

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/SB 1524

SPONSOR: Transportation Committee and Senator Sebesta

SUBJECT: Transportation of Fuel

DATE: February 21, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McAuliffe</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>APJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS provides that it is unlawful to possess any device for the transportation of motor or diesel fuel which does not conform to federal requirements for such fuel transportation devices. The CS provides that it is a felony of the third degree, punishable by up to five years in prison and a \$5,000 fine. The CS further provides that such a violation will result in revocation of the violator's driver's license.

The CS provides that, if the above violation occurs and the violator purchases or attempts to purchase fuel by using a fraudulent credit card, credit card account number, or by using unauthorized access to any computer network, the violation is also third degree felony. The CS exempts containers of 8 gallons or less from the provisions of the act.

II. Present Situation:

According to the petroleum industry, there has been a recent problem, particularly in South-East Florida, with sale of motor fuel that has been illegally obtained. Persons fraudulently obtain fuel from a gas station, often by using a stolen or duplicate credit card, and convey the gas into an inappropriate container on the vehicle. These containers often hold hundreds of gallons of fuel. The stolen gas is then sold from the vehicle at another location, typically an industrial area.

Chapter 206, F.S., requires persons transporting fuel to be licensed as a carrier and provides for various record keeping requirements. Section 206.20, F.S., provides that every person transporting motor fuel over public highways must have in their possession proof of sale and payment of taxes for the fuel on board the vehicle, except when less than 5 gallons of fuel is being transported for emergency purposes. A violation is a misdemeanor of the first degree. Section 206.205, F.S., provides that any vehicle found to be transporting fuel for the purpose of

illegally evading any fuel tax may be forfeited, and transporting fuel without being licensed as a carrier is a misdemeanor of the first degree.

Chapters 525 and 526, F.S., address requirements for the sale of motor fuel, including inspection of retail motor fuel storage tanks, proper labeling of fuels, deceptive sales practices, and other requirements directed toward ensuring safe operation and fair competition among legitimate businesses.

Sections 817.57-817.685, F.S. (the "State Credit Card Crime Act") addresses and provides penalties for various forms of credit card fraud. Credit card crimes which are misdemeanors of the first degree include theft by credit card which was lost, buying or selling credit cards, and false statements on credit card applications. Credit card crimes which are a third degree felony include forging a signature on a credit card, use of a scanning device or reencoder to defraud, and illegal possession of credit card making equipment.

Title 49, Code of Federal Regulations, Part 173 provides general requirements for commercial truck shipments and packaging. All commercial fuel carriers must meet federal safety requirements; however, fuel containers holding 8 gallons or less are exempt from federal requirements.

III. Effect of Proposed Changes:

Subsection 1 of Section 1 of this CS provides that it is unlawful to possess any device for the transportation of motor or diesel fuel which does not conform to federal requirements for such fuel transportation devices. The CS provides that it is a felony of the third degree, punishable by up to five years in prison and a \$5,000 fine. The CS further provides that a violation of this section will result in the revocation of the violator's driver's license.

Subsection 2 provides that, if a violation of subsection 1 occurs and the violator purchases or attempts to purchase fuel by using a fraudulent credit card, credit card account number, or by using unauthorized access to any computer network, the violation is also a felony of the third degree.

The CS further provides that all conveyances or vehicles, fuel tanks, related fuel, and other equipment used to transport fuel in violation of federal requirements is subject to seizure and forfeiture. The CS provides that the seizing law enforcement agency must remove and reclaim, recycle, or dispose of all associated fuel, and all fuel tanks and other equipment used in violation of this CS must be destroyed, except the conveyance or vehicle.

The CS also provides that any person convicted of a violation of this law is responsible for all reasonable costs incurred by the investigating law enforcement agency, including towing and storage of the conveyance or vehicle, removal and disposal of the fuel, and storage and destruction of all fuel tanks and other equipment described and used in violation of the law. Any person convicted of a violation of this law would also be responsible for restitution to the fuel vendor for any fuel unlawfully obtained. The CS exempts containers of 8 gallons or less from its provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The CS requires that conviction of a person for violating the act will automatically result in issuance of a court order declaring that all fuel tanks and other equipment used in committing the violation are forfeited and to be destroyed, with the exception of any conveyance or vehicle. Article I, Section 9 of the Florida Constitution provides that a person cannot be deprived of property without due process of law. In *Department of Law Enforcement v. Real Property, etc.*, 588 So.2d 957 (Fla. 1991), the Florida Supreme Court held that the Florida Contraband Forfeiture Act satisfies constitutional requirements of procedural and substantive due process. However, the Court noted that forfeitures are considered as harsh exactions and not generally favored in law or equity.

Automatic forfeiture and destruction of property after conviction does not follow the procedures of the Contraband Forfeiture Act. Courts have determined that a criminal trial cannot substitute for the civil jury trial that is allowed under the Act. *See, e.g. Kern v. Florida* 706 So.2d 1366 (Fla. 5th Dist. 1998). One concern is that a criminal trial does not adjudicate the rights of an innocent owner who was not involved in the commission of the crime.

In a few cases, Florida law does allow destruction of certain seized items after criminal trial without a civil hearing. Examples of such items include controlled substances (s. 893.12, F.S.) and obscene prints or literature (s. 933.03, F.S.), both of which are inherently illegal. The items which may be used to violate the provisions of this bill have non-criminal uses, and it is likely that the courts will not uphold a requirement of forfeiture and destruction without a hearing.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Paragraphs 3 and 5 of section 1 of the CS are in conflict. Paragraph 3 provides that conveyances or vehicles, fuel tanks, related fuel, and certain other equipment are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act. Paragraph 5 requires a judge to issue an order adjudging and declaring that any fuel tank or other equipment used in violation of the section is forfeited upon conviction and that it must be destroyed upon conviction, with the exception of the conveyance or vehicle. The process provided in paragraph 5 does not comply with the Contraband Forfeiture Act.

Paragraph 5 is also worded ambiguously. It can be interpreted to mean either that the judge is not to order forfeiture of the vehicle or conveyance along with other equipment, or that the judge shall order forfeiture of the vehicle or conveyance but may not order its destruction.

VII. Related Issues:

None.

VIII. Amendments:

None.