

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1282

SPONSOR: Commerce and Economic Opportunities Committee, Criminal Justice Committee, and Senators Burt and Horne

SUBJECT: Property Crimes

DATE: April 19, 2001

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Birnholtz</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute addresses numerous property-related crimes. Specifically, this committee substitute provides penalties for theft of certain emergency medical equipment, defines terms related to retail theft, creates and increases penalties for retail theft and related behavior, creates and increases penalties for certain types of forgery and counterfeiting, provides penalties for dealing in stolen property on the Internet, provides penalties for payment card skimming, conforms the offense severity ranking chart of the Criminal Punishment Code to the changes made by this committee substitute, and encourages local law enforcement agencies to establish a task force on retail crime.

This committee substitute substantially amends the following sections of the Florida Statutes: 812.014, 812.015, 831.07, 831.08, 831.09, 831.10, 831.11, 831.12, 832.05, and 921.0022. This committee substitute creates ss. 812.0155, 812.017, 812.0195, 817.625, and 831.28, F.S.

II. Present Situation:

Theft

Section 812.014, F.S., provides that a person commits 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 the use of the property.¹

The level of a theft offense depends on the value and type of property stolen.

Retail or Farm Theft

According to the National Retail Security Survey conducted by the University of Florida, shoplifting and employee theft cost retail consumers approximately \$22.9 billion annually.² Shoplifting and employee theft combined account for the largest source of property crime committed annually in the United States.³ There were 532,462 larcenies committed in Florida during 1999.⁴ Of that total, 77,746 offenses were related to shoplifting.

Section 812.015, F.S., punishes retail or farm theft. The term “retail theft” is defined as “the taking possession of or carrying away of merchandise, money, or negotiable documents; altering or removing a label or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.” The term “farm theft” is defined as “the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person.”

This section presently defines the term:

- “merchant” as “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”;
- “antishoplifting or inventory control device” as “a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure, or from a protected area within such an enclosure, of specially marked or tagged merchandise”; and
- “antishoplifting or inventory control device countermeasure” as “any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.”

¹ Section 812.012, F.S., defines the term “obtains or uses” to include any manner of taking or exercising control over property; making any unauthorized use, disposition, or transfer of property; obtaining property by fraud, willful misrepresentation of a future act, or false promise; or conduct previously known as stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, or obtaining money or property by false pretenses, fraud, or deception.

² Richard C. Hollinger, Ph.D., “Frequently asked questions about the 2000 National Retail Security Survey,” <http://web.soc.ufl.edu/SRP/Frequently%20asked%20questions.html>, November 9, 2000.

³ “Employee theft on rise, study says,” *South Florida Business Journal*, <http://www.southflorida.bcentral.com/southflorida/stories/2000/11/20/daily20.html>, November 21, 2000.

⁴ Florida Department of Law Enforcement, *Crime in Florida: January-December 1999*, February 29, 2000.

There are presently three penalty provisions in s. 812.015, F.S.:

- A second or subsequent conviction for petit theft from a merchant, farmer, or transit agency is a petit theft of the second degree, except that the court must impose a fine of not less than \$50 or more than \$1,000 (unless the court imposes public service hours in lieu of but commensurate with the fine). [s. 812.015(2), F.S.]
- It is unlawful for a person while committing or after committing theft of property, transit fare evasion, or trespass to resist the reasonable effort of a law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent to recover the property or cause the person to pay the proper transit fare or vacate the transit facility which the law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent had probable cause to believe the individual had concealed or removed from its place of display or elsewhere or perpetrated a transit fare evasion or trespass. This offense is a first-degree misdemeanor, unless the person did not know, or did not have reason to know, that the person seeking to recover the property was a law enforcement officer, merchant, merchant's employee, farmer, or a transit agency's employee or agent. This offense is not currently punishable under the repeat offender provisions of s. 775.084, F.S. [s. 812.015(6), F.S.]
- Possession of any "antishoplifting or inventory control device countermeasure" within any premises used for the purchase or sale of any merchandise is a first-degree misdemeanor. Use or attempted use of such countermeasure is a third-degree felony. The third-degree felony is unranked, and therefore defaults to a Level 1 ranking for the purpose of sentencing (s. 921.0023, F.S.). [s. 812.015(7), F.S.]

Revoking, Suspending, or Withholding Issuance of a Driver's License

Numerous sections of the Florida Statutes provide for revocation, suspension, or the withholding of the issuance of a driver's license. For example, the following are but a few of the sections specifically providing for such sanction:

- mandatory revocation or suspension of, or delay of eligibility for a minor's driver's license if the minor commits certain alcohol, drug, or tobacco offenses (s. 322.056, F.S.);
- mandatory revocation or suspension of, or delay of eligibility for a minor's driver's license if the minor uses a fake driver's license or state identification card to induce a licensee to serve him or her alcoholic beverages (s. 562.11, F.S.);
- mandatory suspension of the driver's license of a person who leaves a gasoline station without paying for gasoline dispensed into the fuel tank of the person's motor vehicle (s. 812.014, F.S.);
- mandatory suspension of the driver's license of a person who, in certain circumstances, refuses to submit to a blood alcohol test (s. 316.1932, F.S.);
- revocation or the withholding of the issuance of the driver's license of a minor who commits certain firearm violations (s. 790.22, F.S.); and
- as one of the sanctions available to the court in a delinquency case, revocation or suspension of the driver's license of a juvenile (s. 985.231, F.S.).

Dealing in Stolen Property

Section 812.019, F.S., provides that:

- any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree; and
- any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree.

Credit Card Skimming

The term “skimming” typically applies to a series of activities, including the unauthorized copying of a person’s credit card details and security code on the card’s magnetic stripe and the transferring of that information onto the magnetic stripe of a counterfeit card. “Skimmers” will often use the credit card information and/or counterfeit card to make fraudulent purchases.

According to James S. Oleska, Director of Security for American Express, the skimming problem in the state is growing by approximately 200 percent each year.⁵ Moreover, the state ranks number one nationally in this problem, with 33 percent of all credit card skimming occurring in the state and 70 percent of all skimming victims living in Florida. Although customers of many types of businesses are affected by skimming, restaurant and gas station customers appear to be the most vulnerable because of the increased potential for their credit cards to be out of sight during transactions.

Forging Bank Bills or Promissory Notes

Section 831.07, F.S., provides that whoever falsely makes, alters, forges, or counterfeits a bank bill or promissory note payable to the bearer thereof, or to the order of any person, issued by an incorporated banking company established in this state, or within the United States, or any foreign province, state, or government, with intent to injure any person, commits a third-degree felony. The third-degree felony is ranked in Level 2 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(b), F.S.]

Possessing Certain Forged Notes or Bills

Section 831.08, F.S., provides that whoever has in his or her possession 10 or more similar false, altered, forged, or counterfeit notes, bills of credit, bank bills, or notes, payable to the bearer thereof or to the order of any person, knowing the same to be false, altered, forged, or counterfeit, with intent to utter and pass the same as true, and thereby to injure or defraud any person, commits a third-degree felony. The third-degree felony is ranked in Level 2 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(b), F.S.]

⁵ James S. Oleska, as cited in “Summit Highlights & Future Steps,” Florida’s Public/Private Partnership on Fraud, http://www.fdle.state.fl.us/publications/SAFE_Summit/Summit2000minutes.htm, September 27, 2000.

Uttering Forged Bills

Section 831.09, F.S., provides that whoever utters or passes or tenders in payment as true, any such false, altered, forged, or counterfeit note, or any bank bill or promissory note, payable to the bearer thereof or to the order of any person, issued as previously stated, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person, commits a third-degree felony. The third-degree felony is ranked in Level 2 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(b), F.S.]

Section 831.10, F.S., provides that whoever, having been convicted of the offense mentioned in s. 831.09, F.S., is again convicted of the like offense committed after the former conviction, and whoever is at the same term of the court convicted upon three distinct charges of such offense, shall be deemed a common utterer of counterfeit bills and shall be punished as provided in s. 775.084, F.S., (habitual offenders).

Bringing into the State Forged Bank Bills

Section 831.11, F.S., provides that whoever brings into this state or has in his or her possession a false, forged, or counterfeit bill or note in the similitude of the bills or notes payable to the bearer thereof or to the order of any person issued by or for any bank or banking company established in this state, or within the United States, or any foreign province, state, or government, with intent to utter and pass the same or to render the same current as true, knowing the same to be false, forged, or counterfeit, commits a third-degree felony. The third-degree felony is unranked, and therefore defaults to a Level 1 ranking for the purpose of sentencing. (s. 921.0023, F.S.)

Fraudulently Connecting Parts of a Genuine Instrument

Section 831.12, F.S., provides that whoever fraudulently connects together parts of several banknotes or other genuine instruments in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, commits forgery as if each of them had been falsely made or forged. Forgery is a third-degree felony, ranked in Level 2 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(b), F.S.]

Giving Worthless Checks, Drafts, and Debit Card Orders

Section 832.05(2), F.S., provides that it is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing, or delivering such check or draft, or at the time of using such debit card, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation. However, this section does not apply to any check when the payee or holder knows or has been expressly notified prior to the drawing or uttering of the check, or has reason to believe, that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment as previously stated, nor does this section apply to any postdated check. A violation of the provisions of this subsection constitutes a first-degree misdemeanor if the dollar amount involved is less than \$150 and is a third-degree felony if the dollar amount involved is \$150 or

more. A violation meriting a third-degree felony charge is ranked in Level 1 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(a), F.S.]

Section 832.05(3), F.S., provides that it is unlawful for any person, by act or common scheme, to cash or deposit any item, as defined in s. 674.104(1)(i), F.S., in any bank or depository with intent to defraud. A violation of the provisions of this subsection constitutes a third-degree felony, ranked in Level 2 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(b), F.S.]

Section 832.05(4), F.S., provides that it is unlawful for any person, firm, or corporation to obtain any services, goods, wares, or other things of value by means of a check, draft, or other written order upon any bank, person, firm, or corporation, knowing at the time of the making, drawing, uttering, issuing, or delivering of such check or draft that the maker thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation. However, no crime may be charged in respect to the giving of any such check or draft or other written order when the payee knows, has been expressly notified, or has reason to believe that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment thereof. A payee does not have reason to believe a payor does not have sufficient funds to ensure payment of a check solely because the payor has previously issued a worthless check to him or her. Furthermore, it is unlawful for any person to use a debit card to obtain money, goods, services, or anything else of value knowing at the time of such use that he or she does not have sufficient funds on deposit with which to pay for the same or that the value thereof exceeds the amount of credit which is available to him or her through an overdraft financing agreement or prearranged line of credit which is accessible by the use of the card. A violation of the provisions of this subsection constitutes a first-degree misdemeanor if the dollar amount involved is less than \$150 and is a third-degree felony if the dollar amount involved is \$150 or more. A violation meriting a third-degree felony charge is ranked in Level 1 of the Criminal Punishment Code offense severity level ranking chart. [s. 921.0022(3)(a), F.S.]

Definition of the Term "Payment Instrument"

Section 560.103(14), F.S., defines the term "payment instrument" to mean a check, draft, warrant, money order, travelers check, or other instrument or payment of money, whether or not negotiable. The term "payment instrument" does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

III. Effect of Proposed Changes:

This committee substitute addresses numerous property-related crimes. Specifically, this committee substitute provides penalties for theft of certain emergency medical equipment, defines terms related to retail theft, creates and increases penalties for retail theft and related behavior, creates and increases penalties for certain types of forgery and counterfeiting, provides penalties for dealing in stolen property on the Internet, provides penalties for payment card skimming, conforms the offense severity ranking chart of the Criminal Punishment Code to the changes made by this committee substitute, and encourages local law enforcement agencies to establish a task force on retail crime.

The following is a section-by-section analysis of this committee substitute:

Section 1. This section amends s. 812.014, F.S., to make the theft of any “emergency medical equipment,” valued at \$300 or more, which is taken from a facility licensed under ch. 395, F.S., (hospital licensing and regulation) or from an aircraft or vehicle permitted under ch. 401, F.S., (medical telecommunications and transportation) a second-degree felony. The term “emergency medical equipment” is defined to mean mechanical or electronic apparatus used to provide emergency services and to care for or treat medical emergencies.

Section 2. This section amends s. 812.015, F.S., which relates to retail and farm theft and transit fare evasion. The definition of “retail theft” in this section is amended to include taking possession of or carrying away property and altering or removing a universal product code. The terms “universal product code,” “UPC,” and “UPC bar code” refer to a code that originates with the Uniform Code Council (UCC). Manufacturers apply and pay a fee to the UCC for permission to enter the UPC system. The UCC issues the manufacturer a manufacturer identification number and provides the manufacturer with guidelines on its use. The code one sees on products for sale includes this number, an item number (which identifies the particular item), and a check digit (which is a check on whether the scanner is correctly reading the code). When a scanner scans the UPC bar code, the cash register sends the UPC number to the store’s central Point of Sale (POS) computer, which looks up the bar code and sends back the current price of the item.

The definition of “antishoplifting or inventory control device” in this section is supplemented with a statement that this definition includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt.

The definition of “antishoplifting or inventory control device countermeasure” in this section is amended to include the *use* of any item or device to defeat any antishoplifting or inventory control device.

This section provides that, if a merchant or merchant’s employee takes a person into custody as provided in this section or acts as a witness with respect to any person taken into custody as provided in this section, the merchant or merchant’s employee may provide his or her business address (instead of a home address) to any investigating law enforcement officer.

This committee substitute amends the provision regarding unlawful possession of an antishoplifting or inventory control device countermeasure to increase the penalty for this offense from a first-degree misdemeanor to a third-degree felony and adds a reference to s. 775.084, F.S., in order to make available the repeat offender sanctions of that section.

This section provides that if a person commits retail theft, it is a third-degree felony, if the property stolen is valued at \$300 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, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

- commits theft from more than one location with a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- 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; or
- 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.

However, despite the similarity of this new offense to other felony offenses currently ranked in the Criminal Punishment Code offense severity level ranking chart (chart) (s. 921.0022, F.S.), this committee substitute does not rank this new offense. (*See* section 15 of this committee substitute.) Under s. 921.0023(1), F.S., an unranked third-degree-felony offense defaults to a Level 1 (the lowest level) ranking for the purpose of sentencing. The Legislature might want to consider explicitly ranking this new offense in a manner consistent with similar offenses. It should be noted that section 2 states that a repeat offender of this provision commits a second-degree felony ranked on Level 6 of the chart. [s. 921.0022(3)(f), F.S.]

Section 3. This section creates s. 812.0155, F.S., to authorize the court to order the suspension of the driver's license of each person adjudicated guilty of a misdemeanor violation of s. 812.014, F.S., (regarding general theft) or s. 812.015, F.S., (regarding retail or farm theft) regardless of the value of the property stolen. However, the court is required to order the suspension of a repeat offender's license. License suspension is for:

- no more than six months for the first suspension of a driver's license; or
- one year for a second or subsequent suspension.

If an offender is a minor and a first-time offender, the court is authorized to revoke, suspend, or withhold issuance of the minor's driver's license as an alternative to sentencing the offender to juvenile or adult probation, juvenile commitment, community control, or incarceration. Suspension, revocation, or the withholding of the issuance of the minor driver's license is as provided:

- If the person is eligible by reason of age for a driver's license or driving privilege, the court must direct the Department of Highway Safety and Motor Vehicles (department) to revoke or withhold issuance of the person's driver's license or driving privilege for not less than six months and not more than one year.
- If the person's driver's license is under suspension or revocation for any reason, the court must direct the department to extend the period of suspension or revocation by not less than six months and not more than one year.
- If the person is ineligible by reason of age for a driver's license or driving privilege, the court must direct the department to withhold issuance of the person's driver's license or driving privilege for not less than six months and not more than one year after the date on which the person would otherwise become eligible.

The provisions relating to minors who are first-time offenders do not preclude the court from imposing any sanction specified or not specified in those provisions.

Section 4. This section creates s. 812.017, F.S., which makes it a second-degree misdemeanor to request a refund of merchandise, money, or anything of value through the use of a fraudulently obtained receipt or false receipt. It is a first-degree misdemeanor to obtain merchandise, money, or anything of value through the use of a fraudulently obtained receipt or false receipt.

Section 5. This section creates s. 812.0195, F.S., which provides that any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows, or has reasonable cause to believe, is stolen commits a second-degree misdemeanor if the value of the property is less than \$300 and a third-degree felony if the value of the property is \$300 or more.

Section 6. This section creates s. 817.625, F.S., which defines the following terms:

- “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.
- “Reencoder” means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.
- “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.
- “Merchant” means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument of obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

This section provides that it is a third-degree felony to:

- use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant; or
- use a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant.

This section of the committee substitute further provides that a second or subsequent violation of this section is a second-degree felony and that anyone who violates this section shall also be subject to the provisions of the Florida Contraband Forfeiture Act (ss. 932.701-932.707, F.S.).

Section 7. This section amends s. 831.07, F.S., to provide that the offense of forging bank bills or promissory notes also applies to checks or drafts.

Section 8. This section amends s. 831.08, F.S., to provide that the offense of possessing certain forged notes or bills also applies to checks or drafts.

Section 9. This section amends s. 831.09, F.S., to provide that the offense of uttering forged bills also applies to checks, drafts, or notes.

Section 10. This section reenacts s. 831.10, F.S., (second conviction of uttering forged bills) for the purpose of incorporating the amendments to s. 831.09, F.S., in references thereto.

Section 11. This section amends s. 831.11, F.S., to provide that the offense of bringing into the state forged bank bills also applies to checks or drafts.

Section 12. This section amends s. 831.12, F.S., to provide that the offense of fraudulently connecting parts of a genuine instrument also applies to checks or drafts.

Section 13. This section creates s. 831.28, F.S., to make it a third-degree felony to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for a person to have a counterfeit payment instrument in such person's possession. The term "counterfeit" is defined as the manufacture of or arrangement to manufacture a payment instrument, as defined in s. 560.103, F.S., without the permission of the financial institution, account holder, or organization whose name, routing number, or account number appears on the payment instrument, or the manufacture of any payment instrument with a fictitious name, routing number, or account number.

This section further provides that the printing of a payment instrument in the name of a person or entity or with the routing number or account number of a person or entity without the permission of the person or entity to manufacture or reproduce such payment instrument with the name, routing number, or account number is prima facie evidence of intent to defraud. This provision employs the evidentiary device known as a "permissive inference." This inference "allows – but does not require – the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one and which places no burden of any kind on the defendant. [citation omitted] In that situation, the basic fact may constitute prima facie of the elemental fact." *County Court v. Allen*, 442 U.S. 140 (1979). In *State v. Rolle*, the Florida Supreme Court interpreted the words "prima facie," when used in s. 316.1934(2)(c), F.S., (regarding driving under the influence), to create a permissive inference, not an unconstitutional presumption. 560 So. 2d 1154 (Fla. 1990). Moreover, "[c]riminal acts declaring one fact prima facie evidence or presumption of another are frequent. Their purpose is not to relieve the State of the burden of proof, but to allow the establishment of a prima facie case." *State v. Kahler*, 232 So. 2d 166, 168 (Fla. 1970).

Finally, this committee substitute provides that this new section does not apply to a law enforcement agency that produces or displays counterfeit payment instruments for investigative or educational purposes.

Section 14. This section amends s. 832.05, F.S., which relates to giving worthless checks, drafts, and debit card orders. This section provides for the following construction of s. 832.05, F.S.: a payee or holder does not have knowledge, express notification, or reason to believe that the maker or drawer has insufficient funds to ensure payment of a check, draft, or debit card solely because the maker or drawer has previously drawn or issued a worthless check, draft, or debit card order to the payee or holder. This provision is intended to address language that appears in various provisions of s. 832.05, F.S. In the provision making it unlawful to draw a check, draft, or debit card order, knowing at the time that the drawer has insufficient funds [s. 832.05(2), F.S.] and in the provision making it unlawful to obtain property or services through such a check, draft, or debit card order [s. 832.05(4), F.S.], there is an exception when the payee knows, has been expressly notified, or has “reason to believe” that the drawer did not have on deposit or to the drawer’s credit with the drawee sufficient funds to ensure payment.

This new statutory construction appears primarily to address the phrase “reason to believe” in the sections cited above. Franchise operations that are essentially unconnected to any parent company and geographically dispersed offices of a large corporation which handle numerous transactions on any given day, often find it difficult, if not impossible, to track the transactions of a payer or drawer who is passing worthless checks. The construction of the statute created by this committee substitute would prevent any construction of the “reason to believe” phrase to mean that a business has “reason to believe” that a payer or drawer has insufficient funds based solely on a previous transaction in which the payer or drawer passed a worthless check.

Section 15. This section amends s. 921.0022, F.S., the offense severity level ranking chart (chart) for the Criminal Punishment Code, to impose the following offense severity level rankings for offenses amended or created by this committee substitute (offenses with an asterisk indicate offenses that are already ranked but are modified by this committee substitute):

- Level 2
 - Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure (third-degree felony). [s. 812.015(7), F.S.]
 - Forging bank bills, checks, drafts, or promissory notes (third-degree felony). (s. 831.07, F.S.)*
 - Possessing 10 or more forged notes, bills, checks, or drafts (third-degree felony). (s. 831.08, F.S.)*
 - Uttering forged notes, bills, checks, drafts, or promissory notes (third-degree felony). (s. 831.09, F.S.)*
 - Bringing into the state forged bank bills, checks, drafts, or notes (third-degree felony). (s. 831.11, F.S.)
- Level 3
 - Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument (third-degree felony). [s. 831.28(2)(a), F.S.]
- Level 4
 - Dealing in stolen property by use of the Internet; property stolen \$300 or more (third-degree felony). [s. 812.0195(2), F.S.]

- Fraudulent use of a scanning device or reencoder (third-degree felony). [s. 817.625(2)(a), F.S.]
- Level 5
 - Second or subsequent fraudulent use of a scanning device or reencoder (second-degree felony). [s. 817.625(2)(b), F.S.]
- Level 6
 - Property stolen \$20,000 or more, but less than \$100,000, grand theft in second degree (second-degree felony). [s. 812.014(2)(b)1., F.S.]*
 - Retail theft; property stolen \$300 or more; second or subsequent conviction (second-degree felony). [s. 812.015(9), F.S.]
- Level 7
 - Property stolen, valued at \$100,000 or more; property stolen while causing other property damage; grand theft in the first degree (first-degree felony). [s. 812.014(2)(a)1., F.S.]* It appears that this ranking might have been inadvertently amended since this committee substitute does not alter the offenses or penalties under s. 812.014(2)(a), F.S. Current law provides for offenses under s. 812.014(2)(a), F.S., (including sub-paragraphs 1. and 2.) to be ranked on Level 7 of the chart. Although it appears that this committee substitute would cause the grand theft offense under s. 812.014(2)(a)2., F.S., (a first-degree felony) to become unranked, an unranked first-degree felony defaults to Level 7, anyway, under s. 921.0023(3), F.S.
 - Property stolen, emergency medical equipment; second-degree grand theft (second-degree felony). [s. 812.014(2)(b)2., F.S.]

Section 16. This section provides an explicit legislative statement encouraging each local law enforcement agency to create a task force on retail crime and indicates how such a task force, if created, should be composed and conducted. The task force should act as an advisory body to study and develop recommendations on retail crime and theft. These recommendations should be submitted to the sheriff or chief officer of the local law enforcement agency, the state attorney, and the chief judge of the judicial circuit. The sheriff or chief officer of the local law enforcement agency should appoint the members of the task force. A majority of the task force members should be persons actively engaged in retail business or employees of such persons. The task force should terminate existence upon completing its assignment.

Section 17. This section provides a severability clause.

Section 18. This section provides that this act shall take effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that the provisions of this committee substitute reduce theft and fraud, businesses should be able to decrease their expenses, and, possibly, pass on their savings to their customers. Additionally, to the extent that the provisions of this committee substitute reduce payment card skimming, card users, card issuers, and merchants would suffer less fraud.

C. Government Sector Impact:

An impact analysis was requested from the Criminal Justice Estimating Conference but was not received prior to completion of this analysis. It is likely that this committee substitute will have an impact, particularly the amendments related to retail theft.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.