SECOND REGULAR SESSION

SENATE BILL NO. 831

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 570.010 and 570.030, RSMo, and to enact in lieu thereof three new sections relating to criminal offenses involving teller machines, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 570.010 and 570.030, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 569.190, 570.010, and 570.030, to read as follows:

569.190. 1. A person commits the offense of tampering with a teller machine, as defined in section 570.010, if he or she knowingly and without authorization or without reasonable grounds to believe that he or she has such authorization:

(1) Modifies, destroys, damages, or takes a teller machine; or

(2) Otherwise renders a teller machine inoperable.

2. The offense of tampering with a teller machine is a class D felony, unless:

(1) The offense is committed for the purpose of executing any scheme or artifice to defraud or obtain any property, the value of which is one thousand dollars or more, or to obtain the personal financial credentials of another person, in which case it is a class C felony; or

(2) The damage to the teller machine is one thousand dollars or more, in which case it is a class C felony.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
570.010. As used in this chapter, the following terms mean:

(1) "Adulterated", varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulations of this state lawfully filed, or if none, as set by commercial usage;

(2) "Appropriate", to take, obtain, use, transfer, conceal, retain or dispose;

(3) "Check", a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money;

(4) "Coercion", a threat, however communicated:

(a) To commit any offense; or

(b) To inflict physical injury in the future on the person threatened or another; or

(c) To accuse any person of any offense; or

(d) To expose any person to hatred, contempt or ridicule; or

(e) To harm the credit or business reputation of any person; or

(f) To take or withhold action as a public servant, or to cause a public servant to take or withhold action; or

(g) To inflict any other harm which would not benefit the actor. A threat of accusation, lawsuit or other invocation of official action is justified and not coercion if the property sought to be obtained by virtue of such threat was honestly claimed as restitution or indemnification for harm done in the circumstances to which the accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful service.

The defendant shall have the burden of injecting the issue of justification as to any threat;
(5) "Credit device", a writing, card, code, number or other device purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer;

(6) "Dealer", a person in the business of buying and selling goods;

(7) "Debit device", a writing, card, code, number or other device, other than a check, draft or similar paper instrument, by the use of which a person may initiate an electronic fund transfer, including but not limited to devices that enable electronic transfers of benefits to public assistance recipients;

(8) "Deceit or deceive", making a representation which is false and which the actor does not believe to be true and upon which the victim relies, as to a matter of fact, law, value, intention or other state of mind, or concealing a material fact as to the terms of a contract or agreement. The term "deceit" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. Deception as to the actor's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

(9) "Deprive":
   (a) To withhold property from the owner permanently; or
   (b) To restore property only upon payment of reward or other compensation; or
   (c) To use or dispose of property in a manner that makes recovery of the property by the owner unlikely;

(10) "Electronic benefits card" or "EBT card", a debit card used to access food stamps or cash benefits issued by the department of social services;
(11) "Financial institution", a bank, trust company, savings and loan association, or credit union;
(12) "Food stamps", the nutrition assistance program in Missouri that provides food and aid to low-income individuals who are in need of benefits to purchase food operated by the United States Department of Agriculture (USDA) in conjunction with the department of social services;
(13) "Forcibly steals", a person, in the course of stealing, uses or threatens the immediate use of physical force upon another person for the purpose of:
   (a) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or
   (b) Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft;
(14) "Internet service", an interactive computer service or system or an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, and includes, but is not limited to, an information service, system, or access software provider that provides access to a network system commonly known as the internet, or any comparable system or service and also includes, but is not limited to, a world wide web page, newsgroup, message board, mailing list, or chat area on any interactive computer service or system or other online service;
(15) "Means of identification", anything used by a person as a means to uniquely distinguish himself or herself;
(16) "Merchant", a person who deals in goods of the kind or otherwise by his or her occupation holds oneself out as having knowledge or skill peculiar to the practices or
goods involved in the transaction or to whom such knowledge
or skill may be attributed by his or her employment of an
agent or broker or other intermediary who by his or her
occupation holds oneself out as having such knowledge or
skill;

(17) "Mislabeled", varying from the standard of truth
or disclosure in labeling prescribed by statute or lawfully
promulgated administrative regulations of this state
lawfully filed, or if none, as set by commercial usage; or
represented as being another person's product, though
otherwise accurately labeled as to quality and quantity;

(18) "Pharmacy", any building, warehouse, physician's
office, hospital, pharmaceutical house or other structure
used in whole or in part for the sale, storage, or
dispensing of any controlled substance as defined in chapter
195;

(19) "Property", anything of value, whether real or
personal, tangible or intangible, in possession or in
action, and shall include but not be limited to the evidence
of a debt actually executed but not delivered or issued as a
valid instrument;

(20) "Public assistance benefits", anything of value,
including money, food, EBT cards, food stamps, commodities,
clothing, utilities, utilities payments, shelter, drugs and
medicine, materials, goods, and any service including
institutional care, medical care, dental care, child care,
psychiatric and psychological service, rehabilitation
instruction, training, transitional assistance, or
counseling, received by or paid on behalf of any person
under chapters 198, 205, 207, 208, 209, and 660, or
benefits, programs, and services provided or administered by
the Missouri department of social services or any of its divisions;

(21) "Services" includes transportation, telephone, electricity, gas, water, or other public service, cable television service, video service, voice over internet protocol service, or internet service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions and use of vehicles;

(22) "Stealing-related offense", federal and state violations of criminal statutes against stealing, robbery, or buying or receiving stolen property and shall also include municipal ordinances against the same if the offender was either represented by counsel or knowingly waived counsel in writing and the judge accepting the plea or making the findings was a licensed attorney at the time of the court proceedings;

(23) "Teller machine", an automated teller machine (ATM) or interactive teller machine (ITM) is a remote computer terminal owned or controlled by a financial institution that allows individuals to obtain financial services including obtaining cash, transferring or transmitting money or digital currencies, payment of bills, loading money or digital currency to a payment card or other device without physical in-person assistance from another person. "Teller machine" does not include personally owned electronic devices used to access financial services;

(24) "Video service", the provision of video programming provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology whether provided as part of a tier, on demand, or a per-channel basis. This definition includes cable service as
defined by 47 U.S.C. Section 522(6), but does not include any video programming provided by a commercial mobile service provider as "commercial mobile service" is defined in 47 U.S.C. Section 332(d), or any video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public internet, and includes microwave television transmission, from a multipoint distribution service not capable of reception by conventional television receivers without the use of special equipment;

[(24)] (25) "Voice over internet protocol service", a service that:

(a) Enables real-time, two-way voice communication;
(b) Requires a broadband connection from the user's location;
(c) Requires internet protocol-compatible customer premises equipment; and
(d) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network;

[(25)] (26) "Writing" includes printing, any other method of recording information, money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks and any other symbols of value, right, privilege or identification.

570.030. 1. A person commits the offense of stealing if he or she:

(1) Appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion;
Attempts to appropriate anhydrous ammonia or liquid nitrogen of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; or

(3) For the purpose of depriving the owner of a lawful interest therein, receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

2. The offense of stealing is a class A felony if the property appropriated consists of any of the following containing any amount of anhydrous ammonia: a tank truck, tank trailer, rail tank car, bulk storage tank, field nurse, field tank or field applicator.

3. The offense of stealing is a class B felony if:
   (1) The property appropriated or attempted to be appropriated consists of any amount of anhydrous ammonia or liquid nitrogen;
   (2) The property consists of any animal considered livestock as the term livestock is defined in section 144.010, or any captive wildlife held under permit issued by the conservation commission, and the value of the animal or animals appropriated exceeds three thousand dollars and that person has previously been found guilty of appropriating any animal considered livestock or captive wildlife held under permit issued by the conservation commission. Notwithstanding any provision of law to the contrary, such person shall serve a minimum prison term of not less than eighty percent of his or her sentence before he or she is eligible for probation, parole, conditional release, or other early release by the department of corrections;
   (3) A person appropriates property consisting of a motor vehicle, watercraft, or aircraft, and that person has
previously been found guilty of two stealing-related
offenses committed on two separate occasions where such
offenses occurred within ten years of the date of occurrence
of the present offense;

(4) The property appropriated or attempted to be
appropriated consists of any animal considered livestock as
the term is defined in section 144.010 if the value of the
livestock exceeds ten thousand dollars; or

(5) The property appropriated or attempted to be
appropriated is owned by or in the custody of a financial
institution and the property is taken or attempted to be
taken physically from an individual person to deprive the
owner or custodian of the property.

4. The offense of stealing is a class C felony if the
value of the property or services appropriated is twenty-
five thousand dollars or more or the property is a teller
machine or the contents of a teller machine, including cash,
regardless of the value or amount.

5. The offense of stealing is a class D felony if:

(1) The value of the property or services appropriated
is seven hundred fifty dollars or more;

(2) The offender physically takes the property
appropriated from the person of the victim; or

(3) The property appropriated consists of:
(a) Any motor vehicle, watercraft or aircraft;
(b) Any will or unrecorded deed affecting real
property;
(c) Any credit device, debit device or letter of
credit;
(d) Any firearms;
(e) Any explosive weapon as defined in section 571.010;
(f) Any United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open;

(g) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri;

(h) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States;

(i) Any book of registration or list of voters required by chapter 115;

(j) Any animal considered livestock as that term is defined in section 144.010;

(k) Any live fish raised for commercial sale with a value of seventy-five dollars or more;

(l) Any captive wildlife held under permit issued by the conservation commission;

(m) Any controlled substance as defined by section 195.010;

(n) Ammonium nitrate;

(o) Any wire, electrical transformer, or metallic wire associated with transmitting telecommunications, video, internet, or voice over internet protocol service, or any other device or pipe that is associated with conducting electricity or transporting natural gas or other combustible fuels; or

(p) Any material appropriated with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues.

6. The offense of stealing is a class E felony if:

(1) The property appropriated is an animal;
The property is a catalytic converter; or

A person has previously been found guilty of three stealing-related offenses committed on three separate occasions where such offenses occurred within ten years of the date of occurrence of the present offense.

7. The offense of stealing is a class D misdemeanor if the property is not of a type listed in subsection 2, 3, 5, or 6 of this section, the property appropriated has a value of less than one hundred fifty dollars, and the person has no previous findings of guilt for a stealing-related offense.

8. The offense of stealing is a class A misdemeanor if no other penalty is specified in this section.

9. If a violation of this section is subject to enhanced punishment based on prior findings of guilt, such findings of guilt shall be pleaded and proven in the same manner as required by section 558.021.

10. The appropriation of any property or services of a type listed in subsection 2, 3, 5, or 6 of this section or of a value of seven hundred fifty dollars or more may be considered a separate felony and may be charged in separate counts.

11. The value of property or services appropriated pursuant to one scheme or course of conduct, whether from the same or several owners and whether at the same or different times, constitutes a single criminal episode and may be aggregated in determining the grade of the offense, except as set forth in subsection 10 of this section.