

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 920

INTRODUCER: Senator Ring

SUBJECT: Possession of Stolen Credit or Debit Cards

DATE: March 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			CM	
3.			AG	
4.				
5.				
6.				

I. Summary:

The bill makes it a third degree felony to knowingly possess, receive, or retain custody of a credit or debit card that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder.

The bill also specifies that this offense does not apply to a retailer that takes, accepts, retains, possesses, or processes a stolen credit or debit card if the retailer does so in the ordinary course of business and does not have actual knowledge that the card is stolen. The exception does not apply to a retail employee who has actual knowledge that the card is stolen.

This bill substantially amends section 817.60 of the Florida Statutes.

II. Present Situation:

Section 817.60, F.S., is part of Part II of ch. 817, F.S., which is the 1967 "State Credit Card Crime Act."¹ This statute provides criminal penalties² for various crimes relating to credit cards.³ The specific offenses are as follows:

¹ Section 817.57, F.S.

² The statute specifies that offenses are subject to the penalties set forth in s. 817.67(1), F.S. or s. 817.67(2), F.S., as applicable. 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 punishable by up to one year in county jail and a fine of up to \$1,000 may also be imposed. Sections 775.082 and 775.083, 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. A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000 may also be imposed. Sections 775.082 and 775.083, F.S.

- *Taking or retaining possession of a credit card taken*: First degree misdemeanor: Person takes a credit card from the possession, custody, or control of another person without the cardholder's consent or, with knowledge the credit card has been so taken, receives 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.⁴
- *Theft of a credit card lost, mislaid, or delivered by mistake*: First degree misdemeanor: Person receives a credit card that he or she knows to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retains the credit card with the intent to use, sell, or transfer the credit card to another person other than the issuer or the cardholder.⁵
- *Purchase or sale of another person's credit card*: First degree misdemeanor: Person other than the credit card issuer sells a credit card or buys a credit card from a person other than the issuer.⁶
- *Obtaining control of a credit card as security for a debt*: First degree misdemeanor: Person, with intent to defraud the credit card issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt.⁷
- *Dealing in another person's credit card*: Third degree felony: Person other than the credit card issuer, during any 12-month period, receives two or more credit cards issued in the name or names of different cardholders, which cards he or she has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of this part.⁸
- *Forgery of another person's credit card*: Third degree felony: Person, with intent to defraud a purported credit card issuer or a person or organization providing money, goods, services, or anything else of value or any other person, falsely makes, falsely embosses, or falsely alters in any manner a credit card or utters such a credit card or, with intent to defraud, has a counterfeit credit card or any invoice, voucher, sales draft, or other representation or manifestation of a counterfeit credit card in his or her possession, custody, or control.⁹
- *Signing another person's card*: First degree misdemeanor: Person other than the holder of a credit card or a person authorized by the cardholder, signs the credit card with the intent to

³ "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.

⁴ Section 817.60(1), F.S. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion. *Id.*

⁵ Section 817.60(2), F.S.

⁶ Section 817.60(3), F.S.

⁷ Section 817.60(4), F.S.

⁸ Section 817.60(5), F.S.

⁹ Section 817.60(6), F.S. A person other than an authorized credit card manufacturer or issuer who possesses two or more counterfeit credit cards is presumed to have violated this subsection. *Id.* A person falsely makes a credit card when he or she makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing or when he or she alters a credit card which was validly issued. *Id.* A person falsely embosses a credit card when, without the authorization of the named issuer, he or she completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder. *Id.*

defraud the credit card issuer or a person or organization providing money, goods, services, or anything else of value or any other person.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 817.60, F.S., to create a new subsection (8) which provides that a person who knowingly possesses, receives, or retains custody of a credit or debit card¹¹ that has been taken from the possession, custody, or control of another person without the cardholder's consent and with the intent to impede recovery of the card by the cardholder commits unlawful possession of a stolen credit or debit card and is subject to the penalties set forth in s. 817.67(2), F.S., which are third degree felony penalties: up to five years in state prison and a fine of up to \$5,000 may also be imposed.¹²

The bill also specifies that this offense does not apply to a retailer that takes, accepts, retains, possesses, or processes a stolen credit or debit card if the retailer does so in the ordinary course of business and does not have actual knowledge that the card is stolen. The exception does not apply to a retail employee who has actual knowledge that the card is stolen.

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.

B. Private Sector Impact:

None.

¹⁰ Section 817.60(7), F.S.

¹¹ "Debit card" is not a term defined in the bill, in s. 817.60, F.S., or in ch. 817, F.S. However, courts may look "to case law or related statutory provisions which define the term, and where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." *State v. Hagan*, 387 So.2d 943, 945 (Fla.1980). Staff's review of the Florida Statutes found many references to the term "debit card" without a definition of the term.

¹² Sections 775.082 and 775.083, F.S.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill has an insignificant prison bed impact because it creates an unranked third degree felony.¹³

VI. Technical Deficiencies:

The retailer exception at lines 28-35 of the bill does not track the elements of the act prohibited, and therefore could raise questions as to whether the retailer's actions are truly an exception from the act prohibited.

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.

¹³ "Unranked" is a descriptive term for a noncapital felony that is not specifically ranked in the offense severity ranking chart in s. 921.0022, F.S. If the felony is not ranked in the chart, it is ranked pursuant to s. 921.0023, F.S., based on its felony degree. An unranked third degree felony is a Level 1 offense. *Id.* A first-time offender convicted of only the unranked third degree felony would score a nonprison sanction as the lowest permissible sentence. Section 921.0024, F.S. Further, in this first-time offender scenario, a non prison sanction would be required unless the sentencing court made written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.