

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 559

Introduced by Bosn, 25.

Read first time January 22, 2025

Committee:

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-618, 28-1601, and 28-1602, Reissue Revised Statutes of Nebraska,
- 3 and section 28-101, Revised Statutes Cumulative Supplement, 2024; to
- 4 provide for offenses relating to skimmer devices and continuing
- 5 criminal enterprises involving financial offenses; to provide
- 6 penalties; to define terms; to provide for forfeiture; to clarify
- 7 and harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 28-101, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 28-101 Sections 28-101 to 28-1357, 28-1601 to 28-1603, and 28-1701
4 and sections 3, 4, 5, and 6 of this act shall be known and may be cited
5 as the Nebraska Criminal Code.

6 **Sec. 2.** Section 28-618, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-618 For purposes of sections 28-618 to 28-630 and sections 3, 4,
9 5, and 6 of this act:

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

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

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

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

27 (5) Embossing means ~~shall mean~~ any process in which account numbers
28 are placed on financial transaction devices that results in the number
29 being raised from the surface of the device;

30 (6) Expired financial transaction device means ~~shall mean~~ a
31 financial transaction device which is no longer valid because the term

1 shown on it has elapsed;

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

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

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

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

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

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

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

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

4 (15) Revoked financial transaction device means ~~shall mean~~ a
5 financial transaction device which is no longer valid because permission
6 to use it has been suspended or terminated by the issuer;

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

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

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

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

18 (20) Skimmer device means an electronic or other device used to
19 capture, record, store or transmit data from a financial transaction
20 device or to capture or record an account holder's personal
21 identification code;

22 (21) (20) To falsely alter a financial transaction device means
23 shall mean to change such device without the authority of anyone entitled
24 to grant such authority, whether in complete or incomplete form, by means
25 of erasure, obliteration, deletion, insertion of new matter,
26 transposition of matter, or any other means, so that such device in its
27 altered form falsely appears or purports to be in all respects an
28 authentic creation of or fully authorized by its ostensible issuer;

29 (22) (21) To falsely complete a financial transaction device means
30 shall mean to transform an incomplete device into a complete one by
31 adding, inserting, or changing matter without the authority of anyone

1 entitled to grant such authority, so that the complete device falsely
2 appears or purports to be in all respects an authentic creation of or
3 fully authorized by its ostensible issuer;

4 ~~(23)~~ (22) To falsely make a financial transaction device means shall
5 ~~mean~~ to make or manufacture a device, whether complete or incomplete,
6 which purports to be an authentic creation of its ostensible issuer but
7 which is fictitious or, if real, the ostensible issuer did not authorize
8 the making or the manufacturing thereof; and

9 ~~(24)~~ (23) Traffic means shall ~~mean~~ to distribute, dispense, sell,
10 transfer, or otherwise dispose of property or to buy, receive, possess,
11 obtain control of, or use property with the intent to dispense,
12 distribute, sell, transfer, or otherwise dispose of such property.

13 **Sec. 3.** (1) It shall be unlawful to install a skimmer device,
14 without authorization, on an automated banking device or a point-of-sale
15 terminal, including any fuel pump, for the purpose of obtaining money,
16 credit, property, or anything of value, and with the intent to defraud.

17 (2) Installation of a skimmer device shall be considered done
18 without authorization if such installation is, for any reason, done
19 without authorization by the issuer, account holder, owner of the
20 automated banking device, or owner of the point-of-sale terminal.

21 (3) A violation of this section is a Class IV felony.

22 **Sec. 4.** (1) It shall be unlawful to use a skimmer device on an
23 automated banking device or any point-of-sale terminal, including any
24 fuel pump, for the purpose of obtaining money, credit, property, or
25 anything of value, and with the intent to defraud.

26 (2) A violation of this section shall be punished according to the
27 total value of the money, credit, property, or things of value obtained,
28 or the financial payments made, as a result of the violation. A violation
29 of this section shall be:

30 (a) A Class IIA felony when such value is five thousand dollars or
31 more;

1 (b) A Class IV felony when such value is one thousand five hundred
2 dollars or more but less than five thousand dollars;

3 (c) A Class I misdemeanor when such value is more than five hundred
4 dollars but less than one thousand five hundred dollars; and

5 (d) A Class II misdemeanor when such value is five hundred dollars
6 or less.

7 (3) For any second or subsequent conviction under subdivision (2)(c)
8 of this section, any person so offending shall be guilty of a Class IV
9 felony.

10 (4) For any second conviction under subdivision (2)(d) of this
11 section, any person so offending shall be guilty of a Class I
12 misdemeanor, and for any third or subsequent conviction under subdivision
13 (2)(d) of this section, the person so offending shall be guilty of a
14 Class IV felony.

15 (5) For a prior conviction to be used to enhance the penalty under
16 subsection (3) or (4) of this section, the prior conviction must have
17 occurred no more than ten years prior to the date of commission of the
18 current offense.

19 (6) The value of the money, credit, property, or things of value
20 obtained, or the financial payments made, pursuant to one scheme or
21 course of conduct from one or more persons may be aggregated in the
22 indictment, information, or complaint in determining the classification
23 of the offense, except that amounts shall not be aggregated into more
24 than one offense.

25 (7) In any prosecution for a violation of this section, the total
26 value of the money, credit, property, or things of value obtained, or the
27 financial payments made, as a result of the violation, is an essential
28 element of the offense that must be proved beyond a reasonable doubt.

29 **Sec. 5. (1) For purposes of this section:**

30 (a) Financial transaction offense means any violation of sections
31 28-618 to 28-630 and sections 3 and 4 of this act for which the

1 punishment is a felony; and

2 (b) Leadership position means a position in which a person acts as a
3 principal administrator, organizer, supervisor, or manager or otherwise
4 leads or directs other persons.

5 (2) A person is engaged in a continuing criminal enterprise if such
6 person commits any financial transaction offense and:

7 (a) Such offense is part of a continuing series of financial
8 transaction offenses;

9 (b) Such series of offenses is undertaken by such person in concert
10 with two or more other persons with respect to whom such person acts in a
11 leadership position; and

12 (c) Such person obtains substantial income or resources from such
13 activities.

14 (3) A violation of this section shall be punished as a:

15 (a) Class II felony if the enterprise, or any other enterprise in
16 which the defendant was in a leadership position:

17 (i) Included three or fewer persons; or

18 (ii) Had at least two million dollars but less than five million
19 dollars in gross receipts during any twelve-month period of the
20 enterprise's existence;

21 (b) Class ID felony if the enterprise, or any other enterprise in
22 which the defendant was in a leadership position:

23 (i) Included four or more persons but fewer than ten persons; or

24 (ii) Had at least five million dollars but less than ten million
25 dollars in gross receipts during any twelve-month period of the
26 enterprise's existence; and

27 (c) Class IC felony if the enterprise, or any other enterprise in
28 which the defendant was in a leadership position:

29 (i) Included ten or more persons; or

30 (ii) Had at least ten million dollars in gross receipts during any
31 twelve-month period of the enterprise's existence.

1 **Sec. 6.** In addition to the existing penalties available for a
2 violation of sections 3, 4, or 5 of this act, a sentencing court may
3 order forfeiture as provided in sections 28-1601 to 28-1603.

4 **Sec. 7.** Section 28-1601, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 28-1601 (1) For purposes of sections 28-1601 to 28-1603:

7 (a) Covered offense means a violation of the Child Pornography
8 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
9 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or section 3,
10 4, or 5 of this act;

11 (b) Electronic communication device has the same meaning as in
12 section 28-833; and

13 (c) Gambling device has the same meaning as in section 28-1101.

14 (2) (1) In addition to existing penalties for a violation of a
15 covered offense the Child Pornography Prevention Act, subsection (1) of
16 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
17 28-1105.01, or 28-1107, a court may order forfeiture of any money,
18 securities, negotiable instruments, firearms, conveyances, or electronic
19 communication devices; as defined in section 28-833, any equipment,
20 components, peripherals, software, hardware, or accessories related to
21 electronic communication devices; or any gambling devices as defined in
22 section 28-1101 if:

23 (a) The owner or possessor of the property has been convicted of a
24 covered offense violation of the Child Pornography Prevention Act,
25 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
26 28-1104, 28-1105, 28-1105.01, or 28-1107;

27 (b) The information charging such violation specifically requests
28 the forfeiture of property upon conviction and is prepared pursuant to
29 section 28-1602; and

30 (c) It The property is found by clear and convincing evidence that
31 such property was to have been derived from, used, or intended to be used

1 to facilitate a covered offense violation of the Child Pornography
2 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
3 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

4 (3) (2) Following the filing of an information charging a violation
5 of a covered offense the Child Pornography Prevention Act, subsection (1)
6 of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,
7 28-1105, 28-1105.01, or 28-1107 that specifically seeks forfeiture of any
8 property listed in subsection (2) (1) of this section, the defendant may
9 request a pretrial hearing to determine the existence of probable cause
10 to believe that the property specifically sought to be forfeited was
11 derived from, used, or intended to be used to facilitate a covered
12 offense violation of the Child Pornography Prevention Act, subsection (1)
13 of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,
14 28-1105, 28-1105.01, or 28-1107. The request for a hearing pursuant to
15 this section must be filed with the district court in which the criminal
16 proceeding is pending within thirty days after the filing of the
17 information.

18 (4)(a) (3) At any time after the filing of the information in
19 district court and prior to final disposition of the criminal case, any
20 person or entity, other than the defendant, with a claimed legal interest
21 in the property may petition to intervene in the district court with
22 jurisdiction over the criminal case for the specific and limited purpose
23 of demonstrating such person's his, her, or its legal interest in the
24 property and such person's his, her, or its lack of actual knowledge that
25 such property was derived from, used, or intended to be used to
26 facilitate a covered offense in violation of the Child Pornography
27 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
28 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

29 (b) In the petition to intervene, the intervening person or entity
30 shall, at a minimum, state facts demonstrating such person's his, her, or
31 its legal interest in the property and such person's his, her, or its

1 lack of actual knowledge regarding the use or intended use of the
2 property.

3 (5) Within thirty days after filing a motion to intervene, the
4 district court shall conduct an evidentiary hearing on the matter. At the
5 conclusion of such hearing, the court may order that any or all of the
6 property be returned to the intervening claimant after it is no longer
7 needed as evidence in the criminal case upon a showing by the claimant by
8 a preponderance of the evidence;

9 (a) That the claimant ~~that he, she, or it~~ has a legally recognized
10 interest in the property; and

11 (b) Either ~~either~~ (i) that such property was acquired by the
12 claimant in good faith and the claimant ~~he, she, or it~~ did not have
13 actual knowledge that such property was derived from, used, or intended
14 to be used to facilitate a covered offense violation of the Child
15 Pornography Prevention Act, subsection (1) of section 28-416, or section
16 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or
17 (ii) that the property seized was not derived from, used, or intended to
18 be used to facilitate a covered offense violation of the Child
19 Pornography Prevention Act, subsection (1) of section 28-416, or section
20 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

21 (6) The court, on its own motion or upon application of the
22 ~~intervening~~ claimant, may permit the claimant ~~such person~~ to proceed in
23 forma pauperis under sections 25-2301 to 25-2310. The court, on its own
24 motion or upon application of the intervening claimant, may appoint
25 counsel to represent the claimant ~~such person~~ if the claimant ~~such person~~
26 is indigent. If the claimant ~~he or she~~ asserts indigency, the court shall
27 make a reasonable inquiry to determine the claimant's ~~such person's~~
28 financial condition and may require the claimant ~~him or her~~ to execute an
29 affidavit of indigency for filing with the clerk of the court.

30 (7) ~~(4)~~ After conviction but prior to sentencing for a covered
31 offense violation of the Child Pornography Prevention Act, subsection (1)

1 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
2 ~~28-1105, 28-1105.01, or 28-1107~~ in cases in which the prosecuting
3 authority has specifically requested forfeiture of property, the district
4 court shall conduct an evidentiary hearing at which the prosecuting
5 authority must prove by clear and convincing evidence what specific
6 amount or portion of the property specifically enumerated in the criminal
7 information was derived from, used, or intended for use in furtherance of
8 a covered offense violation of the Child Pornography Prevention Act,
9 ~~subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,~~
10 ~~28-1104, 28-1105, 28-1105.01, or 28-1107.~~ At the conclusion of such
11 hearing, the court shall make specific findings of fact indicating what
12 amount or portion of the property sought to be forfeited by the state was
13 derived from, used, or intended to be used to facilitate a covered
14 offense violation of the Child Pornography Prevention Act, ~~subsection (1)~~
15 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
16 ~~28-1105, 28-1105.01, or 28-1107.~~ The court shall order any amount or
17 portion of the property not proven by the state to be derived from, used,
18 or intended to be used to facilitate a covered offense violation of the
19 Child Pornography Prevention Act, ~~subsection (1) of section 28-416, or~~
20 ~~section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or~~
21 ~~28-1107~~ or the fair market value of the legally recognized interest in
22 such property be returned to its rightful and legal owner or interest
23 holder.

24 (8)(a) ~~(5)(a)~~ The court shall order that any amount or portion of
25 property proven by the state by clear and convincing evidence to be
26 derived from, used, or intended to be used to facilitate a covered
27 offense violation of the Child Pornography Prevention Act, ~~subsection (1)~~
28 ~~of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,~~
29 ~~28-1105, 28-1105.01, or 28-1107~~ be forfeited to the state and disposition
30 of such property be conducted in accordance with this subsection and
31 section 28-1439.02 at such time as the property is no longer required as

1 evidence in any criminal proceeding.

2 (b) As part of any disposition of property, the court may order
3 that: (i) Any money, securities, or negotiable instruments be distributed
4 as provided in Article VII, section 5, of the Constitution of Nebraska;
5 (ii) any conveyances be sold or put to official use by the seizing agency
6 for a period of not more than one year and when such property is no
7 longer necessary for official use or at the end of two years, whichever
8 comes first, such property shall be sold. Proceeds from the sale of any
9 conveyance shall be distributed as provided in Article VII, section 5, of
10 the Constitution of Nebraska; (iii) any electronic communication devices
11 ~~as defined in section 28-833~~, any equipment, components, peripherals,
12 software, hardware, or accessories related to electronic communication
13 devices, or any gambling devices ~~as defined in section 28-1101~~ be
14 destroyed by a law enforcement agency; and (iv) the disposition of
15 firearms shall be effectuated pursuant to section 29-820.

16 (c) As used in this subsection, official use means use directly in
17 connection with enforcement of the Child Pornography Prevention Act, the
18 Uniform Controlled Substances Act, or section ~~28-813.01~~, 28-1102,
19 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

20 (9) ~~(6)~~ Any money, securities, negotiable instruments, firearms,
21 conveyances, or electronic communication devices; ~~as defined in section~~
22 ~~28-833~~, any equipment, components, peripherals, software, hardware, or
23 accessories related to electronic communication devices; ~~or~~ or any
24 gambling devices ~~as defined in section 28-1101~~ may be forfeited pursuant
25 to a plea agreement between the state and the defendant subject to notice
26 to or approval of the court.

27 (10) ~~(7)~~ Subdivision (2)(a) ~~(1)(a)~~ of this section does not apply if
28 the owner or possessor of the property dies or is removed from the United
29 States before charges are filed or a conviction obtained.

30 (11) ~~(8)~~ Subdivision (2)(b) ~~(1)(b)~~ of this section does not apply if
31 the owner or possessor of the property dies or is removed from the United

1 States before charges are filed so long as the statute of limitations for
2 a covered offense violation of the Child Pornography Prevention Act,
3 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
4 28-1104, 28-1105, 28-1105.01, or 28-1107 has not expired.

5 (12) ~~(9)~~ Subdivision (2)(a) ~~(1)(a)~~ of this section does not apply if
6 the owner or possessor of the property is unknown or incapable of being
7 determined for some legitimate reason or fails to appear in court as
8 ordered after prosecution for a covered offense violation of the Child
9 Pornography Prevention Act, subsection (1) of section 28-416, or section
10 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 is
11 commenced and is not apprehended within twelve months after the failure
12 to appear order was issued by the court.

13 (13) ~~(10)~~ If the owner or possessor of the property fails to appear
14 in court as ordered after prosecution for a covered offense violation of
15 the Child Pornography Prevention Act, subsection (1) of section 28-416,
16 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or
17 28-1107 is commenced but appears or is apprehended within twelve months
18 after the failure to appear order was issued by the court, the court may
19 order the owner or possessor of the property, as a part of any sentence
20 imposed for either the failure to appear or the conviction for a covered
21 offense of the Child Pornography Prevention Act, subsection (1) of
22 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
23 28-1105.01, or 28-1107, to pay a storage fee of one hundred dollars per
24 month for each month the property was held following the issuance of the
25 failure to appear order.

26 **Sec. 8.** Section 28-1602, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 28-1602 (1) The prosecuting authority must specifically plead its
29 intent to seek forfeiture of any property upon a conviction for a covered
30 offense violation of the Child Pornography Prevention Act, subsection (1)
31 of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,

1 ~~28-1105, 28-1105.01, or 28-1107~~ in the same criminal information charging
2 the underlying covered offense ~~violation of the Child Pornography~~
3 ~~Prevention Act, subsection (1) of section 28-416, or section 28-813.01,~~
4 ~~28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.~~

5 (2) In pleading its intent to seek forfeiture, the information shall
6 specifically (a) state the date the property was seized, (b) state the
7 place the property was seized from, (c) describe the property sought to
8 be forfeited, and (d) if known, state the name of the owner of the
9 property, the name of the person or persons in possession of the property
10 or in physical proximity to the property when it was seized, and the name
11 of any other person or entity that may have a claim or interest in the
12 property.

13 **Sec. 9.** Original sections 28-618, 28-1601, and 28-1602, Reissue
14 Revised Statutes of Nebraska, and section 28-101, Revised Statutes
15 Cumulative Supplement, 2024, are repealed.