

Withdrawn

3/25/03

HF 504 substituted

FILED MAR 6 '03

SENATE FILE

317

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1050)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to fraudulent use of a credit card, scanning
2 device, or reencoder, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 317

1 Section 1. Section 715A.6, subsection 2, Code 2003, is
2 amended to read as follows:

3 2. An offense under this section is a class "B" "C" felony
4 if the value of the property or services secured or sought to
5 be secured by means of the credit card is greater than one ten
6 thousand dollars. If the value of the property or services
7 secured or sought to be secured by means of the credit card is
8 greater than one thousand dollars but not more than ten
9 thousand dollars, an offense under this section is a class "D"
10 felony, otherwise the offense is an aggravated misdemeanor.

11 Sec. 2. Section 715A.6, Code 2003, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 3. For purposes of this section, the
14 value of the property or services is the highest value of the
15 property or services determined by any reasonable standard at
16 the time the violation occurred. Any reasonable standard
17 includes but is not limited to market value within the
18 community, actual value, or replacement value. If property or
19 services are secured by two or more acts from the same person
20 or location, or from different persons by two or more acts
21 which occur in approximately the same location or time period
22 so that the acts are attributable to a single scheme, plan, or
23 conspiracy, the acts may be considered as a single act and the
24 value may be the total value of all property or services
25 involved.

26 Sec. 3. NEW SECTION. 715A.10 ILLEGAL USE OF SCANNING
27 DEVICE OR REENCODER.

28 1. A person commits a class "D" felony if the person does
29 any of the following:

30 a. Uses a scanning device to access, read, obtain,
31 memorize, or store, temporarily or permanently, information
32 encoded on the magnetic strip or stripe of a payment card
33 without the permission of the authorized user of the payment
34 card, and with the intent to defraud the authorized user, the
35 issuer of the authorized user's payment card, or a merchant.

1 b. Uses a reencoder to place information encoded on the
2 magnetic strip or stripe of a payment card onto the magnetic
3 strip or stripe of a different card without the permission of
4 the authorized user of the card from which the information is
5 being reencoded, and with the intent to defraud the authorized
6 user, the issuer of the authorized user's payment card, or a
7 merchant.

8 2. A second or subsequent violation of this section is a
9 class "C" felony.

10 3. As used in this section:

11 a. "Merchant" means an owner or operator of a retail
12 mercantile establishment or an agent, employee, lessee,
13 consignee, officer, director, franchisee, or independent
14 contractor of such owner or operator. A "merchant" also means
15 a person who receives from an authorized user of a payment
16 card, or someone the person believes to be an authorized user,
17 a payment card or information from a payment card, or what the
18 person believes to be a payment card or information from a
19 payment card, as the instrument for obtaining, purchasing, or
20 receiving goods, services, money, or anything else of value
21 from the person.

22 b. "Payment card" means a credit card, charge card, debit
23 card, or any other card that is issued to an authorized card
24 user and that allows the user to obtain, purchase, or receive
25 goods, services, money, or anything else of value from a
26 merchant.

27 c. "Reencoder" means an electronic device that places
28 encoded information from the magnetic strip or stripe of a
29 payment card onto the magnetic strip or stripe of a different
30 payment card.

31 d. "Scanning device" means a scanner, reader, or any other
32 electronic device that is used to access, read, scan, obtain,
33 memorize, or store, temporarily or permanently, information
34 encoded on the magnetic strip or stripe of a payment card.

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EXPLANATION

1 This bill relates to the criminal offense of fraudulent use
2 of a credit card, scanning device, or reencoder.

3 The bill provides that the value of property or services
4 fraudulently obtained or attempted to be obtained by use of a
5 credit card is to be determined by any reasonable standard,
6 including the market value within the community, actual value,
7 or replacement value. The bill also provides that if the
8 property or services are fraudulently obtained by two or more
9 acts from the same person or location, or from different
10 persons by two or more acts which occur in approximately the
11 same location or time period so that the acts are attributable
12 to a single scheme, plan, or conspiracy, the acts may be
13 considered as a single act and the value may be the total
14 value of all property or services involved. The bill provides
15 that if the value of the property or services obtained or
16 attempted to be obtained is greater than \$10,000 the person
17 commits a class "C" felony. If the value of the property or
18 services is greater than \$1,000 but not more than \$10,000 then
19 the offense is a class "D" felony; otherwise the offense is an
20 aggravated misdemeanor.

21 The bill provides that a person who illegally uses a
22 scanning device or reencoder commits a class "D" felony for a
23 first offense and a class "C" felony for a second or
24 subsequent offense. A scanning device is defined under the
25 bill to mean a scanner, reader, or other electronic device
26 that is used to access or read information encoded on a
27 magnetic strip. A reencoder means an electronic device that
28 places encoded information from a magnetic strip of a payment
29 card onto the magnetic strip of a different payment card.

30 An aggravated misdemeanor is punishable by confinement for
31 no more than two years and a fine of at least \$500 but not
32 more than \$5,000. A class "D" felony is punishable by
33 confinement for no more than five years and a fine of at least
34 \$750 but not more than \$7,500. A class "C" felony is
35 punishable by confinement for no more than 10 years and a fine

1 of at least \$1,000 but not more than \$10,000.

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SF 317 - False Use of Credit Cards (LSB 2031 SV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version — New

Requested by Senator John Putney

Description

Senate File 317 relates to the criminal offense of fraudulent use of a credit card. The Bill sets the limits on the value of property illegally obtained. Senate File 317 permits separate acts to be combined into one scheme, if one person, or multiple people at different locations commits the illegal acts. The Bill also creates a new crime, illegal use of scanning device or reencoder. Senate File 317 enhances existing penalties for credit card fraud and creates a graduated system of penalties for illegal use of a scanning device or reencoder.

Assumptions

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections practices and policies will not change over the projection period.
3. The law will be come effective July 1, 2003. A lag effect of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court and Community-Based Corrections (CBC) information.
5. There were 171 people convicted of violations of Section 715A.6, Code of Iowa, in FY 2002. Of these, 115 were convicted of aggravated misdemeanors, 34 were convicted of Class D felonies, and 22 convictions were for an unknown Class level. Approximately 25.0% of offenders (33) were charged with multiple counts of the aggravated misdemeanor offense.
6. The median cost per case for indigent defense is \$1,000 for an aggravated misdemeanor or Class D felony and \$1,200 for a Class C felony.
7. The average daily cost for parole is \$1.82 per offender. The average length of stay on parole for an aggravated misdemeanor conviction is 5 months, for a Class D felony conviction is 13 months, and for a Class C felony conviction is 19 months.
8. The marginal cost per day for State prisons is \$12.00 per offender. The average length of stay for new admissions for an aggravated misdemeanor conviction is 8 months, for a Class D felony conviction is 15 months, and for a Class C felony conviction is 22 months.
9. The average cost per aggravated misdemeanor trial for the court system ranges from \$76 to \$466, depending on if a jury is used. The average cost per Class C or D felony trial for the court system ranges from \$195 to \$1,235, depending on if a jury is used.

Correctional Impact

There will be at least ten offenders convicted as Class D felons annually that would have been aggravated misdemeanors under current law. All ten offenders would have been sentenced to prison under current law. However, under SF 317, the offenders will be sentenced as Class D felons and their length of stay in prison will be longer than under current law. The prison population will increase by five offenders annually. There will be offenders currently convicted as Class D felons that will be convicted as Class C felons under the Bill. There is no readily available information with which to predict how many additional Class C convictions will occur under this provision. The imprisonment rate for credit card fraud will increase under Senate File 317, as will the average length of stay in prison for certain offenders.

The correctional impact of creating a new crime, illegal use of scanning device or reencoder, cannot be estimated due to a lack of data. However, creating a new offense and imposing a Class C or Class D felony as the penalty may increase court caseloads, and increase demand for prison, CBC, and county jail resources. Felony convictions, imprisonment rates, and prison length of stay will increase under this provision.

Fiscal Impact

The estimated fiscal impact of SF 317 to the General Fund will be an increased cost of \$2,200 in FY 2004 and \$26,000 in FY 2005. Most of the cost increase is attributed to sentencing offenders to prison for a longer period, 15 months rather than 8 months under current law. There is no data with which to predict the number of offenders under current law that are being convicted as Class D felons, but will be convicted as Class C felons under SF 317. The cost difference for the State between a Class C and Class D felony conviction is \$3,100.

Due to insufficient information, the fiscal impact of creating a new offense under SF 317 cannot be determined. However, the State's cost for one Class D felony conviction ranges from \$1,600 to \$8,300. The State's cost for one Class C felony conviction ranges from \$1,700 to \$11,000. These costs will be incurred over multiple years while the offender is being supervised in a State prison or local community.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
State Public Defender's Office

/s/ Dennis C Prouty

March 11, 2003

Putney
Holbeck
Miller

SSB 1050

SENATE FILE Judiciary
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON REDFERN)

Succeeded By
C. HF 317

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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13 conspiracy, the acts may be considered as a single act and the
14 value may be the total value of all property or services
15 involved.

16 EXPLANATION

17 This bill relates to the criminal offense of fraudulent use
18 of credit cards.

19 The bill provides that the value of property or services
20 fraudulently obtained or attempted to be obtained by use of a
21 credit card is to be determined by any reasonable standard,
22 including the market value within the community, actual value,
23 or replacement value. The bill also provides that if the
24 property or services are fraudulently obtained by two or more
25 acts from the same person or location, or from different
26 persons by two or more acts which occur in approximately the
27 same location or time period so that the acts are attributable
28 to a single scheme, plan, or conspiracy, the acts may be
29 considered as a single act and the value may be the total
30 value of all property or services involved.

31 A person who commits fraudulent use of a credit card
32 commits a class "D" felony if the value of the property or
33 services obtained or sought to be obtained is greater than
34 \$1,000; otherwise, the offense is an aggravated misdemeanor.

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