

ASSEMBLY, No. 3411

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Co-Sponsored by:

**Assemblywomen Jasey, Jimenez, Assemblymen Mejia, Tully and
Assemblywoman Swain**

SYNOPSIS

Criminalizes failure to return erroneous person-to-person electronic payments following proper notification.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/24/2020)

1 AN ACT concerning theft of property and amending N.J.S.2C:20-1
2 and N.J.S.2C:20-6.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:20-1 is amended to read as follows:

8 2C:20-1. Definitions. In chapters 20 and 21, unless a different
9 meaning plainly is required:

10 a. "Deprive" means: (1) to withhold or cause to be withheld
11 property of another permanently or for so extended a period as to
12 appropriate a substantial portion of its economic value, or with
13 purpose to restore only upon payment of reward or other
14 compensation; or (2) to dispose or cause disposal of the property so
15 as to make it unlikely that the owner will recover it.

16 b. "Fiduciary" means an executor, general administrator of an
17 intestate, administrator with the will annexed, substituted
18 administrator, guardian, substituted guardian, trustee under any
19 trust, express, implied, resulting or constructive, substituted trustee,
20 executor, conservator, curator, receiver, trustee in bankruptcy,
21 assignee for the benefit of creditors, partner, agent or officer of a
22 corporation, public or private, temporary administrator,
23 administrator, administrator pendente lite, administrator ad
24 prosequendum, administrator ad litem or other person acting in a
25 similar capacity. "Fiduciary" shall also include an employee or an
26 agent of a cargo carrier, as the term is defined in subsection w. of
27 this section, while acting in that capacity, or an independent
28 contractor providing services to a cargo carrier as that term is
29 defined in subsection w. of this section.

30 c. "Financial institution" means a bank, insurance company,
31 credit union, savings and loan association, investment trust or other
32 organization held out to the public as a place of deposit of funds or
33 medium of savings or collective investment.

34 d. "Government" means the United States, any state, county,
35 municipality, or other political unit, or any department, agency or
36 subdivision of any of the foregoing, or any corporation or other
37 association carrying out the functions of government.

38 e. "Movable property" means property the location of which
39 can be changed, including things growing on, affixed to, or found in
40 land, and documents, although the rights represented thereby have
41 no physical location. "Immovable property" is all other property.

42 f. "Obtain" means: (1) in relation to property, to bring about a
43 transfer or purported transfer of a legal interest in the property,
44 whether to the obtainer or another; or (2) in relation to labor or
45 service, to secure performance thereof.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. "Property" means anything of value, including real estate,
2 tangible and intangible personal property, trade secrets, contract
3 rights, choses in action and other interests in or claims to wealth,
4 admission or transportation tickets, captured or domestic animals,
5 food and drink, electric, gas, steam or other power, financial
6 instruments, information, data, and computer software, in either
7 human readable or computer readable form, copies or originals.

8 h. "Property of another" includes property in which any person
9 other than the actor has an interest which the actor is not privileged
10 to infringe, regardless of the fact that the actor also has an interest
11 in the property and regardless of the fact that the other person might
12 be precluded from civil recovery because the property was used in
13 an unlawful transaction or was subject to forfeiture as contraband.
14 Property in possession of the actor shall not be deemed property of
15 another who has only a security interest therein, even if legal title is
16 in the creditor pursuant to a conditional sales contract or other
17 security agreement.

18 i. "Trade secret" means the whole or any portion or phase of
19 any scientific or technical information, design, process, procedure,
20 formula or improvement which is secret and of value. A trade
21 secret shall be presumed to be secret when the owner thereof takes
22 measures to prevent it from becoming available to persons other
23 than those selected by the owner to have access thereto for limited
24 purposes.

25 j. "Dealer in property" means a person who buys and sells
26 property as a business.

27 k. "Traffic" means:

28 (1) To sell, transfer, distribute, dispense or otherwise dispose of
29 property to another person; or

30 (2) To buy, receive, possess, or obtain control of or use
31 property, with intent to sell, transfer, distribute, dispense or
32 otherwise dispose of such property to another person.

33 l. "Broken succession of title" means lack of regular
34 documents of purchase and transfer by any seller except the
35 manufacturer of the subject property, or possession of documents of
36 purchase and transfer by any buyer without corresponding
37 documents of sale and transfer in possession of seller, or possession
38 of documents of sale and transfer by seller without corresponding
39 documents of purchase and transfer in possession of any buyer.

40 m. "Person" includes any individual or entity or enterprise, as
41 defined herein, holding or capable of holding a legal or beneficial
42 interest in property.

43 n. "Anything of value" means any direct or indirect gain or
44 advantage to any person.

45 o. "Interest in property which has been stolen" means title or
46 right of possession to such property.

47 p. "Stolen property" means property that has been the subject
48 of any unlawful taking.

1 q. "Enterprise" includes any individual, sole proprietorship,
2 partnership, corporation, business trust, association, or other legal
3 entity, and any union or group of individuals associated in fact,
4 although not a legal entity, and it includes illicit as well as licit
5 enterprises and governmental as well as other entities.

6 r. "Attorney General" includes the Attorney General of New
7 Jersey, his assistants and deputies. The term shall also include a
8 county prosecutor or his designated assistant prosecutor, if a county
9 prosecutor is expressly authorized in writing by the Attorney
10 General to carry out the powers conferred on the Attorney General
11 by this chapter.

12 s. "Access device" means property consisting of any telephone
13 calling card number, credit card number, account number, mobile
14 identification number, electronic serial number, personal
15 identification number, or any other data intended to control or limit
16 access to telecommunications or other computer networks in either
17 human readable or computer readable form, either copy or original,
18 that can be used to obtain telephone service. Access device also
19 means property consisting of a card, code or other means of access
20 to an account held by a financial institution, or any combination
21 thereof, that may be used by the account holder for the purpose of
22 initiating electronic fund transfers.

23 t. "Defaced access device" means any access device, in either
24 human readable or computer readable form, either copy or original,
25 which has been removed, erased, defaced, altered, destroyed,
26 covered or otherwise changed in any manner from its original
27 configuration.

28 u. "Domestic companion animal" means any animal commonly
29 referred to as a pet or one that has been bought, bred, raised or
30 otherwise acquired, in accordance with local ordinances and State
31 and federal law for the primary purpose of providing
32 companionship to the owner, rather than for business or agricultural
33 purposes.

34 v. "Personal identifying information" means any name, number
35 or other information that may be used, alone or in conjunction with
36 any other information, to identify a specific individual and includes,
37 but is not limited to, the name, address, telephone number, date of
38 birth, social security number, official State issued identification
39 number, employer or taxpayer number, place of employment,
40 employee identification number, demand deposit account number,
41 savings account number, credit card number, mother's maiden
42 name, unique biometric data, such as fingerprint, voice print, retina
43 or iris image or other unique physical representation, or unique
44 electronic identification number, address or routing code of the
45 individual.

46 w. "Cargo carrier" means: (1) any business or establishment
47 regularly operating for the purpose of conveying goods or property
48 for compensation from one place to another by road, highway, rail,

1 water or air, by any means including but not limited to any pipeline
2 system, railroad car, motor truck, truck, trailer, semi-trailer,
3 commercial motor vehicle or other vehicle, any steamboat, vessel or
4 aircraft, and any business or establishment regularly engaged in the
5 temporary storage of goods or property incident to further
6 distribution of the goods or property elsewhere for commercial
7 purposes, including but not limited to businesses or establishments
8 operating a tank or storage facility, warehouse, terminal, station,
9 station house, platform, depot, wharf, pier, or from any ocean,
10 intermodal, container freight station or freight consolidation
11 facility; or (2) any business or establishment that conveys goods or
12 property which it owns or has title to, from one place to another, by
13 road, highway, rail, water or air by any means including but not
14 limited to any pipeline system, railroad car, motor truck, truck,
15 trailer, semi-trailer, commercial motor vehicle or other vehicle, any
16 steamboat, vessel or aircraft, and including the storage and
17 warehousing of goods and property incidental to their conveyance
18 from one place to another.

19 x. "Payment processor" means any person who acts as a
20 payment processor to facilitate the purchase of, or payment of a bill
21 for, a good or service through a clearance and settlement system by
22 agreement with the creditor or seller. A payment processor:

23 (1) facilitates the purchase of goods or services, or the payment
24 of bills for goods or services other than money transmission itself;
25 and

26 (2) provides its services pursuant to a formal agreement with, at
27 minimum, the seller or creditor that provided the goods or services
28 and receives the funds.

29 y. "Individual" means a natural person.

30 (cf: P.L.2013, c.58, s.1)

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32 2. N.J.S.2C:20-6 is amended to read as follows:

33 2C:20-6. Theft of Property Lost, Mislaid, or Delivered by
34 Mistake.

35 a. A person who comes into control of property of another that
36 he knows to have been lost, mislaid, or delivered under a mistake as
37 to the nature or amount of the property or the identity of the
38 recipient is guilty of theft if, knowing the identity of the owner and
39 with purpose to deprive said owner thereof, he converts the property
40 to his own use.

41 b. An individual who erroneously receives an electronic
42 payment from another individual through a payment processor and
43 who was properly notified that the payment was erroneous, and
44 does not return, within 30 days of notification, the funds transferred
45 to the sender, shall be guilty of theft under subsection a. of this
46 section.

47 (cf: N.J.S.2C:20-6)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill provides that the failure to return an erroneous
7 electronic payment between individuals to the sender is theft.
8 Where an individual receives an electronic payment from another
9 individual through a payment processor that was delivered under a
10 mistake as to the nature or amount of the transfer or the identity of
11 the recipient, the failure to return the payment to the sender
12 constitutes theft where the recipient was notified that the payment
13 was erroneous. Additionally, the bill adds a definition of “payment
14 processor” to the chapter on theft offenses.