

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/SB 1198

INTRODUCER: Criminal Justice Committee and Senator DiCeglie

SUBJECT: Fraudulent Use of Gift Cards

DATE: March 21, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vaughan</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1198 creates s. 817.091, F.S., relating to the fraudulent use of gift cards to establish guidelines and penalties for fraudulent activities involving gift cards. It is a first degree misdemeanor¹ for a person with intent to defraud to:

- Acquire or retain possession of a gift card or of gift card redemption information without the consent of the cardholder, card issuer, or gift card seller.
- To alter or tamper with a gift card or its packaging.
- To devise a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of fraudulent pretenses.
- To use, for the purpose of obtaining money, goods, or services or anything else of value,² a gift card or gift card redemption information that has been obtained in violation of the above.

If the value of the money, goods, services or other things of value obtained as a result of the violation exceeds \$750, the person is guilty of a third degree felony.³

¹ A first degree misdemeanor is punishable by not more than one year in a county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

² The bill defines "value" as the greatest amount of economic loss the card issuer, gift card seller, or cardholder might reasonably suffer, including the full or maximum monetary face or load value of the gift card, regardless of whether the gift card has been activated.

³ A felony of the third degree is punishable by a term of imprisonment of 5 years, as provided in ss. 775.082, 775.083, and 775.083, F.S.

The bill may have a positive indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2025.

II. Present Situation:

Gift Cards

A gift card is a prepaid debit card that contains a specific amount of money available for use for a variety of purchases. Store gift cards are designed to be used at specific merchants or retailers, while general-use prepaid gift cards are not affiliated with any specific merchant and can also be used to withdraw cash at automated teller machines (ATMs).⁴

Gift Card Scams

According to a December 2020 analysis by the Federal Trade Commission (FTC), “About one in four who lost money to a fraud say they paid with a gift card. In fact, gift cards have topped the list of reported fraud payment methods every year since 2018. During that time, people reported losing a total of nearly \$245 million, with a median individual loss of \$840.” The FTC’s statistics exclude reports categorized as online shopping scams and come from consumer complaints directly to the FTC.⁵ Scammers tamper with gift cards in stores using handheld scanners to capture card information, then periodically check the balance by calling the retailer's 800 number. Once the card is activated, they either clone and create counterfeit cards, use the information to shop online, or divert the funds to their own cards, leaving the unsuspecting buyer with an empty gift card.⁶

In June 2023, the Alachua County Sheriff’s Office conducted a traffic stop and seized 1,764 gift cards that were reportedly altered and forged, with a value of \$158,600. Another 208 gift cards were reportedly found, but deputies could not determine whether they had been altered; the known value of those cards is \$10,500, but only 77 of the 208 have dollar amounts on the cards.⁷

Theft and Fraud

Theft and fraud are offenses that involve unlawfully taking or using someone else’s property and engaging in deceptive practices for gain or profit. These offenses are currently prosecuted under

⁴ Investopedia, *Gift Card: definition, types and scams to avoid*, available at <https://www.investopedia.com/terms/g/gift-card.asp> (last visited March 5, 2025).

⁵ Better Business Bureau, *Gift Card Payment Scams*, available at <https://www.bbb.org/all/scamstudies/gift-card-scams/gift-card-scams-full-study> (last visited March 5, 2025).

⁶ Better Business Bureau, *BBB Tip: Don't get scammed out of a gift card*, available at <https://www.bbb.org/article/news-releases/14400-dont-get-scammed-out-of-a-gift-card-this-season> (last visited March 3, 2025).

⁷ Alachua Chronicle, *Pair arrested with 1,764 fraudulent gift cards, may be part of organized ring*, available at <https://alachuachronicle.com/pair-arrested-with-1764-fraudulent-gift-cards-may-be-part-of-organized-ring/> (last visited March 5, 2025).

several different statutes including the Florida Communications Fraud Act,⁸ theft,⁹ and retail theft.¹⁰ The penalties vary depending on the severity of the crime.

Theft

Theft is generally punished in s. 812.014, F.S., which provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.¹¹

Generally, a person commits a third degree felony¹² crime of grand theft if the property stolen is valued at \$750 or more, but less than \$20,000.¹³ If the property stolen is \$20,000 or more, but less than \$100,000, the offender commits a second degree felony,¹⁴ and if the property stolen is \$100,000 or more, the offender commits a first degree felony.¹⁵ Other items listed under this section such as the theft of a firearm, a motor vehicle, or a stop sign, may also constitute grand theft.¹⁶

Theft of any property not specified is a second degree misdemeanor,¹⁷ and property stolen valued at \$100 or more but less than \$750 is a first degree misdemeanor.^{18, 19}

Retail Theft

Section 812.015, F.S., is specifically directed at punishing “retail theft,”²⁰ which the statute defines as “the taking possession of or carrying away of merchandise,²¹ property, money, or negotiable documents; altering or removing a label, universal product code, or price tag;

⁸ Section 817.034, F.S.

⁹ Section 812.014, F.S.

¹⁰ Section 812.015, F.S.

¹¹ Section 812.014(1), F.S.

¹² A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹³ Section 812.014(2)(c)1.-3., F.S.

¹⁴ Section 812.014(2)(b), F.S.

¹⁵ Section 812.014(2)(a)1., F.S.

¹⁶ Section 812.014(2)(c), F.S.

¹⁷ A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, as provided in s. 775.082 or s. 775.083, F.S.

¹⁸ Section 812.014(3)(a), F.S., Section 812.014(2)(f), F.S.

¹⁹ A first degree misdemeanor is punishable by not more than one year in a county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁰ Section 812.015, F.S.

²¹ “Merchandise” means “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” Section 812.015(1)(g), F.S.

transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant²² of possession, use, benefit, or full retail value.^{23, 24}

Section 812.015(8), F.S., provides that it is a third degree felony to commit retail theft, if the property stolen is valued at \$750 or more, and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 120-day period to determine the value of the property stolen and such value is \$750 or more;
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 120-day period is aggregated to determine the value of the stolen property and such value is \$750 or more;
- Individually, or in concert with one or more other persons, commits theft from more than one location within a 120-day period, in which the amount of each individual theft is aggregated to determine the value of the property stolen and such value is \$750 or more;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense and such value is \$750 or more;
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box and such value is \$750 or more;
- Individually, or in concert with one or more other persons, commits three or more retail thefts within a 120-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 120-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations; or
- Acts in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense.²⁵

Section 812.015(9), F.S., provides that it is a second degree felony if the person has committed specified acts of retail theft, and has previously been convicted of retail theft.

Section 812.015(10), F.S., provides that if a person commits retail theft in more than one judicial circuit within a 120-day period, the value of the stolen property resulting from the thefts in each

²² "Merchant" means "an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise." Section 812.015(1)(h), F.S.

²³ Section 812.015(1)(i), F.S.

²⁴ Section 812.015, F.S. defines "value of merchandise" as the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item.

²⁵ Section 812.015(8)(a)-(g), F.S.

judicial circuit may be aggregated, and the person must be prosecuted by the Office of the Statewide Prosecutor in accordance with s. 16.56, F.S.

Schemes to Defraud

Section 817.034(3)(d), F.S., defines “scheme to defraud” means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, endorsements of nonconsenting parties, or promises or willful misrepresentations of a future act.²⁶ Any person who engages in a scheme to defraud and obtains property thereby commits organized fraud, punishable as follows:

- If the amount of property obtained has an aggregate value²⁷ of \$50,000 or more, the person commits a first degree felony.²⁸
- If the amount of property obtained has an aggregate value²⁹ of \$20,000 or more, but less than \$50,000, the person commits a second degree felony.³⁰
- If the amount of property obtained has an aggregate value³¹ of less than \$20,000, the person commits a third degree felony.^{32,33}

Section 832.05(3), F.S., provides if any person, by act or scheme, cashes or deposits any item in a bank or depository with intent to defraud commits a third degree felony.³⁴

²⁶ Section 817.034(3)(d), F.S.

²⁷ Section 817.034, F.S., defines “value” as the value determined according to any of the following: the market value of the property at the time and place of the offense, or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense; the value of a written instrument that does not have a readily ascertainable market value, in the case of an instrument such as a check, draft, or promissory note, is the amount due or collectible or is, in the case of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument; the value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner, suffered by reason of losing an advantage over those who do not know of or use the trade secret; if the value of property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than \$300; amounts of value of separate properties obtained in one scheme to defraud, whether from the same person or from several persons, shall be aggregated in determining the grade of the offense under paragraph (4)(a).

²⁸ A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. When specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

²⁹ See *supra* note 28.

³⁰ A second degree felony is punishable by a term of imprisonment not exceeding 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³¹ See *supra* note 28.

³² A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

³³ Section 817.034(4)(a), F.S.

³⁴ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

III. Effect of Proposed Changes:

The bill creates s. 817.091, F.S., relating to the fraudulent use of gift cards and establishes guidelines and penalties for fraudulent activities involving gift cards. It is a first degree misdemeanor³⁵ for a person with intent to defraud to:

- Acquire or retain possession of a gift card or of gift card redemption information without the consent of the cardholder, card issuer, or gift card seller.
- To alter or tamper with a gift card or its packaging.
- To devise a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of fraudulent pretenses.
- To use, for the purpose of obtaining money, goods, or services or anything else of value, a gift card or gift card redemption information that has been obtained in violation of the above.

If the value of the money, goods, services or other things of value obtained as a result of the violation exceeds \$750, the person is guilty of a third degree felony.³⁶

Section 817.091, F.S., also provides definitions for the following terms:

- “Cardholder” means a person to whom a physical or virtual gift card is sold, gifted or issued following the authorized sale of a gift card;
- “Card issuer” means a person that issues a gift card or the agent of that person with respect to that card;
- “Gift card” as a card, code or device that is issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment, and that is redeemable upon presentation by a consumer at a single merchant, a group of affiliated merchants, or a group of unaffiliated merchants;
- “Gift card redemptive information” as information unique to each gift card which allows the cardholder to access, transfer, or spend the funds on that gift card;
- “Gift card seller” as a merchant that is engaged in the business of selling open-loop or closed-loop gift cards to consumers; and,
- “Value” as the greatest amount of economic loss the card issuer, gift card seller, or cardholder might reasonably suffer, including the full or maximum monetary face or load value of the gift card, regardless of whether the gift card has been activated.

The bill takes effect on October 1, 2025.

³⁵ A first degree misdemeanor is punishable by not more than one year in a county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³⁶ A felony of the third degree is punishable by a term of imprisonment of 5 years, as provided in ss. 775.082, 775.083, and 775.083, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (unquantifiable increase in prison beds) on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

Under current law, these offenders are likely getting convicted under theft or fraud statutes, with that \$750 threshold falling under the Level 2, 3rd degree felony for grand theft (\$750 or more but less than \$5,000). Per DOC, in FY 23-24, there were 366 new commitments for violating this statute. Additionally, there were 197 new commitments for grand theft at or above the \$5,000 threshold,

with only 46 of those at the Level 7, 1st degree felony threshold (\$100,000 or more). Retail theft also begins at \$750 and could be where these offenses also currently exist. There were 58 new commitments for various retail theft offenses. Finally, fraud is another crime where these offenses could currently exist, and does not have a minimum monetary threshold. There were 114 new commitments to prison for fraud offenses in FY 23-24.

It is not known how many of these new commitments fit the criteria outlined in the bill, nor is it known how these new offenses will be used relative to the theft and fraud statutes, since theft and fraud become more serious felonies at higher monetary thresholds, while this remains a Level 1, 3rd degree felony for any value beyond the \$750 threshold.

Per DOC, in FY 23-24, the incarceration rate for a Level 1, 3rd degree felony was 9.7%.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 8179.091 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 11, 2025:

- The amendment revises definitions in the bill and provides that it is a first degree misdemeanor for a person, with the intent to defraud, to perform specified acts relating to gift cards. It is a third degree felony if the value of the money or goods fraudulently obtained exceeds \$750.
- The amendment to the amendment adds language making it illegal to alter with gift card packaging.

B. Amendments:

None.

³⁷ Office of Economic and Demographic Research, *CS/SB 1198 – Fraudulent Use of Gift Cards*, (on file with the Senate Appropriations Committee on Criminal and Civil Justice).

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