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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 1295
RELATING TO: Payment-Card Transactions
SPONSOR(S): Council for Smarter Government and Representative(s) Waters
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 11 NAYS 0
 - (2) BANKING YEAS 8 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill prohibits a merchant from printing more than the last five digits of a credit card or printing the expiration date of a credit card on an electronically printed receipt provided to the cardholder. The bill provides a phase-in of the prohibition in order to give existing businesses an opportunity to update the businesses' cash registers or similar equipment.

The bill also provides an exemption for transactions in which the sole means of recording the account number or expiration date is by handwriting or by an imprint or copy of the card.

The bill authorizes state attorneys to enforce the prohibitions established herein for those violations occurring in or affecting the judicial circuit under that office's jurisdiction; county courts have jurisdiction.

The bill is expected to have no impact on state revenue collections or expenditures.

The bill provides that the act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill creates a new statutory prohibition, a noncriminal violation, and authorizes the imposition of fines for violations.

B. PRESENT SITUATION:

Identity Theft

In 1998, the United States Congress enacted the Identity Theft and Assumption Deterrence Act. The federal act makes it a federal crime when someone:

“...knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of federal law, or that constitutes a felony under any applicable state or local law” (18 U.S.C. s. 1028(a)(7)).

In addition, several other federal laws prohibit various types of identity theft or fraud, including identification fraud (18 U.S.C. s. 1028), credit card fraud (18 U.S.C. s. 1029), mail fraud (18 U.S.C. s. 1341), and financial institution fraud (18 U.S.C. s. 1344).

Chapter 99-335, Laws of Florida, established identity theft as a criminal offense in Florida. Section 817.568(2)(a), F.S., provides that any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree.

During the 2000 Regular Session, the Legislature directed the State Technology Office to create a Task Force on Privacy and Technology (s. 22, ch. 2000-164, L.O.F.). Among other duties, the task force was charged with studying and making policy recommendations concerning technology fraud, including, but not limited to, the illegal use of citizens’ identities and credit. In its policy recommendations, the task force recognized that identity theft is one of the fastest growing crimes in the United States, having affected almost 500,000 victims in 1998 and expected to affect more than 750,000 victims in 2001.¹

¹ Florida State Technology Office, Task Force on Privacy & Technology, *Executive Summary of Policy Recommendations*

One of the task force's recommendations included increasing criminal penalties for identity theft crimes. During the 2001 Regular Session, the Legislature increased the criminal penalty for identity theft cases in which the victim's injury from the fraudulent use of personal identification information is \$75,000 or more (ch. 2001-233, L.O.F.). In these cases, the criminal penalty was increased to a felony of the second degree (s. 817.568(2)(b), F.S.).

The costs associated with identity theft are enormous. A recent report of the statewide grand jury on identity theft estimates that the nationwide cost is \$2.5 billion and is projected to grow by 30 percent per year reaching \$8 billion by the year 2005.² According to the Federal Trade Commission's Identity Theft Clearinghouse, California, Florida, New York, and Texas each had more than 4,000 complaints between November 1999 and June 2001.³ Nationally, about 50 percent of identify theft complaints are attributed to credit card fraud.

"Dumpster Diving"

To minimize the risk of identity theft, the Federal Trade Commission warns consumers to keep items with personal information in a safe place. The commission explains:⁴

"To thwart an identity thief who may pick through your trash or recycling bins to capture your personal information, tear or shred your charge receipts, copies of credit applications, insurance forms, physician statements, bank checks and statements that you are discarding, expired charge cards and credit offers you get in the mail."

Sorting through trash or recycling bins to collect personal identification information is commonly known as "dumpster diving." The Office of Statewide Prosecution within the Florida Department of Legal Affairs echoes the commission's warning:⁵

"You should also be aware that you do not need to lose your wallet or have anything tangible stolen, in order for someone to steal your identity. By simply failing to shred your confidential information, utility bills, credit card slips and other documents, it is easy for an identity thief to "dumpster dive" your garbage, and retrieve your most personal identifying information."

Credit cards, charge cards, debit cards, and other types of payment cards often contain the card's account number and expiration date. At least two states (California and Washington) have enacted legislation prohibiting merchants from providing electronically printed receipts to cardholders which contain more than the last five digits of a payment card's account number or a card's expiration date.

² Fla. 16th Statewide Grand Jury, *Identity Theft in Florida, First Interim Report of the Sixteenth Statewide Grand Jury*, Case No. SC 01-1095 (Fla. Jan. 10, 2002).

³ Federal Trade Commission, Identity Theft Clearinghouse, *Identity Theft Victim Complaint Data: Figures and Trends on Identity Theft, Nov. 1999 through June 2001*.

⁴ Federal Trade Commission, *ID Theft: When Bad Things Happen To Your Good Name*.

⁵ Office of Statewide Prosecution, Florida Department of Legal Affairs, *Identity Theft*.

C. EFFECT OF PROPOSED CHANGES:

The bill prohibits a merchant who accepts payment cards from printing more than the last five digits of a payment card's account number or printing a payment card's expiration date on an electronically printed receipt provided to the cardholder. The term "payment card" is defined to include credit cards, charge cards, debit cards, and any other cards that are issued to cardholders and that allow cardholders to obtain, purchase, or receive goods, services, money, or anything else of value from the merchant. The bill also provides definitions for the terms "cardholder" and "merchant."

The bill specifically exempts receipts from transactions in which the sole means of recording the payment card's account number or expiration date is by handwriting or by an imprint or copy of the payment card.

The bill imposes noncriminal penalties for violations by merchants. A first violation is subject to a \$250 fine, and a second or subsequent violation is subject to a \$1,000 fine. The Office of State Attorney is authorized to enforce these prohibitions for violations that occur within or affect the judicial circuit within the office's jurisdiction. Additionally, jurisdiction is placed in the county courts.

The bill provides an effective date of July 1, 2003, and applies prospectively to receipts printed by cash registers or other machines or devices that are first used on or after that date. The bill also delays implementation until July 1, 2005, for receipts printed by cash registers or other machines or devices that are first used before July 1, 2003.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates an undesignated section in the Florida Statutes.

Subsection (1) creates statutory definitions for the terms "cardholder," "merchant," and "payment card."

Subsection (2) prohibits a merchant from printing more than the last five digits of the payment card account number or the expiration date of the card on a customer's receipt. This prohibition does not apply to transactions in which the sole means of recording the account number or expiration date is by handwriting or by an imprint or copy of the card.

Subsection (3) provides for delayed implementation of these prohibitions.

Subsection (4) creates a noncriminal violation and authorizes a \$250 fine for a first violation and \$1,000 for a second or subsequent violation.

Subsection (5) grants enforcement authority to state attorneys for violations occurring in or affecting their jurisdiction and specifies county courts as the court of jurisdiction.

Section 2. Provides that the act will take effect July 1, 2003.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires electronically printed receipts from cash registers or other machines or devices to include no more than the last five digits of a payment card's account number and to exclude a payment card's expiration date. These prohibitions will require merchants who presently have or who purchase cash registers or machines without this capability to obtain software upgrades for the machines or, if certain machines are unable to be reprogrammed, replace the machines. The bill requires reprogramming or replacement of all cash registers or machines by July 1, 2005. These requirements also apply to cash registers or machines that are first used on or after July 1, 2003.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Business Regulation

The committee considered HB 1295 on February 12, 2002, adopted one amendment, and voted the bill favorably, 11 Yeas and 0 Nays.

The amendment, which is traveling with the bill, establishes authority for state attorneys to enforce the prohibitions [noncriminal civil penalties] contained in the bill and designates jurisdiction to the county courts.

Council on Smarter Government

The council voted, 12 Yeas and 0 Nays, to report this bill favorably as a committee substitute on February 26, 2002. The committee substitute is comprised of the bill as filed along with the amendment adopted by the Business Regulation Committee that provided enforcement authority.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Janet Clark Morris

Staff Director:

M. Paul Liepshutz

AS REVISED BY THE COMMITTEE ON BANKING:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Janet Clark Morris

Council Director:

Don Rubottom