

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2127

101ST GENERAL ASSEMBLY

4223H.02P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 569.010, 569.100, 570.010, and 570.030, RSMo, and to enact in lieu thereof five new sections relating to offenses involving teller machines, with penalty provisions.

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

Section A. Sections 569.010, 569.100, 570.010, and 570.030, RSMo, are repealed
2 and five new sections enacted in lieu thereof, to be known as sections 569.010, 569.100,
3 569.190, 570.010, and 570.030, to read as follows:

569.010. As used in this chapter the following terms mean:

2 (1) "Cave or cavern", any naturally occurring subterranean cavity enterable by a
3 person including, without limitation, a pit, pothole, natural well, grotto, and tunnel, whether
4 or not the opening has a natural entrance;

5 (2) "Enter unlawfully or remain unlawfully", a person enters or remains in or upon
6 premises when he or she is not licensed or privileged to do so. A person who, regardless of
7 his or her purpose, enters or remains in or upon premises which are at the time open to the
8 public does so with license and privilege unless he or she defies a lawful order not to enter or
9 remain, personally communicated to him or her by the owner of such premises or by other
10 authorized person. A license or privilege to enter or remain in a building which is only partly
11 open to the public is not a license or privilege to enter or remain in that part of the building
12 which is not open to the public;

13 (3) "Nuclear power plant", a power generating facility that produces electricity by
14 means of a nuclear reactor owned by a utility or a consortium utility. Nuclear power plant
15 shall be limited to property within the structure or fenced yard, as defined in section 563.011;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (4) "To tamper", to interfere with something improperly, to meddle with it, displace it,
17 make unwarranted alterations in its existing condition, or to deprive, temporarily, the owner
18 or possessor of that thing;

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

26 (6) "Utility", an enterprise which provides gas, electric, steam, water, sewage
27 disposal, or communication, video, internet, or voice over internet protocol services, and any
28 common carrier. It may be either publicly or privately owned or operated.

569.100. 1. A person commits the offense of property damage in the first degree if
2 such person:

3 (1) Knowingly damages property of another to an extent exceeding seven hundred
4 fifty dollars; or

5 (2) Damages property to an extent exceeding seven hundred fifty dollars for the
6 purpose of defrauding an insurer; ~~or~~

7 (3) Knowingly damages a motor vehicle of another and the damage occurs while such
8 person is making entry into the motor vehicle for the purpose of committing the crime of
9 stealing therein or the damage occurs while such person is committing the crime of stealing
10 within the motor vehicle; or

11 **(4) Knowingly damages, modifies, or destroys a teller machine or otherwise**
12 **makes it inoperable.**

13 2. The offense of property damage in the first degree committed under subdivision (1)
14 or (2) of subsection 1 of this section is a class E felony, unless the offense of property damage
15 in the first degree was committed under subdivision (1) of subsection 1 of this section and the
16 victim was intentionally targeted as a law enforcement officer, as defined in section 556.061,
17 or the victim is targeted because he or she is a relative within the second degree of
18 consanguinity or affinity to a law enforcement officer, in which case it is a class D felony.
19 The offense of property damage in the first degree committed under subdivision (3) of
20 subsection 1 of this section is a class D felony unless committed as a second or subsequent
21 violation of subdivision (3) of subsection 1 of this section in which case it is a class B felony.
22 **The offense of property damage in the first degree committed under subdivision (4) of**
23 **subsection 1 of this section is a class D felony unless committed for the purpose of**
24 **executing any scheme or artifice to defraud or obtain any property, the value of which**

25 exceeds seven hundred fifty dollars or the damage to the teller machine exceeds seven
26 hundred fifty dollars in which case it is a class C felony. If the offense of property
27 damage in the first degree committed under subdivision (4) of subsection 1 of this
28 section is committed to obtain the personal financial credentials of another person or
29 unless committed as a second or subsequent violation of subdivision (4) of subsection 1
30 of this section in which case it is a class B felony.

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

- 4 (1) Modifies, destroys, damages, or takes a teller machine; or
- 5 (2) Otherwise renders a teller machine inoperable.

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

7 (1) The offense is committed for the purpose of executing any scheme or artifice
8 to defraud or obtain any property, the value of which is one thousand dollars or more,
9 or to obtain the personal financial credentials of another person; or

10 (2) The damage to the teller machine is one thousand dollars or more,

11
12 in which case it is a class C felony.

570.010. As used in this chapter, the following terms mean:

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

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

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

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

9 (a) To commit any offense; or

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

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

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

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

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

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

20 lawsuit or other official action relates, or as compensation for property or lawful service. The
21 defendant shall have the burden of injecting the issue of justification as to any threat;

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

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

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

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

37 (9) "Deprive":

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

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

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

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

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

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

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

52 (a) Preventing or overcoming resistance to the taking of the property or to the
53 retention thereof immediately after the taking; or

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

56 (14) "Internet service", an interactive computer service or system or an information
57 service, system, or access software provider that provides or enables computer access by
58 multiple users to a computer server, and includes, but is not limited to, an information service,
59 system, or access software provider that provides access to a network system commonly
60 known as the internet, or any comparable system or service and also includes, but is not
61 limited to, a world wide web page, newsgroup, message board, mailing list, or chat area on
62 any interactive computer service or system or other online service;

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

65 (16) "Merchant", a person who deals in goods of the kind or otherwise by his or her
66 occupation holds oneself out as having knowledge or skill peculiar to the practices or goods
67 involved in the transaction or to whom such knowledge or skill may be attributed by his or
68 her employment of an agent or broker or other intermediary who by his or her occupation
69 holds oneself out as having such knowledge or skill;

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

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

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

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

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

91 (22) "Stealing-related offense", federal and state violations of criminal statutes
92 against stealing, robbery, or buying or receiving stolen property and shall also include

93 municipal ordinances against the same if the offender was either represented by counsel or
94 knowingly waived counsel in writing and the judge accepting the plea or making the findings
95 was a licensed attorney at the time of the court proceedings;

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

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

114 ~~[(24)]~~ (25) "Voice over internet protocol service", a service that:

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

120 ~~[(25)]~~ (26) "Writing" includes printing, any other method of recording information,
121 money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks
122 and any other symbols of value, right, privilege or identification.

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

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

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

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

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

14 (1) The property appropriated or attempted to be appropriated consists of any amount
15 of anhydrous ammonia or liquid nitrogen;

16 (2) The property consists of any animal considered livestock as the term livestock is
17 defined in section 144.010, or any captive wildlife held under permit issued by the
18 conservation commission, and the value of the animal or animals appropriated exceeds three
19 thousand dollars and that person has previously been found guilty of appropriating any animal
20 considered livestock or captive wildlife held under permit issued by the conservation
21 commission. Notwithstanding any provision of law to the contrary, such person shall serve a
22 minimum prison term of not less than eighty percent of his or her sentence before he or she is
23 eligible for probation, parole, conditional release, or other early release by the department of
24 corrections;

25 (3) A person appropriates property consisting of a motor vehicle, watercraft, or
26 aircraft, and that person has previously been found guilty of two stealing-related offenses
27 committed on two separate occasions where such offenses occurred within ten years of the
28 date of occurrence of the present offense;

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

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

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

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

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

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

43 (3) The property appropriated consists of:

- 44 (a) Any motor vehicle, watercraft or aircraft;
45 (b) Any will or unrecorded deed affecting real property;
46 (c) Any credit device, debit device or letter of credit;
47 (d) Any firearms;
48 (e) Any explosive weapon as defined in section 571.010;
49 (f) Any United States national flag designed, intended and used for display on
50 buildings or stationary flagstaffs in the open;
51 (g) Any original copy of an act, bill or resolution, introduced or acted upon by the
52 legislature of the state of Missouri;
53 (h) Any pleading, notice, judgment or any other record or entry of any court of this
54 state, any other state or of the United States;
55 (i) Any book of registration or list of voters required by chapter 115;
56 (j) Any animal considered livestock as that term is defined in section 144.010;
57 (k) Any live fish raised for commercial sale with a value of seventy-five dollars or
58 more;
59 (l) Any captive wildlife held under permit issued by the conservation commission;
60 (m) Any controlled substance as defined by section 195.010;
61 (n) Ammonium nitrate;
62 (o) Any wire, electrical transformer, or metallic wire associated with transmitting
63 telecommunications, video, internet, or voice over internet protocol service, or any other
64 device or pipe that is associated with conducting electricity or transporting natural gas or
65 other combustible fuels; or
66 (p) Any material appropriated with the intent to use such material to manufacture,
67 compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of
68 their analogues.
- 69 6. The offense of stealing is a class E felony if:
70 (1) The property appropriated is an animal;
71 (2) The property is a catalytic converter; or
72 (3) A person has previously been found guilty of three stealing-related offenses
73 committed on three separate occasions where such offenses occurred within ten years of the
74 date of occurrence of the present offense.
- 75 7. The offense of stealing is a class D misdemeanor if the property is not of a type
76 listed in subsection 2, 3, 5, or 6 of this section, the property appropriated has a value of less
77 than one hundred fifty dollars, and the person has no previous findings of guilt for a stealing-
78 related offense.
- 79 8. The offense of stealing is a class A misdemeanor if no other penalty is specified in
80 this section.

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

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

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

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