

ENGROSSED LEGISLATIVE BILL 559

Introduced by Bosn, 25; Hallstrom, 1.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-618, 28-1601, and 28-1602, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2024; to provide for offenses relating to skimmer devices and continuing criminal enterprises involving financial offenses; to provide penalties; to define terms; to provide for forfeiture; to clarify and harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2024, is amended to read:

28-101 Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701 and sections 3 to 9 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-618, Reissue Revised Statutes of Nebraska, is amended to read:

28-618 For purposes of sections 28-618 to 28-630 and sections 3 to 6 of this act:

(1) Account holder means the person or business entity named on the face of a financial transaction device for whose benefit the financial transaction device is issued by an issuer;

(2) Acquirer means any business organization, financial institution, or agent of such organization or institution which authorizes a merchant to accept payment by financial transaction device for money, property, services, or anything else of value;

(3) Automated banking device means any machine which, when properly activated by a financial transaction device or a personal identification code, may be used for any purpose for which a financial transaction device is issued;

(4) Counterfeit financial transaction device means any financial transaction device which is fictitious, altered, forged, stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained and which may or may not be embossed with account information or a company logo or any facsimile, false representation, depiction, or component of a financial transaction device;

(5) Embossing means any process in which account numbers are placed on financial transaction devices that results in the number being raised from the surface of the device;

(6) Expired financial transaction device means a financial transaction device which is no longer valid because the term shown on it has elapsed;

(7) Financial transaction device means any instrument or device whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, debit card, electronic funds transfer card, or account number representing a financial account. Such device shall affect the financial interest, standing, or obligation of the financial account for services or financial payments for money, credit, property, or services;

(8) Financial-transaction-device-making equipment means any equipment, impression, machine, mechanism, plate, or other device designed, used, or capable of being used to produce a financial transaction device, a counterfeit financial transaction device, or any aspect or component of a financial transaction device;

(9) Holographic means a photographic method that uses laser light to produce three-dimensional images;

(10) Intent to defraud means an unlawful attempt to secure money, credit, property, or services from an issuer, without permission of the account holder, for the benefit of any person other than the account holder;

(11) Issuer means any person or any financial or business entity that acquires financial rights by issuing, canceling, controlling, or distributing a financial transaction device;

(12) Magnetic encoding means any electronically encoded account holder

information which is placed on a magnetic strip on the financial transaction device and is capable of being read by an electronic terminal such as an automatic teller machine or an electronic terminal at a merchant location also known as a point-of-sale terminal;

(13) Personal identification code means any grouping of letters, numbers, or symbols assigned to the account holder of a financial transaction device by the issuer to permit authorized electronic access of that account;

(14) Receives or receiving means acquiring possession or control of or accepting as security for a loan a financial transaction device;

(15) Revoked financial transaction device means a financial transaction device which is no longer valid because permission to use it has been suspended or terminated by the issuer;

(16) Sales form means any written, electronic, magnetic, or printed record of a financial transaction involving use of a financial transaction device;

(17) Sales form processing services means services provided to enable a person to obtain payment or credit for sales forms;

(18) Sales form processor means any bank, financial institution, or other entity which with authority from a bona fide association of issuers provides sales form processing services;

(19) Service mark means a word, name, symbol, or other device or any combination thereof to identify the goods or services of the entity from the goods and services of another entity;

(20) Skimmer device means an electronic or other device used to capture, record, store or transmit data from a financial transaction device or to capture or record an account holder's personal identification code;

(21) To falsely alter a financial transaction device means to change such device without the authority of anyone entitled to grant such authority, whether in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that such device in its altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible

issuer;

(22) To falsely complete a financial transaction device means to transform an incomplete device into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant such authority, so that the complete device falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer;

(23) To falsely make a financial transaction device means to make or manufacture a device, whether complete or incomplete, which purports to be an authentic creation of its ostensible issuer but which is fictitious or, if real, the ostensible issuer did not authorize the making or the manufacturing thereof; and

(24) Traffic means to distribute, dispense, sell, transfer, or otherwise dispose of property or to buy, receive, possess, obtain control of, or use property with the intent to dispense, distribute, sell, transfer, or otherwise dispose of such property.

Sec. 3. (1) It shall be unlawful to install a skimmer device, without authorization, on an automated banking device or a point-of-sale terminal, including any fuel pump, for the purpose of obtaining money, credit, property, or anything of value, and with the intent to defraud.

(2) Installation of a skimmer device shall be considered done without authorization if such installation is, for any reason, done without authorization by the issuer, account holder, owner of the automated banking device, or owner of the point-of-sale terminal.

(3) A violation of this section is a Class IV felony.

Sec. 4. (1) It shall be unlawful to use a skimmer device on an automated banking device or any point-of-sale terminal, including any fuel pump, for the purpose of obtaining money, credit, property, or anything of value, and with the intent to defraud.

(2) A violation of this section shall be punished according to the total value of the money, credit, property, or things of value obtained, or the financial payments made, as a result of the violation. A violation of this

section shall be:

- (a) A Class IIA felony when such value is five thousand dollars or more;
- (b) A Class IV felony when such value is one thousand five hundred dollars or more but less than five thousand dollars;
- (c) A Class I misdemeanor when such value is more than five hundred dollars but less than one thousand five hundred dollars; and
- (d) A Class II misdemeanor when such value is five hundred dollars or less.

(3) For any second or subsequent conviction under subdivision (2)(c) of this section, any person so offending shall be guilty of a Class IV felony.

(4) For any second conviction under subdivision (2)(d) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subdivision (2)(d) of this section, the person so offending shall be guilty of a Class IV felony.

(5) For a prior conviction to be used to enhance the penalty under subsection (3) or (4) of this section, the prior conviction must have occurred no more than ten years prior to the date of commission of the current offense.

(6) The value of the money, credit, property, or things of value obtained, or the financial payments made, pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment, information, or complaint in determining the classification of the offense, except that amounts shall not be aggregated into more than one offense.

(7) In any prosecution for a violation of this section, the total value of the money, credit, property, or things of value obtained, or the financial payments made, as a result of the violation, is an essential element of the offense that must be proved beyond a reasonable doubt.

Sec. 5. (1) For purposes of this section:

(a) Financial transaction offense means any violation of sections 28-618 to 28-630 and sections 3 and 4 of this act for which the punishment is a felony; and

(b) Leadership position means a position in which a person acts as a

principal administrator, organizer, supervisor, or manager or otherwise leads or directs other persons.

(2) A person is engaged in a continuing criminal enterprise if such person commits any financial transaction offense and:

(a) Such offense is part of a continuing series of financial transaction offenses;

(b) Such series of offenses is undertaken by such person in concert with two or more other persons with respect to whom such person acts in a leadership position; and

(c) Such person obtains substantial income or resources from such activities.

(3) A violation of this section shall be punished as a:

(a) Class II felony if the enterprise, or any other enterprise in which the defendant was in a leadership position:

(i) Included three or fewer persons; or

(ii) Had at least two million dollars but less than five million dollars in gross receipts during any twelve-month period of the enterprise's existence;

(b) Class ID felony if the enterprise, or any other enterprise in which the defendant was in a leadership position:

(i) Included four or more persons but fewer than ten persons; or

(ii) Had at least five million dollars but less than ten million dollars in gross receipts during any twelve-month period of the enterprise's existence; and

(c) Class IC felony if the enterprise, or any other enterprise in which the defendant was in a leadership position:

(i) Included ten or more persons; or

(ii) Had at least ten million dollars in gross receipts during any twelve-month period of the enterprise's existence.

Sec. 6. In addition to the existing penalties available for a violation of sections 28-618 to 28-630 and sections 3 to 5 of this act, a sentencing court may order forfeiture as provided in sections 28-1601 to 28-1603.

Sec. 7. For purposes of sections 7 to 9 of this act:

(1) Aggregated retail market value means the total combined value of all retail merchandise involved in a transaction, series of transactions, occurrence, series of occurrences, or course of conduct which constitutes a violation of section 8 of this act. Such value shall be calculated based on the price at which the retail merchandise would ordinarily be sold by a retailer in the ordinary course of business. If the value cannot be reasonably ascertained in such manner, the value shall be calculated based on the cost of replacing the retail merchandise within a reasonable period after a violation of this section;

(2) Organized retail crime means the theft of retail merchandise with the intent or purpose of:

(a) Reselling, distributing, or otherwise reentering the retail merchandise in commerce; or

(b) Transferring the stolen retail merchandise to another retailer or to any other person in exchange for anything of value;

(3) Retail commerce means the sale of articles, products, commodities, items, or components to the public for use or consumption rather than for resale;

(4) Retail merchandise means any article, product, commodity, item, or component intended to be sold in retail commerce; and

(5) Retailer means a person that sells or facilitates the sale of retail merchandise.

Sec. 8. A person commits the offense of organized retail crime when that person, acting alone or in association with another person, does any of the following:

(1) Knowingly commits an organized retail crime;

(2) Organizes, supervises, finances, or otherwise manages or assists another person in committing an organized retail crime;

(3) Removes, destroys, deactivates, or knowingly evades any component of an antishoplifting or inventory-control device to prevent the activation of

that device or to facilitate another person in committing an organized retail crime;

(4) Conspires with another person to commit an organized retail crime;

(5) Receives, purchases, or possesses retail merchandise for sale or resale if a reasonable person would know such retail merchandise to be stolen;

(6) Uses any artifice, instrument, container, device, or other article to facilitate the commission of an organized retail crime; or

(7) Knowingly causes a fire exit alarm to sound or otherwise activate, or deactivates or prevents a fire exit alarm from sounding, in the commission of an organized retail crime or to facilitate the commission of an organized retail crime by another person.

Sec. 9. (1) A violation of section 8 of this act shall be a:

(a) Class IIA felony when the aggregated retail market value of the retail merchandise involved is five thousand dollars or more;

(b) Class IV felony when the aggregated retail market value of the retail merchandise involved is one thousand five hundred dollars or more but less than five thousand dollars; and

(c) Class I misdemeanor when the aggregated retail market value of the retail merchandise involved is more than five hundred dollars but less than one thousand five hundred dollars.

(2) A second or subsequent conviction under subdivision (1)(c) of this section shall be a Class IV felony.

(3) For a prior conviction to be used to enhance the penalty under subsection (2) of this section, the prior conviction must have occurred no more than ten years prior to the date of commission of the current offense.

(4) The aggregated retail market value of amounts taken pursuant to one organized retail crime scheme from one or more persons may be aggregated in the same indictment, information, or complaint in determining the classification of the offense, except that amounts shall not be aggregated into more than one offense.

(5) In any prosecution of a violation of section 8 of this act, aggregated

retail market value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Sec. 10. Section 28-1601, Reissue Revised Statutes of Nebraska, is amended to read:

28-1601 (1) For purposes of sections 28-1601 to 28-1603:

(a) Covered offense means a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or a financial transaction offense;

(b) Electronic communication device has the same meaning as in section 28-833;

(c) Financial transaction offense means a violation of sections 28-618 to 28-630 and sections 3 to 5 of this act; and

(d) Gambling device has the same meaning as in section 28-1101.

(2) In addition to existing penalties for a violation of a covered offense, a court may order forfeiture of any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices; any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices; or any gambling devices if:

(a) The owner or possessor of the property has been convicted of a covered offense;

(b) The information charging such violation specifically requests the forfeiture of property upon conviction and is prepared pursuant to section 28-1602; and

(c) It is found by clear and convincing evidence that such property was derived from, used, or intended to be used to facilitate a covered offense.

(3) Following the filing of an information charging a violation of a covered offense that specifically seeks forfeiture of any property listed in subsection (2) of this section, the defendant may request a pretrial hearing to determine the existence of probable cause to believe that the property specifically sought to be forfeited was derived from, used, or intended to be used to facilitate a covered offense. The request for a hearing pursuant to

this section must be filed with the district court in which the criminal proceeding is pending within thirty days after the filing of the information.

(4)(a) At any time after the filing of the information in district court and prior to final disposition of the criminal case, any person, other than the defendant, with a claimed legal interest in the property may petition to intervene in the district court with jurisdiction over the criminal case for the specific and limited purpose of demonstrating such person's legal interest in the property and such person's lack of actual knowledge that such property was derived from, used, or intended to be used to facilitate a covered offense.

(b) In the petition to intervene, the intervening person shall, at a minimum, state facts demonstrating such person's legal interest in the property and such person's lack of actual knowledge regarding the use or intended use of the property.

(5) Within thirty days after filing a motion to intervene, the district court shall conduct an evidentiary hearing on the matter. At the conclusion of such hearing, the court may order that any or all of the property be returned to the intervening claimant after it is no longer needed as evidence in the criminal case upon a showing by the claimant by a preponderance of the evidence:

(a) That the claimant has a legally recognized interest in the property;
and

(b) Either (i) that such property was acquired by the claimant in good faith and the claimant did not have actual knowledge that such property was derived from, used, or intended to be used to facilitate a covered offense or (ii) that the property seized was not derived from, used, or intended to be used to facilitate a covered offense.

(6) The court, on its own motion or upon application of the claimant, may permit the claimant to proceed in forma pauperis under sections 25-2301 to 25-2310. The court, on its own motion or upon application of the claimant, may appoint counsel to represent the claimant if the claimant is indigent. If the claimant asserts indigency, the court shall make a reasonable inquiry to

determine the claimant's financial condition and may require the claimant to execute an affidavit of indigency for filing with the clerk of the court.

(7) After conviction but prior to sentencing for a covered offense in cases in which the prosecuting authority has specifically requested forfeiture of property, the district court shall conduct an evidentiary hearing at which the prosecuting authority must prove by clear and convincing evidence what specific amount or portion of the property specifically enumerated in the criminal information was derived from, used, or intended for use in furtherance of a covered offense. At the conclusion of such hearing, the court shall make specific findings of fact indicating what amount or portion of the property sought to be forfeited by the state was derived from, used, or intended to be used to facilitate a covered offense. The court shall order any amount or portion of the property not proven by the state to be derived from, used, or intended to be used to facilitate a covered offense or the fair market value of the legally recognized interest in such property be returned to its rightful and legal owner or interest holder.

(8)(a) The court shall order that any amount or portion of property proven by the state by clear and convincing evidence to be derived from, used, or intended to be used to facilitate a covered offense be forfeited to the state and disposition of such property be conducted in accordance with this subsection and section 28-1439.02 at such time as the property is no longer required as evidence in any criminal proceeding.

(b) As part of any disposition of property, the court may order that: (i) For a covered offense other than a financial transaction offense, any money, securities, or negotiable instruments be distributed as provided in Article VII, section 5, of the Constitution of Nebraska; (ii) for a financial transaction offense, any money, securities, or negotiable instruments be credited to the Financial Fraud Victims' Reimbursement Fund for the purposes described in section 12 of this act; (iii) any conveyances be sold or put to official use by the seizing agency for a period of not more than one year and when such property is no longer necessary for official use or at the end of two

years, whichever comes first, such property shall be sold. Proceeds from the sale of any conveyance shall be distributed as provided in Article VII, section 5, of the Constitution of Nebraska; (iv) any electronic communication devices, any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices, or any gambling devices be destroyed by a law enforcement agency; and (v) the disposition of firearms shall be effectuated pursuant to section 29-820.

(c) As used in this subsection, official use means use directly in connection with enforcement of the Child Pornography Prevention Act, the Uniform Controlled Substances Act, sections 28-618 to 28-630 and sections 3 to 6 of this act, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

(9) Any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices; any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices; or any gambling devices may be forfeited pursuant to a plea agreement between the state and the defendant subject to notice to or approval of the court.

(10) Subdivision (2)(a) of this section does not apply if the owner or possessor of the property dies or is removed from the United States before charges are filed or a conviction obtained.

(11) Subdivision (2)(b) of this section does not apply if the owner or possessor of the property dies or is removed from the United States before charges are filed so long as the statute of limitations for a covered offense has not expired.

(12) Subdivision (2)(a) of this section does not apply if the owner or possessor of the property is unknown or incapable of being determined for some legitimate reason or fails to appear in court as ordered after prosecution for a covered offense is commenced and is not apprehended within twelve months after the failure to appear order was issued by the court.

(13) If the owner or possessor of the property fails to appear in court as ordered after prosecution for a covered offense is commenced but appears or is

apprehended within twelve months after the failure to appear order was issued by the court, the court may order the owner or possessor of the property, as a part of any sentence imposed for either the failure to appear or the conviction for a covered offense, to pay a storage fee of one hundred dollars per month for each month the property was held following the issuance of the failure to appear order.

Sec. 11. Section 28-1602, Reissue Revised Statutes of Nebraska, is amended to read:

28-1602 (1) The prosecuting authority must specifically plead its intent to seek forfeiture of any property upon a conviction for a covered offense in the same criminal information charging the underlying covered offense.

(2) In pleading its intent to seek forfeiture, the information shall specifically (a) state the date the property was seized, (b) state the place the property was seized from, (c) describe the property sought to be forfeited, and (d) if known, state the name of the owner of the property, the name of the person or persons in possession of the property or in physical proximity to the property when it was seized, and the name of any other person or entity that may have a claim or interest in the property.

Sec. 12. (1) For purposes of this section:

(a) Financial transaction offense has the same meaning as in section 28-1601; and

(b) Victim includes both individuals and persons, including, but not limited to, financial institutions.

(2) The Financial Fraud Victims' Reimbursement Fund is created. The fund shall be administered by the Attorney General. The fund shall consist of assets forfeited from financial transaction offenses as provided in subdivision (8)(b)(ii) of section 28-1601. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) A victim who has suffered loss as a result of a financial transaction offense may apply for reimbursement from the fund. An application shall be

submitted in a form and manner prescribed by the Attorney General.

(4) The Attorney General shall determine whether an applicant has suffered a qualifying loss and, if so, the extent of reimbursement that shall be made. An applicant shall only be eligible to receive reimbursement from the funds forfeited as a result of the financial transaction offense of which the applicant was a victim. If there are more applicants with qualified losses than there are funds available, the Attorney General shall distribute the funds on a pro rata basis according to the amount of the qualifying loss suffered.

(5) Funds relating to a financial transaction offense that are transferred into the Financial Fraud Victims' Reimbursement Fund as provided in subdivision (8)(b)(ii) of section 28-1601 shall remain in the Financial Fraud Victims' Reimbursement Fund until the later of:

(a) Thirty-six months following the date of such transfer; or

(b) Resolution of any applications filed during such thirty-six month period.

(6) Upon the expiration of the period described in subsection (5) of this section, such funds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 13. Original sections 28-618, 28-1601, and 28-1602, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 559 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR