

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7115    PCB SSC 08-06    Counterfeiting a Payment Instrument  
**SPONSOR(S):** Safety & Security Council; Adams  
**TIED BILLS:**    **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council	13 Y, 1 N	Fishbein/Davis	Havlicak
1) Policy & Budget Council	31 Y, 0 N	Leznoff	Hansen
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Currently, s. 831.28, F.S., provides that “it is unlawful to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have any counterfeit payment instrument in such person’s possession.”

This bill enhances the penalty from a third degree felony to a second degree felony for any person who commits such an offense. The bill will have the effect of increasing the maximum sentence that can be imposed for this offense from 5 years to 15 years.

This bill also modifies the ranking level for an offense of counterfeiting a payment instrument from a level 3 to a level 7 under the Criminal Punishment Code. This revises the lowest permissible sanction from a non-state prison sanction to 21 months in the Department of Corrections

It is expected that the bill will have a prison bed impact on the bill on the Department of Corrections. It is estimated that in Fiscal Year 2008-2009 there will be a recurring fiscal impact of \$91,103 and a non-recurring impact of \$2,781,448 in General Revenue. Cumulative costs through fiscal year through Fiscal Year 2012-13 are estimated at \$15,397,437.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will make it a second degree felony for a person to counterfeit a payment instrument with the intent to defraud, or to have a counterfeit payment instrument in their possession.

Promote personal responsibility: The bill makes it a second degree felony for these unlawful activities.

#### B. EFFECT OF PROPOSED CHANGES:

The Select Committee to Protect Personal Information (Select Committee) was created, pursuant to Rule 7.6, on August 2, 2007, and was directed to complete its work by March 4, 2008. The Select Committee held six meetings that focused on issues involving identity theft and government collection, retention, and disposal of personal information.

The Select Committee heard testimony from the Agency for Enterprise Information Technology, the Department of Highway Safety & Motor Vehicles, the Department of State, the Governor's Commission on Open Government Reform, and the Supreme Court Committee on Access to Court Records. The Select Committee also heard from private sector representatives regarding their use of government records and the information contained therein.

The Select Committee recommended the following statutory change relating to counterfeiting a payment instrument.

Currently, s. 831.28, F.S., provides that "it is unlawful to counterfeit<sup>1</sup> a payment instrument<sup>2</sup> with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have any counterfeit payment instrument in such person's possession."

This bill enhances the penalty to a second degree felony (from a third degree felony) for any person who commits such an offense<sup>3</sup>. The bill will have the effect of increasing the maximum sentence that can be imposed for this offense. The current statutes providing for the maximum sentences for felonies of the second and third degree are as follows:

- Felony of the third degree: by a term of imprisonment not exceeding five years.<sup>4</sup>
- Felony of the second degree: by a term of imprisonment not exceeding fifteen years.<sup>5</sup>

The Criminal Punishment Code is the state's sentencing policy for non-capital felony offenses. Under the code all felony offenses are ranked in level of severity from 1 (the least severe) to 10 (the most severe). Points are assigned to each severity level in the distinct areas of primary offense additional

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<sup>1</sup> S. 831.28, F.S., defines "counterfeit" to mean the manufacture of or arrangement to manufacture a payment instrument, as defined in s. 560.103, without the permission of the financial institution, account holder, or organization whose name, routing number, or account number appears on the payment instrument, or the manufacture of any payment instrument with a fictitious name, routing number or account number.

<sup>2</sup> "Payment instrument", as defined in s. 560.103(15), F.S., means a check, draft, warrant, money order, travelers check or other instrument or payment of money, whether or not negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

<sup>3</sup> Punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

<sup>4</sup> S. 775.082(3)(d), F.S.

<sup>5</sup> S. 775.082(3)(c), F.S.

offense and prior record. The code also scores other factors relevant at sentencing such as victim injury and probation violations. The score is computed pursuant to a formula established in statute and the score derives the lowest permissible sentence in months. This bill also amends s. 921.0022, F.S., by changing the ranking of the offense of counterfeiting a payment instrument from level 3 to level 7 in the offense severity ranking chart. Level 3 offenses provides for a non-state prison sanction absent other factors at sentencing under the Code. Level 7 offense absent other factors at sentencing provide for a lowest permissible sentence of 21 months under the Code.

C. SECTION DIRECTORY:

Section 1. Amends s. 831.28(2)(a), F.S., relating to counterfeiting a payment instrument.

Section 2. Amends s. 921.0022, F.S., relating to offense severity ranking chart.

Section 3. Provides effective date of October 1, 2008.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

On March 31, 2008, the Criminal Justice Impact Conference met and determined this bill's net impact on the inmate population would be an additional nine prison beds in FY 2008-09, and a cumulative bed projection of 131 beds over the next five years. The following is an outline of these projected costs.

<b>Fiscal Year</b>	<b>Projected Cumulative Beds</b>	<b>Annual Operating Costs</b>	<b>Annual Fixed Capital Costs</b>	<b>Total Annual Funds</b>	<b>Total Cumulative Funds</b>
2008-09	9	91,103	2,690,345	2,781,448	2,781,448
By 2012-13	131	6,810,781	8,586,656	15,397,437	15,397,437

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

None.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES