

FINAL BILL ANALYSIS

BILL #: CS/CS/HB 339

FINAL HOUSE FLOOR ACTION:

110 Y's 5 N's

SPONSOR: Rep. Perman

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 920

SUMMARY ANALYSIS

CS/CS/HB 339 passed the House on April 29, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-184, Laws of Florida, and becomes effective October 1, 2011.

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.

The 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 bill also specifies that this new offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen; or who possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

The Criminal Justice Impact Conference met on March 2, 2011, and determined this bill will have an insignificant impact on state prison beds.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

¹ Section 817.57, F.S.

² Section 817.58(4), F.S., defines “credit card” 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.”

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.

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 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 s. 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 also specifies that this new offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen; or who possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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 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 Section 812.012(8), F.S., defines "traffic" as "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."

2. Expenditures:

The Criminal Justice Impact Conference met on March 2, 2011, and determined this bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.