

Senate Study Bill 3018 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act modifying certain criminal acts involving payment cards,
2 and including penalties.

3 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 another person
19 intends to use such device to obtain information encoded on a
20 payment card without the permission of the authorized user of
21 the payment card, the issuer of the authorized user's payment
22 card, or a merchant.

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

31 d. Possesses an encoding machine with the intent to use such
32 machine to obtain information encoded on a payment card onto a
33 different card without the permission of the authorized user of
34 the payment card from which the information is obtained, the
35 issuer of the authorized user's payment card, or a merchant,

1 or possesses an encoding machine with knowledge that another
2 person intends to use such device to obtain information encoded
3 on a payment card onto a different card without the permission
4 of the authorized user of the payment card from which the
5 information is obtained, the issuer of the authorized user's
6 payment card, or a merchant.

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

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

10 a. "Encoding machine" means an electronic device that is
11 used to encode information onto a payment card.

12 ~~a.~~ b. "Merchant" means an owner or operator of a retail
13 mercantile establishment or an agent, employee, lessee,
14 consignee, officer, director, franchisee, or independent
15 contractor of such owner or operator. A "merchant" also means
16 a financial institution that establishes a satellite terminal,
17 as those terms are defined in section 527.2, a person who
18 receives from an authorized user of a payment card, or someone
19 the person believes to be an authorized user, a payment card or
20 information from a payment card, or what the person believes
21 to be a payment card or information from a payment card, as
22 the instrument for obtaining, purchasing, or receiving goods,
23 services, money, or anything else of value from the person.

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

29 ~~e.~~ ~~"Reencoder" means an electronic device that places~~
30 ~~encoded information from the magnetic strip or stripe of a~~
31 ~~payment card onto the magnetic strip or stripe of a different~~
32 ~~payment card.~~

33 d. "Scanning device" means a scanner, reader, wireless
34 access device, radio frequency identification scanner,
35 near-field communications technology, or any other electronic

1 device that is used to access, read, scan, obtain, memorize, or
2 store, temporarily or permanently, information encoded on the
3 ~~magnetic strip or stripe~~ of a payment card.

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

6 NEW PARAGRAPH. *f.* The act is committed upon real or
7 personal property that has the ability to process a payment
8 card as defined in section 715A.10.

9 EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
11 the explanation's substance by the members of the general assembly.

12 This bill modifies certain criminal acts that involve
13 payment cards.

14 Current Code section 715A.10 prohibits a person from
15 using a scanning device to access information encoded on
16 the magnetic strip or stripe of a payment card without the
17 permission of the authorized user of the payment card, and with
18 the intent to defraud the authorized user, the issuer of the
19 authorized user's payment card, or a merchant. A person is
20 also prohibited from using a reencoder to place information
21 encoded on the magnetic strip or stripe of a payment card
22 onto the magnetic strip or stripe of another card without the
23 permission of the authorized user of the card from which the
24 information is being reencoded, and with the intent to defraud
25 the authorized user, the issuer of the authorized user's
26 payment card, or a merchant.

27 The bill makes several changes to terminology in Code
28 section 715A.10. The bill replaces the term "reencoder" with
29 "encoding machine", defined as an electronic device that is
30 used to encode information onto a payment card. The bill
31 expands the definition of "merchant" to include a financial
32 institution that establishes a satellite terminal, as those
33 terms are defined in Code section 527.2. The bill expands the
34 definition of "payment card" to include an access device as
35 defined in Code section 527.2. The bill expands the definition

1 of "scanning device" to include a wireless access device, radio
2 frequency identification scanner, and near-field communications
3 technology. The bill removes any references to the magnetic
4 strip or stripes of payment cards in Code section 715A.10.

5 The bill broadens the prohibitions against using a scanning
6 device or encoding machine to commit fraud by prohibiting the
7 direct or indirect use of such a device or machine. The bill
8 also removes the requirement that a person have intent to
9 defraud for the prohibitions against using a scanning device or
10 encoding machine to commit fraud.

11 The bill makes it a criminal act to possess a scanning
12 device with the intent to use such device to obtain information
13 encoded on a payment card without permission from the
14 authorized user of the payment card, the issuer of such card,
15 or a merchant, or to possess a scanning device with knowledge
16 that another person intends to use the device to obtain
17 information encoded on a payment card without permission from
18 the authorized user of the payment card, the issuer of such
19 card, or a merchant. The bill also makes it a criminal act
20 to possess an encoding machine with the intent to use the
21 machine to obtain information encoded on a payment card onto a
22 different card without permission from the authorized user of
23 the payment card from which the information is obtained, the
24 issuer of such card, or a merchant, or to possess an encoding
25 machine with knowledge that another person intends to use the
26 machine to obtain information encoded on a payment card on to a
27 different card without permission from the authorized user of
28 the payment card from which the information is obtained, the
29 issuer of such card, or a merchant.

30 A person who commits a violation of Code section 715A.10
31 commits a class "D" felony. A class "D" felony is punishable
32 by confinement for no more than five years and a fine of at
33 least \$750 but not more than \$7,500. A second or subsequent
34 violation of Code section 715A.10 is a class "C" felony. A
35 class "C" felony is punishable by confinement for no more

1 than 10 years and a fine of at least \$1,000 but not more than
2 \$10,000.

3 Current law defines "criminal mischief" as the intentional
4 damage, defacement, alteration, or destruction of property
5 by a person who has no right to do so. The bill provides
6 that a person commits criminal mischief in the third degree
7 if the act is committed upon real or personal property that
8 has the ability to process a payment card as defined in Code
9 section 715A.10. Criminal mischief in the third degree is
10 an aggravated misdemeanor. An aggravated misdemeanor is
11 punishable by confinement for no more than two years and a fine
12 of at least \$625 but not more than \$6,250.