

STORAGE NAME: h0531a.ccc.doc
DATE: April 18, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

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

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

- (1) BANKING YEAS 7 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 13 NAYS 0
 - (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 third degree felony offenses: the manufacture of or arrangement to manufacture "counterfeit" payment instruments and the possession of counterfeit payment instruments.

There is no fiscal impact to the state.

The bill takes effect July 1, 2001.

The Council for Competitive Commerce adopted a strike-everything amendment that is traveling with the bill. The amendment incorporates the text of the original bill and provides the following:

- Provides that the theft of emergency medical equipment valued in excess of \$300 is a second-degree felony;
- Creates a section prohibiting "skimming" – an unauthorized use of a scanning device to access information stored on a credit card with intent to defraud;
- Provides that the following types of retail theft are a third degree felony if the property stolen is valued at \$300 or more: coordinating the activities of one or more individuals in committing a theft; committing a retail theft from more than one location within a 48 hour period and acting in concert with one or more other individuals to distract the merchant in order to carry out the offense. Makes a second violation of the section a second-degree felony;
- Authorizes the trial court to order the revocation of a driver's license of a person upon a first conviction of theft. Requires the trial court to order the revocation of a driver's license of a person upon a second or subsequent conviction of theft;
- Creates an offense of dealing in stolen property by use of the Internet; and
- Makes the theft of "cargo" worth less than \$50,000 a second-degree felony and the theft of medical equipment worth more than \$50,000 a first-degree felony.

Please see Section VI of this analysis for details.

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:

Payment Instruments

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 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.

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. 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 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.

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.

Current Law

State Attorneys prosecute counterfeiters under Chapter 831, F.S., Florida's forgery³ laws. The forgery laws address, in part, the initial creation of a forged instrument, possession of certain forged notes or bills and the final utterance or passing of a forged instrument.

Creation of a Forged Instrument: As provided in s. 831.01, F.S., a person who falsely makes, alters, forges or counterfeits a payment instrument with intent to injure or defraud someone commits forgery.

Utterance of a Forged Instrument: In order 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. s. 831.02, F.S.

These offenses are third degree felonies which carry a maximum penalty of five years in prison.⁴

Under current Florida law, no statute prohibits carrying or possessing false, counterfeit, or forged payment instruments. For example, if a person goes to a print shop and has checks printed in the name of a bank, that person cannot be charged with a crime unless he or she actually passes or tenders the check as payment with intent to defraud under s. 831.02, F.S.

In State v. Haas, 433 So.2d 1343 (Fla. App 5 Dist. 1983), the defendant delivered, to an undercover agent, 102 blank documents simulated to look like cashier's checks of Barnett Bank. The documents did not bear a date, signature, payee or amount. The defendant in this case was charged with bringing into state forged bank bills under s. 831.11, F.S.

The Court ruled that these blank cashier's checks did not qualify as checks under the Uniform Commercial Code (s. 673.1041(6), F.S.) because they were not signed by the maker and did not contain an unconditional promise to pay to a bearer or order a sum certain in money on demand or at a definite time.

C. EFFECT OF PROPOSED CHANGES:

The bill creates the offense of counterfeiting a payment instrument. A "payment instrument" is already 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." Section 560.103(14), F.S.

The bill defines the term "counterfeit" to mean: 1) the manufacture or arrangement to manufacture a payment instrument without permission of the organization whose name, routing number or account number appears on the payment instrument, or 2) the

³ Section 831.01, F.S., defines forgery as "Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

⁴ Section 775.082(3)(d), F.S.

manufacture of any payment instrument with a fictitious name, routing number or account number.

The bill makes it a third degree felony to: 1) counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or 2) for a person to have any counterfeit payment instrument in his or her possession.

The bill 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 such name, routing number or account number is prima facie evidence of intent to defraud. The bill exempts law enforcement agencies which produce or display counterfeit payment instruments for investigative or educational purposes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Defines a counterfeit payment instrument; provides that counterfeiting of payment instruments with intent to defraud is unlawful and provides a felony penalty; specifies prima facie evidence of intent to defraud; provides an exception for law enforcement agencies under certain circumstances.

Section 2: Provides an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its March 29, 2001, meeting, the Committee on Crime Prevention, Corrections, and Safety adopted one amendment. This amendment creates section 817.265, F.S., to provide penalties for the use of a scanning device or reencoder to defraud. The amendment defines the terms "scanning device," "reencoder," "payment card," and "merchant." The provisions of this amendment establish third degree felony penalties for a person to use a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip of a payment card without the permission of the card's authorized user and with intent to defraud the card user. It also provides a third degree felony penalty for a person to use a reencoder to place information encoded on the magnetic strip of a payment card onto the magnetic strip of a different card without the permission of the authorized user of the card from which the information is being reencoded, and with intent to defraud the authorized user. The amendment establishes second-degree felony penalties for subsequent violations. This amendment further provides that violators of this section are subject to the provisions of the Florida Contraband Forfeiture Act, ss. 932.701 – 932.707, F.S.

At its April 18, 2001, meeting, the Council for Competitive Commerce adopted a strike-everything amendment that incorporates the substance of the bill as well as the previous traveling amendment. It is traveling with the bill. This amendment makes the following changes to theft related statutes:

- The amendment provides that the theft of emergency medical equipment valued in excess of \$300 from a medical facility is a second-degree felony. The amendment defines the term "emergency medical equipment" as mechanical or electronic apparatus used to provide emergency services and care or to treat medical emergencies
- The amendment provides that the following types of retail theft are a third degree felony if the property stolen is valued at \$300 or more: coordinating the activities of one or more individuals in committing a theft; committing a retail theft from more than one location within a 48 hour period; and acting in concert with one or more other individuals to distract the merchant in order to carry out the offense. The amendment makes a second violation of the section a second-degree felony.
- The amendment authorizes the trial court to order the revocation of a driver's license of a person upon a first conviction of theft. The amendment requires the trial court to order the revocation of a driver's license of a person upon a second or subsequent conviction of theft.
- The amendment creates an offense of dealing in stolen property by use of the Internet.
- The amendment makes the theft of "cargo" worth less than \$50,000 a second-degree felony and the theft of medical equipment worth more than \$50,000 a first degree felony.

VII. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Warren A. "Drew" Crawford

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Lynn Dodson

Staff Director:

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AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

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