

LEGISLATIVE BILL 773

Approved by the Governor April 04, 2018

Introduced by Clements, 2; Bostelman, 23; Brasch, 16; Ebke, 32; Erdman, 47; Halloran, 33; Kuehn, 38; Linehan, 39; Lowe, 37; Thibodeau, 6; Watermeier, 1; Pansing, 28.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-632, 28-634, and 28-1310, Reissue Revised Statutes of Nebraska; to redefine terms; to change provisions relating to prohibited uses of scanning devices and encoding machines; to change provisions relating to intimidation by telephone call; to prohibit intimidation by electronic communication; and to repeal the original sections.

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

Section 1. Section 28-632, Reissue Revised Statutes of Nebraska, is amended to read:

28-632 For purposes of this section and sections 28-633 and 28-634:

(1) Encoding machine means an electronic device that is used to encode information onto a payment card;

(2) ~~(1)~~ Merchant means:

(a) An ~~an~~ owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator;

(b) An establishing financial institution as defined in section 8-157.01;

or

(c) A ~~Merchant~~ also includes a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;

(3) ~~(2)~~ Payment card means a credit card, charge card, ~~or~~ debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(4) ~~(3)~~ Person means an individual, firm, partnership, association, corporation, limited liability company, or other business entity; and

~~(4) Reencoder means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card; and~~

(5) Scanning device means a scanner, a reader, a wireless access device, a radio-frequency identification scanner, near-field communication technology, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the ~~magnetic strip or stripe of a payment card.~~

Sec. 2. Section 28-634, Reissue Revised Statutes of Nebraska, is amended to read:

28-634 (1) It is unlawful for a person to intentionally and knowingly use:

(a) Use a A scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the ~~magnetic strip or stripe of a payment card~~ without the permission of the authorized user of the payment card ~~and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant;~~ ~~or~~

(b) Possess a scanning device with the intent to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant or possess a scanning device with knowledge that some other person intends to use the scanning device to obtain information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant;

(c) Use an encoding machine ~~(b) A reencoder~~ to place information encoded on the ~~magnetic strip or stripe of a payment card~~ onto the ~~magnetic strip or stripe of a different card~~ without the permission of the authorized user of the card from which the information was obtained ~~is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or~~ ~~-~~

(d) Possess an encoding machine with the intent to place information encoded on a payment card onto a different payment card without the permission of the user, the issuer of the authorized user's payment card, or a merchant.

(2) A violation of this section is a Class IV felony for the first offense and a Class IIIA felony for a second or subsequent offense.

Sec. 3. Section 28-1310, Reissue Revised Statutes of Nebraska, is amended to read:

28-1310 (1) A person commits the offense of intimidation by telephone call or electronic communication if, with intent to terrify, intimidate, threaten, or harass an individual, annoy, or offend, the person telephones such individual or transmits an electronic communication directly to such

individual, whether or not conversation or an electronic response ensues, and the person:

~~(a) Telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or~~

~~(a) Uses (b) Telephones another and uses indecent, lewd, lascivious, or obscene language or suggests any obscene indecent, lewd, or lascivious act; or~~

~~(b) Threatens (c) Telephones another and threatens to inflict physical or mental injury to such individual or any other person or physical injury to the property of such individual or any other person; or~~

~~(d) Intentionally fails to disengage the connection; or~~

~~(c) Attempts (e) Telephones another and attempts to extort money or other thing of value from such individual or any other person.~~

~~(2) The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.~~

~~(2) (3) The offense shall be deemed to have been committed either at the place where the call or electronic communication was initiated made or where it was received.~~

~~(3) (4) Intimidation by telephone call or electronic communication is a Class III misdemeanor.~~

~~(4) For purposes of this section, electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section 28-833.~~

Sec. 4. Original sections 28-632, 28-634, and 28-1310, Reissue Revised Statutes of Nebraska, are repealed.