

SENATE BILL NO. 831

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

4290S.01H

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
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 569.190, 570.010, and 570.030, to read as
4 follows:

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

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

8 (2) Otherwise renders a teller machine inoperable.

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

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

16 (2) The damage to the teller machine is one thousand
17 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
2 mean:

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

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

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

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

13 (a) To commit any offense; or

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

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

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

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

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

23 (g) To inflict any other harm which would not benefit
24 the actor. A threat of accusation, lawsuit or other
25 invocation of official action is justified and not coercion
26 if the property sought to be obtained by virtue of such
27 threat was honestly claimed as restitution or
28 indemnification for harm done in the circumstances to which
29 the accusation, exposure, lawsuit or other official action
30 relates, or as compensation for property or lawful service.
31 The defendant shall have the burden of injecting the issue
32 of justification as to any threat;

33 (5) "Credit device", a writing, card, code, number or
34 other device purporting to evidence an undertaking to pay
35 for property or services delivered or rendered to or upon
36 the order of a designated person or bearer;

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

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

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

56 (9) "Deprive":

57 (a) To withhold property from the owner permanently; or

58 (b) To restore property only upon payment of reward or
59 other compensation; or

60 (c) To use or dispose of property in a manner that
61 makes recovery of the property by the owner unlikely;

62 (10) "Electronic benefits card" or "EBT card", a debit
63 card used to access food stamps or cash benefits issued by
64 the department of social services;

65 (11) "Financial institution", a bank, trust company,
66 savings and loan association, or credit union;

67 (12) "Food stamps", the nutrition assistance program
68 in Missouri that provides food and aid to low-income
69 individuals who are in need of benefits to purchase food
70 operated by the United States Department of Agriculture
71 (USDA) in conjunction with the department of social services;

72 (13) "Forcibly steals", a person, in the course of
73 stealing, uses or threatens the immediate use of physical
74 force upon another person for the purpose of:

75 (a) Preventing or overcoming resistance to the taking
76 of the property or to the retention thereof immediately
77 after the taking; or

78 (b) Compelling the owner of such property or another
79 person to deliver up the property or to engage in other
80 conduct which aids in the commission of the theft;

81 (14) "Internet service", an interactive computer
82 service or system or an information service, system, or
83 access software provider that provides or enables computer
84 access by multiple users to a computer server, and includes,
85 but is not limited to, an information service, system, or
86 access software provider that provides access to a network
87 system commonly known as the internet, or any comparable
88 system or service and also includes, but is not limited to,
89 a world wide web page, newsgroup, message board, mailing
90 list, or chat area on any interactive computer service or
91 system or other online service;

92 (15) "Means of identification", anything used by a
93 person as a means to uniquely distinguish himself or herself;

94 (16) "Merchant", a person who deals in goods of the
95 kind or otherwise by his or her occupation holds oneself out
96 as having knowledge or skill peculiar to the practices or

97 goods involved in the transaction or to whom such knowledge
98 or skill may be attributed by his or her employment of an
99 agent or broker or other intermediary who by his or her
100 occupation holds oneself out as having such knowledge or
101 skill;

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

108 (18) "Pharmacy", any building, warehouse, physician's
109 office, hospital, pharmaceutical house or other structure
110 used in whole or in part for the sale, storage, or
111 dispensing of any controlled substance as defined in chapter
112 195;

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

118 (20) "Public assistance benefits", anything of value,
119 including money, food, EBT cards, food stamps, commodities,
120 clothing, utilities, utilities payments, shelter, drugs and
121 medicine, materials, goods, and any service including
122 institutional care, medical care, dental care, child care,
123 psychiatric and psychological service, rehabilitation
124 instruction, training, transitional assistance, or
125 counseling, received by or paid on behalf of any person
126 under chapters 198, 205, 207, 208, 209, and 660, or
127 benefits, programs, and services provided or administered by

128 the Missouri department of social services or any of its
129 divisions;

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

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

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

154 (24) "Video service", the provision of video
155 programming provided through wireline facilities located at
156 least in part in the public right-of-way without regard to
157 delivery technology, including internet protocol technology
158 whether provided as part of a tier, on demand, or a per-
159 channel basis. This definition includes cable service as

160 defined by 47 U.S.C. Section 522(6), but does not include
161 any video programming provided by a commercial mobile
162 service provider as "commercial mobile service" is defined
163 in 47 U.S.C. Section 332(d), or any video programming
164 provided solely as part of and via a service that enables
165 users to access content, information, electronic mail, or
166 other services offered over the public internet, and
167 includes microwave television transmission, from a
168 multipoint distribution service not capable of reception by
169 conventional television receivers without the use of special
170 equipment;

171 [(24)] (25) "Voice over internet protocol service", a
172 service that:

173 (a) Enables real-time, two-way voice communication;

174 (b) Requires a broadband connection from the user's
175 location;

176 (c) Requires internet protocol-compatible customer
177 premises equipment; and

178 (d) Permits users generally to receive calls that
179 originate on the public switched telephone network and to
180 terminate calls to the public switched telephone network;

181 [(25)] (26) "Writing" includes printing, any other
182 method of recording information, money, coins, negotiable
183 instruments, tokens, stamps, seals, credit cards, badges,
184 trademarks and any other symbols of value, right, privilege
185 or identification.

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

3 (1) Appropriates property or services of another with
4 the purpose to deprive him or her thereof, either without
5 his or her consent or by means of deceit or coercion;

6 (2) Attempts to appropriate anhydrous ammonia or
7 liquid nitrogen of another with the purpose to deprive him
8 or her thereof, either without his or her consent or by
9 means of deceit or coercion; or

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

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

19 3. The offense of stealing is a class B felony if:

20 (1) The property appropriated or attempted to be
21 appropriated consists of any amount of anhydrous ammonia or
22 liquid nitrogen;

23 (2) The property consists of any animal considered
24 livestock as the term livestock is defined in section
25 144.010, or any captive wildlife held under permit issued by
26 the conservation commission, and the value of the animal or
27 animals appropriated exceeds three thousand dollars and that
28 person has previously been found guilty of appropriating any
29 animal considered livestock or captive wildlife held under
30 permit issued by the conservation commission.

31 Notwithstanding any provision of law to the contrary, such
32 person shall serve a minimum prison term of not less than
33 eighty percent of his or her sentence before he or she is
34 eligible for probation, parole, conditional release, or
35 other early release by the department of corrections;

36 (3) A person appropriates property consisting of a
37 motor vehicle, watercraft, or aircraft, and that person has

38 previously been found guilty of two stealing-related
39 offenses committed on two separate occasions where such
40 offenses occurred within ten years of the date of occurrence
41 of the present offense;

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

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

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

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

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

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

61 (3) The property appropriated consists of:

62 (a) Any motor vehicle, watercraft or aircraft;

63 (b) Any will or unrecorded deed affecting real
64 property;

65 (c) Any credit device, debit device or letter of
66 credit;

67 (d) Any firearms;

68 (e) Any explosive weapon as defined in section 571.010;

69 (f) Any United States national flag designed, intended
70 and used for display on buildings or stationary flagstaffs
71 in the open;

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

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

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

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

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

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

86 (m) Any controlled substance as defined by section
87 195.010;

88 (n) Ammonium nitrate;

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

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

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

100 (1) The property appropriated is an animal;

101 (2) The property is a catalytic converter; or

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

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

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

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

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

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

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