubtful whether they reach the credit card situation because the user of a stolen or cancelled credit card does not obtain goods by any deception practiced upon or victimizing the seller. The seller will collect from the issuer of the credit card, because credit card users assume the risk of misuse of cards in order to encourage sellers to honor the cards readily. Thus it is the non-deceived issuer who is the victim of the practice." (P.O.D. p. 179 (1962)).

B. Derivation

The section is based on MPC section 224.6 and Michigan Revised Criminal Code. The stated intent "to injure or defraud" is the same as that which is set forth in the forgery sections of the draft. The existing statute (ORS 165.300) requires an intent "to defraud." The definition of "credit card" is an amended version of ORS 165.290 (1) and is more precise than the Model Penal Code's "writing or other evidence" definition.

C. Relationship to Existing Law

Three existing sections of ORS cover credit card crimes. ORS 165.290 defines the terms "credit card" and "card holder". ORS 165.295 deals with the unlawful taking, procuring, possession, alteration or use of a credit card. ORS 165.300 prohibits the fraudulent use of a revoked or canceled card.

The card itself would constitute "property"; consequently stealing it would be "theft" as defined in Tentative Draft No. 1. Possession of a stolen card would probably amount to "theft by receiving". Forging a credit card or possession of a forged card is prohibited by the forgery sections of the draft. Therefore, there is no purpose in having separate sections relating specifically to theft or forgery of credit cards.

What remains of the present statutes, then, is the gist of ORS 165.300, restated in slightly different and simplified language, with the scope of the crime enlarged to include use of a forged or stolen credit card. The existing statute provides for misdemeanor punishment if the total amount of goods or services obtained is less than \$75 and for felony penalties if the total amount exceeds \$75. It is anticipated that a similar provision will be retained when the crimes are graded by the Commission.

FORGERY & RELATED OFFENSES
Tentative Draft No. 1

Section 8. Negotiating a bad check. (1) A person commits the crime of negotiating a bad check if he makes, draws or utters a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

Existing Law
ORS
165.225

(2) For purposes of this section, unless the check or order is **postdated**, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

COMMENTARY - NEGOTIATING A BAD CHECK

A. Summary

This section prohibits issuing or passing "bad checks" or other worthless sight orders for the payment of money.

Subsection (1) defines the crime itself and subsection (2) establishes certain prima facie evidence provisions that will be applicable.

B. Derivation

The section is based on MPC section 224.5 and Michigan Revised Criminal Code section 4040.

C. Relationship to Existing Law

Oregon first adopted a bad check statute in 1917 and since that time it has coexisted with the false pretenses statute. In State v. Cody, 116 Or 509, 241 P 983 (1925),

the court distinguished the two statutes on the basis of whether property is transferred, saying that the worthless check violation consists of drawing a bad check with intent to defraud and no property need change hands. The court recognized the Cody "property transfer" test in Gumm v. Heider, 220 Or 5, 348 P2d 455 (1960), in which it held that ORS 165.225 is not violated by the making or delivering of a postdated check in payment of a debt if the payee accepts it knowing that it was postdated and if there is no other representation that the check is good, the rationale being that the party receiving the check has not been defrauded. See, also, 25 Op Att'y Gen (1950-52) pp. 40-41.

The Cody test was discarded by the Oregon Court in Broome v. Gladden, 231 Or 502, 373 P2d 611 (1962), in which it said:

"We construe ORS 165.205 and ORS 165.225 as defining mutually exclusive crimes. ORS 165.225 applies only where the accused has, prior to presenting the check, established an account in the bank upon which the check is drawn. Where no debtor-creditor relationship exists between the accused and the drawee bank the drawer may be prosecuted under ORS 165.205 but not under ORS 165.225." Id at 505.

The Broome doctrine was extended to cover the case in which there is an account but which has no funds at the time the check was drawn in State v. Scott, 237 Or 390, 390 P2d 328 (1964). Therefore, if there is a bank account the state must charge the defendant under the bad check statute, whereas, if property is obtained by the use of a check drawn on a non-existent account, the false pretense statute must be used. This result has been criticized as permitting a bad check artist to avoid felony prosecution by opening an account and then making all overdrafts for less than \$75.00. (See 45 O.L.R. 81-84). The draft section treats no account and insufficient funds checks alike.

Both statutes have the common element of "an intent to defraud," with the bad check statute containing certain prima facie evidence provisions relating to such an intent. The knowledge of the defendant of insufficient funds under ORS 165.225 is "at the time of the making, drawing, uttering or delivering." The draft section changes this to one of "knowing that it will not be honored by the drawee." As the Michigan commentary states:

"This (knowledge at the time of the making) hardly appears to correspond to commercial practice or popular expectation. The important thing is not whether at the exact time that the instrument is written or passed the

drawee happens to have received funds from or on behalf of the drawer. Rather, the important thing is that by the time the instrument is presented there is some reason to honor it." (Michigan Revised Criminal Code, Final Draft (1967) p. 275).

Under the prima facie evidence provisions of the section the state meets its initial burden of proving intent if it shows either that the issuer of the instrument had no account with the drawee or that the instrument was not made good within ten days after receipt of a notice of dishonor. This does not mean that the state cannot prosecute until after the ten day period has elapsed, but, merely that the prima facie evidence provisions are not available against a defendant who has an account with the drawee until this time has gone by.

As observed by the MPC reporters, special bad check legislation has two practical advantages that should be retained, even though a comprehensive theft statute is enacted: (1) No actual obtaining of property need be proven and (2) Prima facie evidence provisions take care of the intent or knowledge factors. (T.D. No. 2, p. 117). Moreover, there is a sound policy rationale behind a criminal statute that helps to safeguard public confidence in a commercial system that is so widely used in society on a daily basis. However, since the more serious deprecations could be prosecuted for theft by deception, it is anticipated that misdemeanor penalties would provide adequate protection for the system under the proposed section.

NOTE ON CRIMINAL IMPERSONATION. Section 12 of Preliminary Draft No. 1 was deleted by action of the Commission. It was designed to replace several existing statutes that prohibit impersonation of another or misrepresenting membership in certain types of organizations and related fraudulent conduct. The Commission felt that the draft provisions on theft and theft by deception provide sufficient protection against obtaining property by criminal impersonation, and, further, that civil remedies are available to private organizations against persons or groups misrepresenting affiliation. Existing statutes, such as impersonating a peace officer, should be retained, but logically belong in that part of the proposed code that covers crimes against public administration.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 224.1. Forgery.

(1) **Definition.** A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(a) alters any writing of another without his authority; or

(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(c) utters any writing which he knows to be forged in a manner specified in paragraphs (a) or (b).

"Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege, or identification.

(2) **Grading.** Forgery is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise. Forgery is a felony of the third degree if the writing is or purports to be a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations. Otherwise forgery is a misdemeanor.

Section 224.2. Simulating Objects of Antiquity, Rarity, Etc.

A person commits a misdemeanor if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code (Cont'd.)

Section 224.3. Fraudulent Destruction, Removal or Concealment of Recordable Instruments.

A person commits a felony of the third degree if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

Section 224.4. Tampering with Records.

A person commits a misdemeanor if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

Section 224.5. Bad Checks.

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor. For the purposes of this Section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or order (other than a post-dated check or order) would not be paid, if:

¹
(a) the issuer had no account with the drawee at the time the check or order was issued; or

²
(b) payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code (Cont'd.)

Section 224.6. Credit Cards.

A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that:

- (¹a) the card is stolen or forged; or
- (²b) the card has been revoked or cancelled; or
- (³c) for any other reason his use of the card is unauthorized. *by the issuer.*

It is an affirmative defense to prosecution under paragraph (c) if the actor proves by a preponderance of the evidence that he had the purpose and ability to meet all obligations to the issuer arising out of his use of the card. "Credit card" means a writing purporting to evidence an ^{or other} undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer. An offense under this Section is a felony of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds \$500; otherwise it is a misdemeanor.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law

§ 165.20 Fraudulently obtaining a signature

A person is guilty of fraudulently obtaining a signature when, with intent to defraud or injure another or to acquire a substantial benefit for himself or a third person, he obtains the signature of a person to a written instrument by means of any misrepresentation of fact which he knows to be false.

Fraudulently obtaining a signature is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.00 Forgery; definitions of terms

1. "Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

2. "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof. An endorsement, attestation, acknowledgment or other similar signature or statement is deemed both a complete written instrument in itself and a part of the main instrument in which it is contained or to which it attaches.

3. "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

4. "Falsely make." A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.

5. "Falsely complete." A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law (Cont'd.)

§170.00 Forgery; definitions of terms (Cont'd.)

6. "Falsely alter." A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

7. "Forged instrument" means a written instrument which has been falsely made, completed or altered. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.05 Forgery in the third degree

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument.

Forgery in the third degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.10 Forgery in the second degree

A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

2. A public record, or an instrument filed or required or authorized by law to be filed in or with a public office or public servant; or

3. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or

4. Part of an issue of tokens, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; or

5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

Forgery in the second degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law (Cont'd.)

§ 170.15 Forgery in the first degree

A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

Forgery in the first degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.20 Criminal possession of a forged instrument in the third degree

A person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument.

Criminal possession of a forged instrument in the third degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.25 Criminal possession of a forged instrument in the second degree

A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10.

Criminal possession of a forged instrument in the second degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.30 Criminal possession of a forged instrument in the first degree

A person is guilty of criminal possession of a forged instrument in the first degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in section 170.15.

Criminal possession of a forged instrument in the first degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law (Cont'd.)

§ 170.35 Criminal possession of a forged instrument; no defense

In any prosecution for criminal possession of a forged instrument, it is no defense that the defendant forged or participated in the forgery of the instrument in issue; provided that a person may not be convicted of both criminal possession of a forged instrument and forgery with respect to the same instrument. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.40 Criminal possession of forgery devices

A person is guilty of criminal possession of forgery devices when:

1. He makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments; or
2. With intent to use, or to aid or permit another to use, the same for purposes of forgery, he makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

Criminal possession of forgery devices is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.45 Criminal simulation

A person is guilty of criminal simulation when:

1. With intent to defraud, he makes or alters any object in such manner that it appears to have an antiquity, rarity, source or authorship which it does not in fact possess; or
2. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

Criminal simulation is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law (Cont'd.)

§ 170.50 Unlawfully using slugs; definitions of terms

The following definitions are applicable to sections 170.55 and 170.60:

1. "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed (a) to receive a coin or bill or a token made for the purpose, and (b) in return for the insertion or deposit thereof, automatically to offer, to provide, to assist in providing or to permit the acquisition of some property or some service.

2. "Slug" means an object or article which, by virtue of its size, shape or any other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill or token.

3. "Value" of a slug means the value of the coin, bill or token for which it is capable of being substituted. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.55 Unlawfully using slugs in the second degree

A person is guilty of unlawfully using slugs in the second degree when:

1. With intent to defraud the owner of a coin machine, he inserts or deposits a slug in such machine; or

2. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin machine.

Unlawfully using slugs in the second degree is a class B misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 170.60 Unlawfully using slugs in the first degree

A person is guilty of unlawfully using slugs in the first degree when he makes, possesses or disposes of slugs with intent to enable a person to insert or deposit them in a coin machine, and the value of such slugs exceeds one hundred dollars.

Unlawfully using slugs in the first degree is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code

[Definition of Terms]

Sec. 4001. The following definitions are applicable in this chapter unless the context otherwise requires:

(a) "Written instrument" means (i) any paper, document or other instrument containing written or printed matter or its equivalent; and (ii) any token, stamp, seal, badge, trademark or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(b) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(c) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(d) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker, but which is not either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof.

(e) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

(f) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.

(g) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

(h) "Intent to defraud" means

(a) A purpose to use deception as defined in section 3201(a) or to injure someone's interest which has value as defined in section 3201(m); or

(b) Knowledge that the defendant is facilitating a fraud or injury to be perpetrated or inflicted by someone else.

(i) "Property" is defined as in section 3201(i).

(j) "Services" is defined as in section 3220.

(k) "Government" is defined as in section 3201(d).

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Forgery in the First Degree]

Sec. 4005. (1) A person commits the crime of forgery in the first degree if, with intent to defraud, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of stamps, securities or other valuable instruments issued by a government or governmental agency; or

(b) Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property.

(2) Forgery in the first degree is a Class B felony.

[Forgery in the Second Degree]

Sec. 4006. (1) A person commits the crime of forgery in the second degree if, with intent to defraud, he falsely makes, completes or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(a) A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

(b) A public record, or an instrument filed or required by law to be filed or legally fileable in a public office or with a public employee; or

(c) A written instrument officially issued or created by a public office, public employee or government agency.

(2) Forgery in the second degree is a Class C felony.

[Forgery in the Third Degree]

Sec. 4007. (1) A person commits the crime of forgery in the third degree if, with intent to defraud, he falsely makes, completes or alters a written instrument.

(2) Forgery in the third degree is a Class A misdemeanor.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Criminal Possession of a Forged Instrument in the First Degree]

Sec. 4010. (1) A person commits the crime of criminal possession of a forged instrument in the first degree if he possesses or utters any forged instrument of a kind specified in section 4005 with knowledge that it is forged and with intent to defraud.

(2) Criminal possession of a forged instrument in the first degree is a Class B felony.

[Criminal Possession of a Forged Instrument in the Second Degree]

Sec. 4011. (1) A person commits the crime of criminal possession of a forged instrument in the second degree if he possesses or utters any forged instrument of a kind specified in section 4006 with knowledge that it is forged and with intent to defraud.

(2) Criminal possession of a forged instrument in the second degree is a Class C felony.

[Criminal Possession of a Forged Instrument in the Third Degree]

Sec. 4012. (1) A person commits the crime of criminal possession of a forged instrument in the third degree if he possesses or utters a forged instrument with knowledge that it is forged and with intent to defraud.

(2) Criminal possession of a forged instrument in the third degree is a Class A misdemeanor.

[Forgery and Criminal Possession of a Forged Instrument: Limitation on Criminal Liability]

Sec. 4015. A person may not be convicted of both forgery and criminal possession of a forged instrument with respect to the same instrument.

[Criminal Possession of a Forgery Device]

Sec. 4020. (1) A person commits the crime of criminal possession of a forgery device if:

(a) He makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment or article specifically designed or adapted for use in forging written instruments;
or

(b) He makes or possesses any device, apparatus, equipment or article capable of or adaptable to a use specified in subparagraph (1) (a) with intent to use it himself, or to aid or permit another to use it, for purposes of forgery.

(2) Criminal possession of a forgery device is a Class C felony.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Criminal Simulation]

Sec. 4025. (1) A person commits the crime of criminal simulation if:

(a) He makes or alters any object, with intent to defraud, so that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or

(b) He possesses or utters an object so simulated with knowledge of its true character and with intent to defraud.

(2) Criminal simulation is a Class A misdemeanor.

[Obtaining Signature by Deception]

Sec. 4030. (1) A person commits the crime of obtaining a signature by deception if with intent to defraud or to acquire a substantial benefit for himself or another and by deception he causes another to sign or execute a written instrument.

(2) The definition of deception in section 3201(a) applies to this section also.

(3) Obtaining a signature by deception is a Class A misdemeanor.

[Offering a False Instrument for Recording]

Sec. 4035. (1) A person commits the crime of offering a false instrument for recording if, knowing or believing that a written instrument relating to or affecting real or personal property or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed or recorded, or become a part of the records of that public office or public employee.

(2) Offering a false instrument for recording is a Class B misdemeanor.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Negotiating a Worthless Negotiable Instrument]

Sec. 4040. (1) A person commits the crime of negotiating a worthless negotiable instrument if he negotiates or delivers a negotiable instrument with the intent, knowledge or expectation that it will not be honored by the drawee.

(2) The fact that:

(a) The maker or drawer had no account with the drawee at the time the negotiable instrument was negotiated or delivered; or

(b) Payment was refused by the drawee for lack of funds, upon presentation within a reasonable time after negotiation or delivery, as determined according to section 3503 of the Uniform Commercial Code [C.L.1948, § 440.3503], and the maker or drawer failed to make good within 10 days after receiving a notice of dishonor as defined in section 3508 of the Uniform Commercial Code [C.L.1948, § 440.3508], shall be prima facie evidence of intent, knowledge, or expectation that the negotiable instrument would not be honored upon presentation.

(3) The definition of negotiable instrument in section 3104 of the Uniform Commercial Code [C.L.1948, § 440.3104] applies to this section.

(4) The definition of negotiation in section 3202 of the Uniform Commercial Code [C.L.1948, § 440.3202] applies to this section.

(5) The definition of delivery in section 1201(14) of the Uniform Commercial Code [C.L.1948, § 440.1201(14)] applies to this section.

(6) Negotiating a worthless negotiable instrument is a Class A misdemeanor.

[Fraudulent Use of Credit Card]

Sec. 4045. (1) A person commits the crime of fraudulent use of a credit card if he uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) The card is stolen; or

(b) The card has been revoked or cancelled; or

(c) For any other reason his use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) Fraudulent use of a credit card is a Class A misdemeanor.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Unlawfully Using Slugs: Definition of Terms]

Sec. 4050. The following definitions apply to sections 4051 and 4052:

(1) "Coin machine" means a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle designed:

(a) To receive a coin or bill of a certain denomination or a token made for the purpose; and

(b) In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.

(2) "Slug" means a metallic or other object or article which by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill or token.

(3) "Value" of the slug means the value of the coin, bill, or token for which it is capable of being substituted.

[Unlawfully Using Slugs in the First Degree]

Sec. 4051. (1) A person commits the crime of unlawfully using slugs in the first degree if:

(a) He makes, possesses or disposes of slugs with intent to enable a person to use them fraudulently in a coin machine; and

(b) The value of the slugs exceeds 100 dollars.

(2) Unlawfully using slugs in the first degree is a Class C felony.

[Unlawfully Using Slugs in the Second Degree]

Sec. 4052. (1) A person commits the crime of unlawfully using slugs in the second degree if:

(a) With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, he inserts, deposits or uses a slug in that machine; or

(b) He makes, possesses or disposes of a slug or slugs with intent to enable a person to use it or them fraudulently in a coin machine.

(2) Unlawfully using slugs in the second degree is a Class B misdemeanor.

TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code (Cont'd.)

[Criminal Impersonation]

Sec. 4055. (1) A person commits the crime of criminal impersonation if he:

(a) Assumes a false identity and does an act in his assumed character with intent to gain a pecuniary benefit for himself or another or to injure or defraud another; or

(b) Pretends to be a representative of some person or organization and does an act in his pretended capacity with intent to gain a pecuniary benefit for himself or another or to injure or defraud another.

(2) Criminal impersonation is a Class B misdemeanor.