

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: SB 1020

SPONSOR: Senator Burt

SUBJECT: Payment-Card Transactions

DATE: January 22, 2002

REVISED: 01/23/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gillespie</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1020 prohibits a merchant from printing more than the last five digits or printing the expiration date of a credit card, debit card, or other payment card on an electronically printed receipt provided to the cardholder. The bill delays these requirements for cash registers or other machines used before the effective date and imposes fines for violations by merchants.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Identity Theft

In 1998, the United States Congress enacted the Identity Theft and Assumption Deterrence Act. The federal act created a new offense of identity theft, which prohibits “knowingly transfer[ring] or us[ing], without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law” (18 U.S.C. s. 1028(a)(7)). In addition, several other federal laws prohibit various types of identity theft or fraud, including identification fraud (18 U.S.C. s. 1028), credit card fraud (18 U.S.C. s. 1029), mail fraud (18 U.S.C. s. 1341), and financial institution fraud (18 U.S.C. s. 1344).

During the 1999 Regular Session, the Legislature established identity theft as a criminal offense in Florida (ch. 99-335, L.O.F.). Section 817.568(2)(a), F.S., provides that “[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that

individual's consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree.”

During the 2000 Regular Session, the Legislature directed the State Technology Office to create a Task Force on Privacy and Technology (s. 22, ch. 2000-164, L.O.F.). Among other duties, the task force was charged with studying and making policy recommendations concerning technology fraud, including, but not limited to, the illegal use of citizens' identities and credit. In its policy recommendations, the task force recognized that identity theft is one of the fastest growing crimes in the United States, having affected almost 500,000 victims in 1998 and having been expected to affect more than 750,000 victims in 2001.¹

One of the task force's recommendations included increasing criminal penalties for identity theft crimes. During the 2001 Regular Session, the Legislature increased the criminal penalty for identity theft cases in which the victim's injury from the fraudulent use of personal identification information is \$75,000 or more (ch. 2001-233, L.O.F.). In these cases, the criminal penalty was increased to a felony of the second degree (s. 817.568(2)(b), F.S.).

According to the Federal Trade Commission's Identity Theft Clearinghouse, California had more than 4,800 complaints of identity theft in 2000, while Florida, New York, and Texas each had more than 1,900 complaints.² From November 1999 to June 2001, these four states were the only states with more than 4,000 complaints during that period.³ Nationally, about 50 percent of these complaints are attributed to credit card fraud.

“Dumpster Diving”

To minimize the risk of identity theft, the Federal Trade Commission warns consumers to keep items with personal information in a safe place. The commission explains:⁴

To thwart an identity thief who may pick through your trash or recycling bins to capture your personal information, tear or shred your charge receipts, copies of credit applications, insurance forms, physician statements, bank checks and statements that you are discarding, expired charge cards and credit offers you get in the mail.

¹ Fla. State Technology Office, Task Force on Privacy & Technology, *Executive Summary of Policy Recommendations*, 2 (last modified Jan. 2001), available at http://www.myflorida.com/myflorida/government/taskandcommissions/pttf/documents/final_executive_summary.doc.

² Fed. Trade Comm'n, *Identity Theft: Prepared Statement of Charles Harwood, Dir., N.W. Region, Fed. Trade Comm'n, before the Comm. on Labor, Commerce & Fin. Instns., Wash. St. Sen.* (Jan. 29, 2001), available at <http://www.ftc.gov/be/v010001.htm>.

³ Fed. Trade Comm'n, Identity Theft Clearinghouse, *Identity Theft Victim Complaint Data: Figures and Trends on Identity Theft, Nov. 1999 through June 2001*, available at <http://www.consumer.gov/idtheft/charts/01-06c.pdf> (last visited Jan. 16, 2002) (Figure 3 displays the number of identity theft complaints by state from Nov. 1999 through June 2001).

⁴ Fed. Trade Comm'n, *ID Theft: When Bad Things Happen To Your Good Name*, 3 (last modified Jan. 14, 2002), available at <http://www.ftc.gov/bcp/online/pubs/credit/idtheft.pdf>.

Sorting through trash or recycling bins to collect personal identification information is commonly known as “dumpster diving.” The Office of Statewide Prosecution within the Florida Department of Legal Affairs echoes the commission’s warning:⁵

You should also be aware that you do not need to lose your wallet or have anything tangible stolen, in order for someone to steal your identity. By simply failing to shred your confidential information, utility bills, credit card slips and other documents, it is easy for an identity thief to “dumpster dive” your garbage, and retrieve your most personal identifying information.

A recent report of the statewide grand jury on identity theft recognized the problem of “dumpster diving,” citing that unsecured mailboxes and trash containers provide thieves with easy access to personal identification information.⁶

Credit cards, charge cards, debit cards, and other types of payment cards often contain the card’s account number and expiration date. At least two states (California and Washington) have enacted legislation prohibiting merchants from providing electronically printed receipts to cardholders which contain more than the last five digits of a payment card’s account number or a card’s expiration date.

III. Effect of Proposed Changes:

The bill prohibits a merchant who accepts payment cards from printing more than the last five digits of a payment card’s account number or printing a payment card’s expiration date on an electronically printed receipt provided to the cardholder. The term “payment card” includes credit cards, charge cards, debit cards, and any other cards that are issued to cardholders and that allow cardholders to obtain, purchase, or receive goods, services, money, or anything else of value from the merchant.

The bill specifically exempts receipts from transactions in which the sole means of recording the payment card’s account number or expiration date is by handwriting or by an imprint or copy of the payment card.

The bill imposes noncriminal penalties for violations by merchants. A first violation is subject to a \$250 fine, and a second or subsequent violation is subject to a \$1,000 fine. The bill does not specify a state agency as responsible for enforcement or prosecution of violations, nor does the bill designate which court would have jurisdiction to hear complaints against merchants.

The bill provides an effective date of July 1, 2003, and applies prospectively to receipts printed by cash registers or other machines or devices that are first used on or after that date. The bill also delays implementation until July 1, 2005, for receipts printed by cash registers or other machines or devices that are first used before July 1, 2003.

⁵ Off. of Statewide Prosecution, Fla. Dep’t of Legal Affairs, *Identity Theft*, at <http://legal.firm.edu/swp/identity.html> (last visited Jan. 21, 2002).

⁶ Fla. 16th Statewide Grand Jury, *Identity Theft in Florida, First Interim Report of the Sixteenth Statewide Grand Jury*, Case No. SC 01-1095 (Fla. Jan. 10, 2002), available at <http://legal.firm.edu/swp/JURY/identity.html>.

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:

The bill requires electronically printed receipts from cash registers or other machines or devices to include no more than the last five digits of a payment card's account number and to exclude a payment card's expiration date. The bill would require merchants who purchase cash registers or machines without this capability to obtain software upgrades for these machines or, if certain machines are unable to be reprogrammed, replace these machines. The bill requires reprogramming or replacement of all cash registers or machines by July 1, 2005. These requirements also apply to cash registers or machines that are first used on or after July 1, 2003.

C. Government Sector Impact:

The bill does not specify a state agency as responsible for enforcement or prosecution of violations, nor does the bill designate which court would have jurisdiction to hear complaints against merchants. If, however, it is determined each state attorney has enforcement authority, the state attorney could prosecute complaints against merchants using existing funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce & Economic Opportunities:

Provides that the office of the state attorney may bring actions to enforce violations of the bill in county court for violations occurring in or affecting the judicial circuit under the office's jurisdiction. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
