

House Study Bill 507 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to the criminal offenses of the illegal use of
2 a scanning device or encoding machine and criminal mischief
3 in the third degree, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 715A.10, Code 2018, is amended to read
2 as follows:

3 715A.10 **Illegal use of scanning device or ~~reencoder~~ encoding**
4 **machine.**

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

7 *a.* ~~Uses~~ Directly or indirectly uses a scanning device
8 to access, read, obtain, memorize, or store, temporarily
9 or permanently, information encoded on the ~~magnetic strip~~
10 ~~or stripe~~ of a payment card without the permission of the
11 authorized user of the payment card, ~~and with the intent to~~
12 ~~defraud the authorized user~~, the issuer of the authorized
13 user's payment card, or a merchant.

14 *b.* Possesses a scanning device with the intent to obtain
15 information encoded on a payment card without the permission
16 of the authorized user of the payment card, the issuer of the
17 authorized user's payment card, or a merchant, or possesses a
18 scanning device with knowledge that a person other than the
19 authorized user, the issuer of the authorized user's payment
20 card, or a merchant intends to use the scanning device to
21 obtain information encoded on a payment card without the
22 permission of the authorized user, the issuer of the authorized
23 user's payment card, or a merchant.

24 ~~*b.*~~ *c.* ~~Uses a reencoder~~ Directly or indirectly uses an
25 encoding machine to place information encoded on the ~~magnetic~~
26 ~~strip or stripe~~ of a payment card onto the ~~magnetic strip~~
27 ~~or stripe~~ of a different payment card without the permission
28 of the authorized user of the payment card from which the
29 information is ~~being reencoded~~ was obtained, ~~and with the~~
30 ~~intent to defraud the authorized user~~, the issuer of the
31 authorized user's payment card, or a merchant.

32 2. A second or subsequent violation of **this section** is a
33 class "C" felony.

34 3. As used in **this section**:

35 *a.* "Encoding machine" means an electronic device that is

1 used to encode information onto a payment card.

2 ~~a.~~ b. "Merchant" means an owner or operator of a retail
3 mercantile establishment or an agent, employee, lessee,
4 consignee, officer, director, franchisee, or independent
5 contractor of such owner or operator. A "merchant" also means
6 includes an establishing financial institution referred to
7 in section 527.5, a person who receives from an authorized
8 user of a payment card, or someone the person believes to
9 be an authorized user, a payment card or information from a
10 payment card, or what the person believes to be a payment card
11 or information from a payment card, as the instrument for
12 obtaining, purchasing, or receiving goods, services, money, or
13 anything else of value from the person.

14 ~~b.~~ c. "Payment card" means a credit card, charge card,
15 debit card, access device as defined in section 527.2, or
16 any other card that is issued to an authorized card user and
17 that allows the user to obtain, purchase, or receive goods,
18 services, money, or anything else of value from a merchant.

19 ~~e.~~ ~~"Reencoder" means an electronic device that places~~
20 ~~encoded information from the magnetic strip or stripe of a~~
21 ~~payment card onto the magnetic strip or stripe of a different~~
22 ~~payment card.~~

23 d. "Scanning device" means a scanner, reader, wireless
24 access device, radio frequency identification scanner, an
25 electronic device that utilizes near field communications
26 technology, or any other electronic device that is used to
27 access, read, scan, obtain, memorize, or store, temporarily
28 or permanently, information encoded on the magnetic strip or
29 stripe of a payment card.

30 Sec. 2. Section 716.5, subsection 1, Code 2018, is amended
31 by adding the following new paragraph:

32 NEW PARAGRAPH. f. The property has the ability to process a
33 payment card as defined in section 715A.10.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to the illegal use of a scanning device or
3 encoding machine.

4 ILLEGAL USE OF SCANNING DEVICE OR ENCODING MACHINE. The bill
5 replaces the term "reencoder" with the term "encoding machine".
6 The bill defines "encoding machine" to mean an electronic
7 device that is used to encode information to a payment card.

8 The bill also expands the definition of "merchant" to
9 include an establishing financial institution referred to in
10 Code section 524.5.

11 The bill modifies the definition of "payment card" to
12 include an access device as defined in Code section 527.2.

13 The bill also modifies the term "scanning device" to include
14 a wireless access device, a radio frequency identification
15 scanner, and an electronic device that utilizes near field
16 communications technology.

17 A person commits a class "D" felony under the bill if the
18 person directly or indirectly uses a scanning device to access,
19 read, obtain, memorize, or store, temporarily or permanently,
20 information encoded on a payment card without the permission
21 of the authorized user, the issuer of the authorized user's
22 payment card, or a merchant. In order to commit this offense
23 currently, a person must use a scanning device to access,
24 read, obtain, memorize, or store, temporarily or permanently,
25 information encoded on the magnetic strip or stripe of a
26 payment card without the permission of the authorized user of
27 the payment card, and with the intent to defraud the authorized
28 user, the issuer of the authorized user's payment card, or a
29 merchant.

30 The bill creates a new criminal offense. Under the bill, a
31 person shall not possess a scanning device with the intent to
32 obtain information encoded on a payment card without permission
33 of the authorized user, the issuer of the authorized user's
34 payment card, or a merchant, or possess a scanning device with
35 knowledge that a person other than the authorized user, the

1 issuer of the authorized user's payment card, or a merchant
2 intends to use the scanning device to obtain information
3 encoded on a payment card without permission from the
4 authorized user, the issuer of the authorized user's payment
5 card, or a merchant. A person who violates this provision
6 commits a class "D" felony.

7 A person commits a class "D" felony under the bill if the
8 person directly or indirectly uses an encoding machine to place
9 information encoded on a payment card onto a different payment
10 card without the permission of the authorized user, the issuer
11 of the authorized user's payment card, or a merchant. In order
12 to commit this offense currently, a person must use a reencoder
13 to place information encoded on the magnetic strip or stripe of
14 a payment card onto the magnetic strip or stripe of a different
15 card without the permission of the authorized user of the
16 card from which the information is being reencoded, and with
17 the intent to defraud the authorized user, the issuer of the
18 authorized user's payment card, or a merchant.

19 A class "D" felony is punishable by confinement for no more
20 than five years and a fine of at least \$750 but not more than
21 \$7,500.

22 CRIMINAL MISCHIEF IN THE THIRD DEGREE. If a person
23 intentionally damages, defaces, alters, or destroys property
24 that has the ability to process a payment card as defined in
25 Code section 715A.10 in the bill, with no right to do such
26 an act, that person commits criminal mischief in the third
27 degree. Criminal mischief in the third degree is an aggravated
28 misdemeanor.

29 An aggravated misdemeanor is punishable by confinement for
30 no more than two years and a fine of at least \$625 but not more
31 than \$6,250.