

LEGISLATIVE BILL 372

Approved by the Governor April 20, 1989

Introduced by Chizek, 31; Pirsch, 10

AN ACT relating to crimes and punishments; to amend section 28-101, Revised Statutes Supplement, 1988; to make certain acts relating to the use of financial transaction devices and sales forms unlawful; to define and redefine terms; to provide penalties; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-101, Revised Statutes Supplement, 1988, be amended to read as follows:

28-101. Sections 28-101 to 28-1348 and sections 2 to 14 of this act shall be known as the Nebraska Criminal Code.

Sec. 2. For purposes of sections 2 to 14 of this act:

(1) Account holder shall mean the person or business entity named on the face of a financial transaction device for whose benefit the financial transaction device is issued by an issuer;

(2) Acquirer shall mean any business organization, financial institution, or agent of such organization or institution which authorizes a merchant to accept payment by financial transaction device for money, property, services, or anything else of value;

(3) Automated banking device shall mean any machine which, when properly activated by a financial transaction device or a personal identification code, may be used for any purpose for which a financial transaction device is issued;

(4) Counterfeit financial transaction device shall mean any financial transaction device which is fictitious, altered, forged, stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained and which may or may not be embossed with account information or a company logo or any facsimile, false representation, depiction, or component of a financial transaction device;

(5) Embossing shall mean any process in which account numbers are placed on financial transaction devices that results in the number being raised from the

surface of the device;

(6) Expired financial transaction device shall mean a financial transaction device which is no longer valid because the term shown on it has elapsed;

(7) Financial transaction device shall mean any instrument or device whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, debit card, electronic funds transfer card, or account number representing a financial account. Such device shall affect the financial interest, standing, or obligation of the financial account for services or financial payments for money, credit, property, or services;

(8) Financial-transaction-device-making equipment shall mean any equipment, impression, machine, mechanism, plate, or any other device designed, used, or capable of being used to produce a financial transaction device, a counterfeit financial transaction device, or any aspect or component of a financial transaction device;

(9) Holographic shall mean a photographic method that uses laser light to produce three-dimensional images;

(10) Intent to defraud shall mean an unlawful attempt to secure money, credit, property, or services from an issuer, without permission of the account holder, for the benefit of any person other than the account holder;

(11) Issuer shall mean any person or any financial or business entity that acquires financial rights by issuing, canceling, controlling, or distributing a financial transaction device;

(12) Magnetic encoding shall mean any electronically encoded account holder information which is placed on a magnetic strip on the financial transaction device and is capable of being read by an electronic terminal such as an automatic teller machine or an electronic terminal at a merchant location also known as a point-of-sale machine;

(13) Personal identification code shall mean any grouping of letters, numbers, or symbols assigned to the account holder of a financial transaction device by the issuer to permit authorized electronic access of that account;

(14) Receives or receiving shall mean acquiring possession or control of or accepting as security for a loan a financial transaction device;

(15) Revoked financial transaction device shall mean a financial transaction device which is no

longer valid because permission to use it has been suspended or terminated by the issuer;

(16) Sales form shall mean any written, electronic, magnetic, or printed record of a financial transaction involving use of a financial transaction device;

(17) Sales form processing services shall mean services provided to enable a person to obtain payment or credit for sales forms;

(18) Sales form processor shall mean any bank, financial institution, or other entity which with authority from a bona fide association of issuers provides sales form processing services;

(19) Service mark shall mean a word, name, symbol, or other device or any combination thereof to identify the goods or services of the entity from the goods and services of another entity;

(20) To falsely alter a financial transaction device shall mean to change such device without the authority of anyone entitled to grant such authority, whether in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other means, so that such device in its altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer;

(21) To falsely complete a financial transaction device shall mean to transform an incomplete device into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant such authority, so that the complete device falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible issuer;

(22) To falsely make a financial transaction device shall mean to make or manufacture a device, whether complete or incomplete, which purports to be an authentic creation of its ostensible issuer but which is fictitious or, if real, the ostensible issuer did not authorize the making or the manufacturing thereof; and

(23) Traffic shall mean to distribute, dispense, sell, transfer, or otherwise dispose of property or to buy, receive, possess, obtain control of, or use property with the intent to dispense, distribute, sell, transfer, or otherwise dispose of such property.

Sec. 3. (1) A person commits the offense of issuing a false financial statement for purposes of obtaining a financial transaction device if, upon filing an application for a financial transaction device with

an issuer, such person knowingly makes or causes to be made a statement or report (a) which is false in some material respect and reasonably relied upon relative to his or her name, occupation, financial condition, assets, or liabilities, (b) willfully and materially overvalues any assets, or (c) willfully omits or materially undervalues any indebtedness with the intent of influencing the issuer to issue a financial transaction device.

(2) Any person issuing a false financial statement for the purposes of obtaining a financial transaction device, when such device is used in violation of this section to obtain money, property, or services, shall be guilty of a Class I misdemeanor.

(3) Any person issuing two or more false financial statements for purposes of obtaining two or more financial transaction devices, when such devices are used in violation of this section to obtain money, property, or services, shall be guilty of a Class IV felony.

Sec. 4. (1) A person commits the offense of unauthorized use of a financial transaction device if such person uses such device in an automated banking device, to imprint a sales form, or in any other manner:

(a) For the purpose of obtaining money, credit, property, or services or for making financial payment, with intent to defraud;

(b) With notice that the financial transaction device is expired, revoked, or canceled;

(c) With notice that the financial transaction device is forged, altered, or counterfeited; or

(d) When for any reason his or her use of the financial transaction device is unauthorized either by the issuer or by the account holder.

(2) For purposes of this section, notice shall mean either notice given in person or notice given in writing to the account holder, by registered or certified mail, return receipt requested, duly stamped and addressed to such account holder at his or her last address known to the issuer. Such notice shall be evidenced by a returned receipt signed by the account holder which shall be prima facie evidence that the notice was received.

(3) Any person committing the offense of unauthorized use of a financial transaction device shall be guilty of:

(a) A Class II misdemeanor if the total value of the money, credit, property, or services obtained or the financial payments made are less than seventy-five

dollars within a six-month period from the date of the first unauthorized use;

(b) A Class I misdemeanor if the total value of the money, credit, property, or services obtained or the financial payments made are seventy-five dollars or more but less than three hundred dollars within a six-month period from the date of the first unauthorized use;

(c) A Class IV felony if the total value of the money, credit, property, or services obtained or the financial payments made are three hundred dollars or more but less than one thousand dollars within a six-month period from the date of the first unauthorized use; and

(d) A Class III felony if the total value of the money, credit, property, or services obtained or the financial payments made are one thousand dollars or more within a six-month period from the date of the first unauthorized use.

Sec. 5. (1) A person commits the offense of criminal possession of a financial transaction device if, with the intent to defraud, such person has in his or her possession or under his or her control any financial transaction device issued to a different account holder or which he or she knows or reasonably should know to be lost, stolen, forged, altered, or counterfeited.

(2) Any person committing the offense of criminal possession of one financial transaction device shall be guilty of a Class III misdemeanor.

(3) Any person committing the offense of criminal possession of two or three financial transaction devices, each issued to different account holders, shall be guilty of a Class IV felony.

(4) Any person committing the offense of criminal possession of four or more financial transaction devices, each issued to different account holders, shall be guilty of a Class III felony.

Sec. 6. (1) A person commits the offense of unlawful circulation of a financial transaction device in the second degree if such person sells or has in his or her possession or under his or her control with the intent to deliver, circulate, or sell any financial transaction device which he or she knows or reasonably should know to be lost, stolen, forged, altered, counterfeited, or delivered under a mistake as to the identity or address of the account holder.

(2) Any person committing the offense of unlawful circulation of a financial transaction device

in the second degree shall be guilty of a Class IV felony.

Sec. 7. (1) A person commits the offense of unlawful circulation of a financial transaction device in the first degree if such person sells or has in his or her possession or under his or her control with the intent to deliver, circulate, or sell two or more financial transaction devices which he or she knows or reasonably should know to be lost, stolen, forged, altered, counterfeited, or delivered under a mistake as to the identity or address of the account holder.

(2) Any person committing the offense of unlawful circulation of a financial transaction device in the first degree shall be guilty of a Class III felony.

Sec. 8. (1) A person commits the offense of criminal possession of a blank financial transaction device if, without the authorization of the issuer or manufacturer, such person has in his or her possession, has under his or her control, or receives from another person a blank financial transaction device, with intent to use or to cause the use of such device.

(2) Any person committing the offense of criminal possession of a blank financial transaction device shall be guilty of a Class I misdemeanor.

(3) Any person committing the offense of criminal possession of two or more blank financial transaction devices shall be guilty of a Class IV felony.

Sec. 9. (1) A person commits the offense of criminal sale of a blank financial transaction device if, without the authorization of the issuer or manufacturer, such person has in his or her possession, has under his or her control, or receives from another person a blank financial transaction device, with intent to deliver, circulate, or sell or to cause the delivery, circulation, or sale of such device.

(2) Any person committing the offense of criminal sale of one blank financial transaction device shall be guilty of a Class IV felony.

(3) Any person committing the offense of criminal sale of two or more blank financial transaction devices shall be guilty of a Class III felony.

For purposes of section 8 of this act and this section, a blank financial transaction device shall mean a device that has at least one or more characteristics of a financial transaction device but does not contain all of the characteristics of a financial transaction device including, but not limited to, a financial

transaction device which has not been embossed or magnetically encoded with the name of the account holder, personal identification code, expiration date, or other proprietary institutional information.

Sec. 10. (1) A person commits the offense of criminal possession of a forgery device if (a) such person possesses any tool, photographic equipment, printing equipment, or any other device or group or combination of devices adapted, designed, or commonly used for committing or facilitating the commission of an offense involving the unauthorized manufacturing, printing, embossing, or magnetic encoding of a financial transaction device or the altering or addition of any service marks or holographic images to a financial transaction device and (b) intends to use the device or devices possessed or knows that some person intends to use the device or devices possessed in the commission of such an offense.

(2) Any person committing the offense of criminal possession of a forgery device shall be guilty of a Class IV felony.

Sec. 11. (1) A person commits the offense of unlawful manufacture of a financial transaction device if, with intent to defraud, such person:

(a) Falsely makes or manufactures, by printing, embossing, or magnetically encoding, a financial transaction device;

(b) Falsely alters or adds service marks, optical characters, or holographic images to a device which is, purports to be, or is circulated to become or represent if completed a financial transaction device; or

(c) Falsely completes a financial transaction device by adding to an incomplete device to make it appear to be a complete one.

(2) Any person committing the offense of unlawful manufacture of a financial transaction device shall be guilty of a Class III felony.

Sec. 12. A person other than a sales form processor commits the offense of laundering of sales forms if such person presents for payment to any sales form processor a sales form which was not originated as a result of a sales transaction between such person and the account holder named on such sales form.

Any person committing the offense of laundering of sales forms shall be guilty of a Class IV felony.

Sec. 13. A person commits the offense of unlawful acquisition of sales form processing services

if, upon applying for such services with a sales form processor, such person makes or causes to be made a statement or report which is false in some material respect relative to the type of goods or services provided by such person to his or her customers or the method by which such person solicits or concludes sales transactions with his or her customers.

Any person committing the offense of unlawful acquisition of sales form processing services shall be guilty of a Class IV felony.

Sec. 14. (1) A person commits the offense of unlawful factoring of a financial transaction device if such person or any agent or employee of such person is authorized by any acquirer to furnish money, property, services, or anything else of value and, with intent to defraud the account holder, acquirer, or issuer, presents for payment a financial transaction device transaction record to the issuer or acquirer.

(2) Any person committing the offense of unlawful factoring of a financial transaction device shall be guilty of a Class IV felony.

Sec. 15. That original section 28-101, Revised Statutes Supplement, 1988, is repealed.