

LEGISLATIVE BILL 126

Approved by the Governor March 10, 1982

Introduced by DeCamp, 40

AN ACT to amend sections 28-509, 28-510, and 28-515, Reissue Revised Statutes of Nebraska, 1943, relating to crime and punishment; to provide for the crime of theft by shoplifting as prescribed; to redefine certain theft provisions; to provide a penalty; to change a penalty; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-509. As used in sections 28-509 to 28-518 and section 4 of this act, unless the context otherwise requires:

(1) Deprive shall mean:

(a) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(b) To dispose of the property of another so as to create a substantial risk that the owner will not recover it in the condition it was when the actor obtained it;

(2) Financial institution shall mean a bank, insurance company, credit union, building and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(3) Movable property shall mean property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby may have no physical location. Immovable property shall mean all other property;

(4) Obtain shall mean:

(a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the

property, whether to the obtainer or another; or

(b) In relation to labor or service, to secure performance thereof;

(5) Property shall mean anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards, charge plates, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power;

(6) Property of another shall mean property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

(7) Receiving shall mean acquiring possession, control, or title, or lending on the security of the property; and

(8) Stolen shall mean property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 28-517.

Sec. 2. That section 28-510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-510. Conduct denominated theft in sections 28-509 to 28-518 and section 4 of this act constitutes a single offense embracing the separated offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under sections 28-509 to 28-518 and section 4 of this act, notwithstanding the specification of a different manner in the indictment or information, subject only to the

power of the court to insure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Sec. 3. That section 28-515, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-515. (1) A person commits theft if he or she obtains services which he or she knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he or she is not entitled, he or she diverts such services to his or her own benefit or to the benefit of another not entitled thereto.

(3) Any person who makes or possesses any device, instrument, apparatus, or equipment designed or which can be used to obtain telecommunications service fraudulently or to conceal from any supplier or telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or who sells, gives or otherwise transfers to another, or offers or advertises for sale, any such device, instrument, apparatus, or equipment, or plans or instructions for making or assembling the same, under circumstances evincing an intent to use or employ such device, instrument, apparatus, or equipment, or to allow the same to be used or employed, for a purpose described in this subsection, or knowing or having reason to believe that the same is intended to be used, or that the plans or instructions are intended to be used, for making or assembling such device, instrument, apparatus, or equipment is guilty of a Class II misdemeanor.

Sec. 4. (1) A person commits the crime of theft by shoplifting when he or she, with the intent of appropriating merchandise to his or her own use without paying for the same or to deprive the owner of possession

of such property or its retail value, in whole or in part, does any of the following:

(a) Conceals or takes possession of the goods or merchandise of any store or retail establishment;

(b) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;

(c) Transfers the goods or merchandise of any store or retail establishment from one container to another;

(d) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise; or

(e) Causes the cash register or other sales recording device to reflect less than the retail price of the merchandise.

(2) In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

(a) A description of the property;

(b) The name of the owner or owners of the property;

(c) The time, date, and location where the shoplifting occurred;

(d) The time and date the photograph was taken;

(e) The name of the photographer; and

(f) Verification by the arresting officer.

The purpose of this subsection is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

Prior to allowing the use of the shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for retention of the property, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit

may be misleading.

Sec. 5. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 6. That original sections 28-509, 28-510, and 28-515, Reissue Revised Statutes of Nebraska, 1943, are repealed.