

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1990
103RD GENERAL ASSEMBLY

4454H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 570.010, RSMo, and to enact in lieu thereof two new sections relating to the offense of gift card fraud, with penalty provisions.

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

Section A. Section 570.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 570.010 and 570.137, to read as follows:

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) "**Closed-loop gift card**", a card, code, or device that is:
 - (a) **Issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified monetary amount, regardless of whether that amount may be increased or reloaded in exchange for payment; and**
 - (b) **Redeemable upon presentation by a consumer at a single merchant or group of affiliated merchants;**
- (5) "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

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.

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

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

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

28 ~~[(5)]~~ (6) "Credit device", a writing, card, code, number or other device purporting to
29 evidence an undertaking to pay for property or services delivered or rendered to or upon the
30 order of a designated person or bearer;

31 ~~[(6)]~~ (7) "Dealer", a person in the business of buying and selling goods;

32 ~~[(7)]~~ (8) "Debit device", a writing, card, code, number or other device, other than a
33 check, draft or similar paper instrument, by the use of which a person may initiate an
34 electronic fund transfer, including but not limited to devices that enable electronic transfers of
35 benefits to public assistance recipients;

36 ~~[(8)]~~ (9) "Deceit or deceive", making a representation which is false and which the
37 actor does not believe to be true and upon which the victim relies, as to a matter of fact, law,
38 value, intention or other state of mind, or concealing a material fact as to the terms of a
39 contract or agreement. The term "deceit" does not, however, include falsity as to matters
40 having no pecuniary significance, or puffing by statements unlikely to deceive ordinary
41 persons in the group addressed. Deception as to the actor's intention to perform a promise
42 shall not be inferred from the fact alone that he did not subsequently perform the promise;

43 ~~[(9)]~~ (10) "Deprive":

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

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

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

48 ~~[(10)]~~ (11) "Electronic benefits card" or "EBT card", a debit card used to access food
49 stamps or cash benefits issued by the department of social services;

50 ~~[(11)]~~ (12) "Financial institution", a bank, trust company, savings and loan
51 association, or credit union;

52 ~~[(12)]~~ (13) "Food stamps", the nutrition assistance program in Missouri that provides
53 food and aid to low-income individuals who are in need of benefits to purchase food operated
54 by the United States Department of Agriculture (USDA) in conjunction with the department
55 of social services;

56 ~~[(13)]~~ **(14)** "Forcibly steals", a person, in the course of stealing, uses or threatens the
57 immediate use of physical force upon another person for the purpose of:

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

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

62 **(15) "Gift card", a physical or digital closed-loop gift card or open-loop gift card**
63 **that is either activated or inactivated;**

64 **(16) "Gift card holder", any person or party to whom a physical or virtual gift**
65 **card is issued through a purchase, or any person or party who receives a gift card from**
66 **a willing party;**

67 **(17) "Gift card issuer", any person who issues a gift card or the agent of that**
68 **person with respect to a gift card;**

69 **(18) "Gift card redemption information", information unique to each gift card**
70 **that allows the gift card holder to access, transfer, or spend the funds on that gift card;**

71 **(19) "Gift card seller", a merchant that is engaged in the business of selling**
72 **open-loop or closed-loop gift cards to consumers with the approval or authorization of**
73 **the gift card issuer;**

74 ~~[(14)]~~ **(20)** "Internet service", an interactive computer service or system or an
75 information service, system, or access software provider that provides or enables computer
76 access by multiple users to a computer server, and includes, but is not limited to, an
77 information service, system, or access software provider that provides access to a network
78 system commonly known as the internet, or any comparable system or service and also
79 includes, but is not limited to, a world wide web page, newsgroup, message board, mailing
80 list, or chat area on any interactive computer service or system or other online service;

81 ~~[(15)]~~ **(21)** "Means of identification", anything used by a person as a means to
82 uniquely distinguish himself or herself;

83 ~~[(16)]~~ **(22)** "Merchant", a person who deals in goods of the kind or otherwise by his or
84 her occupation holds oneself out as having knowledge or skill peculiar to the practices or
85 goods involved in the transaction or to whom such knowledge or skill may be attributed by
86 his or her employment of an agent or broker or other intermediary who by his or her
87 occupation holds oneself out as having such knowledge or skill;

88 ~~[(17)]~~ **(23)** "Misabeled", varying from the standard of truth or disclosure in labeling
89 prescribed by statute or lawfully promulgated administrative regulations of this state lawfully
90 filed, or if none, as set by commercial usage; or represented as being another person's product,
91 though otherwise accurately labeled as to quality and quantity;

92 **(24) "Open-loop gift card", a card, code, or device that is:**

93 **(a) Issued to a consumer on a prepaid basis primarily for personal, family, or**
94 **household purposes in a specified monetary amount, regardless of whether that amount**
95 **may be increased or reloaded in exchange for payment;**

96 **(b) Branded with a major payment network; and**

97 **(c) Redeemable upon presentation at multiple unaffiliated merchants for goods**
98 **or services;**

99 ~~[(18)]~~ **(25)** "Pharmacy", any building, warehouse, physician's office, hospital,
100 pharmaceutical house or other structure used in whole or in part for the sale, storage, or
101 dispensing of any controlled substance as defined in chapter 195;

102 ~~[(19)]~~ **(26)** "Property", anything of value, whether real or personal, tangible or
103 intangible, in possession or in action, and shall include but not be limited to the evidence of a
104 debt actually executed but not delivered or issued as a valid instrument;

105 ~~[(20)]~~ **(27)** "Public assistance benefits", anything of value, including money, food,
106 EBT cards, food stamps, commodities, clothing, utilities, utilities payments, shelter, drugs and
107 medicine, materials, goods, and any service including institutional care, medical care, dental
108 care, child care, psychiatric and psychological service, rehabilitation instruction, training,
109 transitional assistance, or counseling, received by or paid on behalf of any person under
110 chapters 198, 205, 207, 208, 209, and 660, or benefits, programs, and services provided or
111 administered by the Missouri department of social services or any of its divisions;

112 ~~[(21)]~~ **(28)** "Services" includes transportation, telephone, electricity, gas, water, or
113 other public service, cable television service, video service, voice over internet protocol
114 service, or internet service, accommodation in hotels, restaurants or elsewhere, admission to
115 exhibitions and use of vehicles;

116 ~~[(22)]~~ **(29)** "Stealing-related offense", federal and state violations of criminal statutes
117 against stealing, robbery, or buying or receiving stolen property and shall also include
118 municipal ordinances against the same if the offender was either represented by counsel or
119 knowingly waived counsel in writing and the judge accepting the plea or making the findings
120 was a licensed attorney at the time of the court proceedings;

121 ~~[(23)]~~ **(30)** "Teller machine", an automated teller machine (ATM) or interactive teller
122 machine (ITM) is a remote computer terminal owned or controlled by a financial institution
123 or a private business that allows individuals to obtain financial services including obtaining
124 cash, transferring or transmitting money or digital currencies, payment of bills, or loading
125 money or digital currency to a payment card or other device without physical in-person
126 assistance from another person. "Teller machine" does not include personally owned
127 electronic devices used to access financial services;

128 ~~[(24)]~~ **(31)** "Video service", the provision of video programming provided through
129 wireline facilities located at least in part in the public right-of-way without regard to delivery

130 technology, including internet protocol technology whether provided as part of a tier, on
131 demand, or a per-channel basis. This definition includes cable service as defined by 47
132 U.S.C. Section 522(6), but does not include any video programming provided by a
133 commercial mobile service provider as "commercial mobile service" is defined in 47 U.S.C.
134 Section 332(d), or any video programming provided solely as part of and via a service that
135 enables users to access content, information, [~~electronic mail~~] **email**, or other services offered
136 over the public internet, and includes microwave television transmission, from a multipoint
137 distribution service not capable of reception by conventional television receivers without the
138 use of special equipment;

139 [~~(25)~~] **(32)** "Voice over internet protocol service", a service that:

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

145 [~~(26)~~] **(33)** "Writing" includes printing, any other method of recording information,
146 money, coins, negotiable instruments, tokens, stamps, seals, credit cards, badges, trademarks
147 and any other symbols of value, right, privilege or identification.

**570.137. 1. A person commits the offense of gift card fraud if he or she
2 knowingly:**

- 3 **(1) Alters or tampers with a gift card or its packaging;**
4 **(2) Devises a scheme to obtain a gift card or gift card redemption information**
5 **from a gift card holder, gift card issuer, or gift card seller by means of deceit; or**
6 **(3) Uses, for the purpose of obtaining money, goods, services, or anything else of**
7 **value, a gift card or gift card redemption information that has been obtained in**
8 **violation of this subsection.**

9 **2. The offense of gift card fraud is a class C felony if the value of the gift card;**
10 **gift card redemption information; or money, goods, services, or other thing of value**
11 **obtained as a result of violating subsection 1 of this section is twenty-five thousand**
12 **dollars or more.**

13 **3. The offense of gift card fraud is a class D felony if the value of the gift card;**
14 **gift card redemption information; or money, goods, services, or other thing of value**
15 **obtained as a result of violating subsection 1 of this section is seven hundred fifty dollars**
16 **or more but less than twenty-five thousand dollars.**

17 **4. The offense of gift card fraud is a class A misdemeanor if the value of the gift**
18 **card; gift card redemption information; or money, goods, services, or other thing of**
19 **value obtained as a result of violating subsection 1 of this section is less than seven**

20 **hundred fifty dollars. For the purpose of determining the value of a gift card under this**
21 **section, "value" shall mean the greatest amount of economic loss the owner of the**
22 **property might reasonably suffer, including, in the case of a gift card, the full monetary**
23 **face value or potential value for variable load gift cards.**

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