

LEGISLATIVE BILL 276

Approved by the Governor April 16, 2002

Introduced by Redfield, 12; Baker, 44; Bromm, 23; Burling, 33; Byars, 30; Coordsen, 32; Cudaback, 36; Dierks, 40; Foley, 29; Jensen, 20; Kremer, 34; Price, 26; Quandahl, 31; Smith, 48; Stuhr, 24; Thompson, 14; Tyson, 19; Bruning, 3; Erdman, 47; Aguilar, 35; Jones, 43; Preister, 5; Schimek, 27

AN ACT relating to personal information; to amend sections 28-608, 28-620, and 84-712.05, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Supplement, 2000; to change provisions and penalties relating to criminal impersonation and financial transaction devices; to provide for restitution; to prohibit the printing of payment card numbers and the use of scanning devices or reencoders as prescribed; to provide penalties; to change provisions relating to public records; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-101, Revised Statutes Supplement, 2000, is amended to read:

28-101. Sections 28-101 to 28-1348 and sections 4 to 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-608, Reissue Revised Statutes of Nebraska, is amended to read:

28-608. (1) A person commits the crime of criminal impersonation if he or she:

(a) Assumes a false identity and does an act in his or her assumed character with intent to gain a pecuniary benefit for himself, herself, or another, or to deceive or harm another; ~~or~~

(b) Pretends to be a representative of some person or organization and does an act in his or her pretended capacity with the intent to gain a pecuniary benefit for himself, herself, or another, and to deceive or harm another; ~~or~~

(c) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law; or

(d) Without the authorization or permission of another and with the intent to deceive or harm another:

(i) Obtains or records personal identification documents or personal identifying information; and

(ii) Accesses or attempts to access the financial resources of another through the use of a personal identification document or personal identifying information for the purpose of obtaining credit, money, goods, services, or any other thing of value.

(2) (a) Criminal impersonation is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more.

(b) Criminal impersonation is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars.

(c) Criminal impersonation is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Criminal impersonation is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

(3) Criminal impersonation does not mean:

(a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution; or

(c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive.

(4) For purposes of this section:

(a) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;

(b) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's: (i) Name; (ii) date of birth; (iii) address; (iv) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state; (v) social security number or visa work permit number; (vi) public, private, or government employer, place of employment, or employment identification number; (vii) maiden name of a person's mother; (viii) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity; (ix) number assigned to a person's depository account, savings account, or brokerage account; (x) personal identification number as defined in section 8-157.01; (xi) electronic identification number, address, or routing code used to access financial information; (xii) digital signature; (xiii) telecommunications identifying information or access device; (xiv) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and (xv) other number or information which can be used to access a person's financial resources; and

(c) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to: (i) Obtain money, goods, services, or any other thing of value; or (ii) initiate a transfer of funds other than a transfer originated solely by a paper instrument. ~~Criminal impersonation is a Class II misdemeanor.~~

Sec. 3. Section 28-620, Reissue Revised Statutes of Nebraska, is amended to read:

28-620. (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~~ two hundred 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~~ two hundred dollars or more but less than ~~three~~ five 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~~ five hundred dollars or more but less than one thousand five hundred 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 five hundred dollars or more within a six-month period from the date of the first unauthorized use.

(4) Any prosecution under this section may be conducted in any county where the person committed the offense or any one of a series of offenses to be aggregated.

(5) Once aggregated and filed, no separate prosecution for an offense arising out of the same series of offenses aggregated and filed shall be allowed in any county.

Sec. 4. For purposes of this section and sections 5 and 6 of this act:

(1) Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. Merchant also includes a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person;

(2) Payment card means a credit card, charge card, or debit card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant;

(3) Person means an individual, firm, partnership, association, corporation, limited liability company, or other business entity;

(4) Reencoder means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card; and

(5) Scanning device means a scanner, a reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

Sec. 5. (1) A person that accepts a payment card for the transaction of business shall print no more than the last five digits of the payment card account number upon any receipt provided to the payment card holder.

(2) This section applies only to receipts that are electronically printed and does not apply to any transaction in which the only means of recording the payment card number is by handwriting or by an imprint or copy of the payment card.

(3) A violation of this section is a Class III misdemeanor for the first offense and a Class I misdemeanor for a second or subsequent offense.

(4)(a) This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for payment card transactions and that is originally put into use on or after January 1, 2004.

(b) This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for payment card transactions and that is originally put into use before January 1, 2004.

Sec. 6. (1) It is unlawful for a person to use:

(a) A scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant; or

(b) A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(2) A violation of this section is a Class IV felony for the first offense and a Class IIIA felony for a second or subsequent offense.

Sec. 7. Section 84-712.05, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.05. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a

public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any tax-supported educational institution maintaining the records, other than routine directory information;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the physical security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations; or the

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

~~(9)~~ (10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

~~(10)~~ (11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

~~(11)~~ (12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

~~(12)~~ (13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

~~(13)~~ (14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act; ~~and~~

~~(14)~~ (15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

Sec. 8. Original sections 28-608, 28-620, and 84-712.05, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Supplement, 2000, are repealed.