Senate File 2238 - Introduced

SENATE FILE 2238

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3018)

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 use such
15 device to obtain information encoded on a payment card without
16 the permission of the authorized user of the payment card, the
17 issuer of the authorized user's payment card, or a merchant, or
18 possesses a scanning device with knowledge that a person other
19 than the authorized user, the issuer of the authorized user's
20 payment card, or a merchant intends to use the scanning device
21 to 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 *c.* *"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 act is committed upon real or

33 personal property that has the ability to process a payment

34 card as defined in section 715A.10.

35 EXPLANATION

1

3   This bill modifies certain criminal acts that involve
4 payment cards.

5   Current Code section 715A.10 prohibits a person from
6 using a scanning device to access information encoded on
7 the magnetic strip or stripe of a payment card without the
8 permission of the authorized user of the payment card, and with
9 the intent to defraud the authorized user, the issuer of the
10 authorized user's payment card, or a merchant. A person is
11 also prohibited from using a reencoder to place information
12 encoded on the magnetic strip or stripe of a payment card
13 onto the magnetic strip or stripe of another card without the
14 permission of the authorized user of the card from which the
15 information is being reencoded, and with the intent to defraud
16 the authorized user, the issuer of the authorized user's
17 payment card, or a merchant.

18   The bill makes several changes to terminology in Code
19 section 715A.10. The bill replaces the term "reencoder" with
20 "encoding machine", defined as an electronic device that is
21 used to encode information onto a payment card. The bill
22 expands the definition of "merchant" to include an establishing
23 financial institution as referred to in Code section 527.5.
24 The bill expands the definition of "payment card" to include
25 an access device as defined in Code section 527.2. The
26 bill expands the definition of "scanning device" to include
27 a wireless access device, radio frequency identification
28 scanner, and an electronic device that utilizes near-field
29 communications technology. The bill removes any references to
30 the magnetic strip or stripes of payment cards in Code section
31 715A.10.

32   The bill broadens the prohibitions against using a scanning
33 device or encoding machine to commit fraud by prohibiting the
34 direct or indirect use of such a device or machine. The bill
35 also removes the requirement that a person have intent to

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1 defraud for the prohibitions against using a scanning device or
2 encoding machine to commit fraud.

3 The bill makes it a criminal act to possess a scanning
4 device with the intent to use such device to obtain information
5 encoded on a payment card without permission from the
6 authorized user of the payment card, the issuer of such card,
7 or a merchant, or to possess a scanning device with knowledge
8 that another person intends to use the device to obtain
9 information encoded on a payment card without permission from
10 the authorized user of the payment card, the issuer of such
11 card, or a merchant.

12 A person who commits a violation of Code section 715A.10
13 commits a class "D" felony. A class "D" felony is punishable
14 by confinement for no more than five years and a fine of at
15 least $750 but not more than $7,500. A second or subsequent
16 violation of Code section 715A.10 is a class "C" felony. A
17 class "C" felony is punishable by confinement for no more
18 than 10 years and a fine of at least $1,000 but not more than
19 $10,000.

20 Current law defines "criminal mischief" as the intentional
21 damage, defacement, alteration, or destruction of property
22 by a person who has no right to do so. The bill provides
23 that a person commits criminal mischief in the third degree
24 if the act is committed upon real or personal property that
25 has the ability to process a payment card as defined in Code
26 section 715A.10. Criminal mischief in the third degree is
27 an aggravated misdemeanor. An aggravated misdemeanor is
28 punishable by confinement for no more than two years and a fine
29 of at least $625 but not more than $6,250.