

**Senate Study Bill 3024 - Introduced**

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

**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.