

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 652

INTRODUCER: Senator Crist

SUBJECT: Credit Cards/Fraudulently Taking or Using

DATE: March 30, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Erickson | Cannon | CJ | Favorable |
| 2. | _____ | _____ | JA | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Section 817.60, F.S., currently provides that it is a first degree misdemeanor to take a credit card from the person, possession, custody, or control of another without the cardholder’s consent or, with knowledge it has been so taken, receive the credit card with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder.

The bill increases the penalty for this offense from a first degree misdemeanor to a third degree felony.

This bill substantially amends s. 817.60, F.S.

II. Present Situation:

Section 817.60, F.S., punishes as a first degree misdemeanor¹ taking a credit card from the person, possession, custody, or control of another without the cardholder’s consent or, with knowledge it has been so taken, receiving the credit card with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder.

The statute further provides that “[t]aking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking,

¹ Section 817.60, F.S., specifies that the offense is subject to the penalties set forth in s. 817.60(1), F.S. Section 817.67(1), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a first degree misdemeanor. A first degree misdemeanor is generally punishable under ss. 775.082 and 775.083, F.S., by incarceration in a county jail not exceeding 1 year, a \$1,000 fine, or both.

common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.”

III. Effect of Proposed Changes:

Section 817.60, F.S., currently provides that it is a first degree misdemeanor to take a credit card from the person, possession, custody, or control of another without the cardholder’s consent or, with knowledge it has been so taken, receive the credit card with intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder.

The bill increases the penalty for this crime from a first degree misdemeanor to a third degree felony. Specifically, the bill provides that this offense is subject to the penalties set forth in s. 817.67(2), F.S. Section 817.67(2), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a third degree felony.² Therefore, as a result of this change, the maximum penalty increases from incarceration in a county jail not exceeding 1 year to imprisonment in a state prison not exceeding 5 years. The third degree felony is not listed in s. 921.002, F.S., the offense severity ranking chart of the Criminal Punishment Code. An unlisted third degree felony is assigned a Level 1 ranking pursuant to s. 921.0023, F.S. A first-time offender with a Level 1 felony as the primary offense and no additional offenses will score a non-prison sanction as the lowest permissible sentence, though the sentencing court is free to sentence up the maximum penalty.

The effective date of the bill is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

² A third degree felony is generally punishable under ss. 775.082 and 775.083, F.S., by imprisonment in a state prison not exceeding 5 years, a \$5,000 fine, or both.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill increases the penalty for the credit card offense in s. 817.60, F.S., from a first degree misdemeanor to a third degree felony ranked in Level 1 (see “Present Situation” section of this analysis). Therefore, as a result of this change, the maximum penalty increases from incarceration in a county jail not exceeding 1 year to imprisonment in a state prison not exceeding 5 years. The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation estimates that the bill will have an insignificant prison bed impact.³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³ See <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (click on “2009 Conference Results” link).