

STORAGE NAME: h0531.ba.doc
DATE: February 27, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BANKING
ANALYSIS**

BILL #: HB 531
RELATING TO: Counterfeit Payment Instruments
SPONSOR(S): Representative Gardiner
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BANKING
 - (2) CRIME PREVENTION, CORRECTIONS, AND SAFETY
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
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I. SUMMARY:

Payment instruments are documents used by Florida financial institutions and by the general public to facilitate the transfer of money. This bill creates two new crimes, the manufacture of or arrangement to manufacture "counterfeit" payment instruments and the possession of counterfeit payment instruments. Both crimes are third degree felonies that carry a maximum penalty of five years in prison.

This bill takes effect on October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

What is a payment instrument?

A "payment instrument" is defined by Florida law to be a "check, draft, warrant, money order, travelers' check" or any other instrument used to facilitate the transfer of money, regardless of negotiability.¹

Who deals with payment instruments?

The primary entities that deal with payment instruments are financial institutions such as banks, credit unions, and savings and loan associations and payment instrument sellers such as convenience stores that sell money orders, check cashing businesses, foreign currency exchange businesses, and funds transmittal organizations.² Retail stores accept payment instruments in the course of sales, though most do not sell them.

How big of a problem is payment instrument fraud?

According to the Florida Bankers' Association ("FBA"), "non-credit losses" or losses due to fraudulent payment instrument activity total over \$200 Million in Florida alone. Nationwide fraud amounts to over \$1.2 Billion.

How do counterfeiters create fake payment instruments?

Counterfeiters can create fake payment instruments by using readily available technology. According to the FBA, by using a computer program, purchased at any office supply center, and check paper stock, a counterfeiter can purchase a small value cashier's or teller's check or a small

¹ Section 560.103(14), F.S.

² To sell payment instruments a business must be either an exempt financial institution or be registered under the Money Transmitter's Code, found in chapter 560 of the Florida Statutes. Section 560.294, F.S., deals with registration of sellers of payment instruments and funds transmittal, and section 560.303, F.S., deals with registration of check cashiers and foreign currency exchangers. Banks, savings and loan associations, and credit unions are exempt from the Money Transmitter's Code. See section 560.104, F.S., for more detail.

value money order, scan the check design into the computer program, and with the signature from the original, print out blank versions of the instrument ready to use. Counterfeiters can also gain knowledge surreptitiously of account and routing numbers with a variety of schemes and then using at home check printing software, print legitimate looking checks using an at home printer.

What law is currently in place?

Counterfeiters are prosecuted by State Attorneys under Florida's forgery laws.³ Florida's forgery laws deal with two scenarios: the initial creation of a forged instrument and the final utterance or passing of a forged instrument.

The first type of forgery is the creation of a forged instrument with the intent to defraud or injure any person.⁴ To be convicted of this crime, a counterfeiter must have both created the fake payment instrument and in creating it, intended to defraud someone.

The second forgery crime is the utterance of a forged instrument.⁵ To be convicted of uttering a forgery, a counterfeiter must knowingly "utter" or pass as true, an instrument he or she knows to be forged, with the intent to defraud someone.

Both forgery crimes are third degree felonies and carry a maximum penalty of five years in prison.⁶

Currently under Florida law, no statute deals with carrying or possessing false, counterfeit, or forged payment instruments.

C. EFFECT OF PROPOSED CHANGES:

New crimes are created making the manufacture, arrangement to manufacture, and the possession of a fake or counterfeit payment instrument illegal. Criminalizing these activities will expand the conduct a counterfeiter may be convicted for. Instead of being liable for just the actual creation of the fake document and the passing of the fake document, a counterfeiter will be liable for creating a fake document, arranging to create it, and having it in his or her possession, as well as passing it. Impact on the business sector will be positive by possibly reducing the amount of non-credit losses a financial institution will occur during the year. Private sector impact is positive by possibly reducing the frequency of unauthorized account number use through easier apprehension of counterfeiters. The particulars of the new crimes are as follows:

1. Definition of "counterfeiting"

"Counterfeiting" a payment instrument occurs whenever someone manufactures or arranges to manufacture a payment instrument without permission to use a financial institution's routing number, an individual account holder's account number or name, or an organization's account number or name. Counterfeiting also includes manufacturing of any payment instrument with a fictitious name, fictitious routing number, or fictitious account number.

³ See generally, chapter 831, F.S.

⁴ Section 831.01, F.S.

⁵ Section 831.02, F.S.

⁶ Section 775.082(3)(d), F.S.

2. Standard for "intent to defraud" defined in the act.

This bill creates a rebuttable presumption that evidence which shows the defendant printed 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 is evidence *prima facie* (evidence on its face) that the defendant intended to defraud a financial institution.

3. Institution of "manufacturing or arranging to manufacture a counterfeit payment instrument with intent to defraud a financial institution" as a crime.

A person commits this crime when he or she "counterfeits" a payment instrument with the intention of defrauding a financial institution. From the definition of "counterfeit," a person is guilty of this crime by either making or arranging to make a payment instrument. The actual manufacture of the payment instrument itself creates a rebuttable presumption that the alleged counterfeiter created the payment instrument with the required intent to defraud a financial institution. This crime is a third degree felony that will carry a maximum penalty of five years in prison.

4. Institution of "possession of a counterfeit payment instrument" as a crime.

A person will commit this crime solely by having in her possession a "counterfeit" payment instrument. This crime is also a third degree felony that will carry a maximum penalty of five years in prison.

5. Affirmative defense for law enforcement.

The act will create an affirmative defense for law enforcement personnel that manufacture or arrange to manufacture counterfeit payment instruments if they use or display the counterfeit instruments for investigative or educational purposes.

D. SECTION-BY-SECTION ANALYSIS:

(See EFFECT OF PROPOSED CHANGES.)

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The financial services industry could see a significant reduction in “non-credit losses” or losses due to fraudulent payment instrument activity that are currently estimated to total over \$200 Million in Florida alone. Nationwide fraud is estimated at over \$1.2 Billion.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h0531.ba.doc

DATE: February 27, 2001

PAGE: 6

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Staff Director:

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