

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 339 Possession of Stolen Credit or Debit Cards

SPONSOR(S): Criminal Justice Subcommittee, Perman and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, mere possession of a stolen credit or debit card is not, per se, illegal. Section 817.60, F.S., contains several offenses relating to the unauthorized possession of a credit card, however all current offenses under this section require either proof of intent to use, sell, or transfer a stolen credit card or require a fraudulent intent in obtaining the credit card.

This bill provides that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent with the intent to impede the recovery of the credit or debit card by the cardholder.

The Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of HB 339. However, on March 17, 2010, CJIC determined that CS/HB 621, which contained similar provisions relating to unlawful possession of a credit or debit card, would have an insignificant impact on state prison beds.

The bill provides an effective date of October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 817.60(1), F.S., is contained within Part II of ch. 817, F.S., which is the 1967 "State Credit Card Crime Act."¹ This subsection provides criminal penalties for various crimes related to credit cards.²

Several offenses that are punishable as a first degree misdemeanor³ include:

- Taking⁴ a credit card from the person, possession, custody, or control of another without the cardholder's consent or, with knowledge the card has been so taken, receiving the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder;
- Receiving a credit card that is known to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retaining the card with the intent to use, sell, or transfer the card to another person other than the issuer or the cardholder;
- Selling or buying a credit card from a person other than the issuer;
- Obtaining a credit card as security for debt with intent to defraud; or
- Signing the credit card of another.⁵

Section 817.60, F.S., also provides a third degree felony⁶ penalty for more serious offenses relating to credit cards such as:

- Receiving two or more credit cards within a 12-month period issued in the names of different cardholders, which the person had reason to know were taken or retained under circumstances that constitute credit card theft;
- Possessing two or more counterfeit credit cards;
- Making a device or instrument that purports to be a credit card of a named issuer but which the issuer did not authorize; or
- Falsely embossing a credit card without authorization of the issuer.⁷

It is possible that possession of a stolen credit card could be prosecuted as theft under s. 812.014, F.S. Section 812.014(1), F.S., provides a person commits theft if he or she knowingly obtains the property of another with the intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.⁸

The penalties for a violation of s. 812.014, F.S., are generally tied to value of the stolen goods.⁹ The actual value of a credit card would likely be determined to be the value of the plastic used to make the

¹ Section 817.57, F.S.

² "Credit card" is defined to mean any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device." Section 817.58(4), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082, and 775.083, F.S.

⁴ Taking a credit card without consent includes obtaining the card by statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, or embezzlement or obtaining property through false pretense, false promise, or extortion. Section 817.60(1), F.S.

⁵ Section 817.60(1)-(4), F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a maximum \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁷ Section 817.60(5) and (6), F.S.

⁸ Section 812.014(1), F.S.

⁹ Section 812.014, F.S. If the value of the stolen property is \$100,000 or greater, the offense is punishable as a first degree felony; if the value of the stolen property is between \$20,000 and \$100,000, the offense is a second degree felony; if the value of the stolen

credit card, which would likely be under \$300 and thus prosecuted as a second degree misdemeanor^{10, 11}.

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property under Section 812.019(1), F.S. This section provides that a person commits a second degree felony¹² if the person traffics¹³ in or endeavors to traffic in property that he or she knew or should have known was stolen.

Effect of the Bill

The bill amends s. 817.60(1), F.S., to provide that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent and with the intent to impede the recovery of the credit or debit card by the cardholder.

The bill provides an effective date of October 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.60, F.S., relating to theft; obtaining credit card through fraudulent means.

Section 2. Provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not met to determine the fiscal impact of CS/HB 339. However, on March 17, 2010, CJIC determined that CS/HB 621, which contained similar provisions relating to unlawful possession of a credit or debit card, would have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

property is between \$300 and \$5,000, the offense is a third degree felony; if the value of the stolen goods is valued at between \$100 and \$300, the offense is a first degree misdemeanor; if the value of the stolen goods is valued at less than \$100, the offense is a second degree misdemeanor. Some property is listed specifically in s. 812.014, F.S. Theft of this specified property may be punished at a greater degree of punishment regardless of the value of the stolen items.

¹⁰ A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Sections 775.082, and 775.083, F.S.

¹¹ Section 812.014(3)(a), F.S.

¹² A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹³ "Traffic" is defined to mean to sell, transfer, distribute, dispense, or otherwise dispose of property, or to buy, receive possess, obtain control of, or use property with intent to sell, transfer, distribute, dispense, or otherwise dispose of such property. Section 812.012(8), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The term “debit card” is not defined in ch. 817, F.S. However in s. 817.58, F.S., “debit card” is included in the definition of the term “credit card” which is defined as “any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.”

Section 832.05, F.S., provides a definition for the term “debit card” as “a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may order, instruct, or authorize a financial institution to debit a demand deposit, savings deposit, or other asset account.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2011, the Criminal Justice Subcommittee adopted an amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment removes an exception for retailers.

This analysis is drafted to the Committee Substitute.