

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 621

Possession of Stolen Credit Cards

SPONSOR(S): Brandenburg

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Public Safety & Domestic Security Policy Committee	10 Y, 0 N, As CS	Billmeier	Cunningham
2) Criminal & Civil Justice Appropriations Committee	9 Y, 1 N, As CS	McAuliffe	Davis
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, mere possession of a stolen credit card is not, per se, illegal. Section 817.60, F.S., contains several offenses relating to the unauthorized possession of a credit card, however all current offenses under this section require either proof of intent to use, sell, or transfer a stolen credit card; or require a fraudulent intent in obtaining the credit card.

The bill amends s. 817.60(1), F.S., to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent; a person possesses, receives, or retains custody of a credit card with the knowledge it has been stolen; or who receives the credit card with the intent to use, sell, or transfer the card to a person other than the issuer.

The bill provides that retailers who in good faith take, accept, retain, or possess a stolen credit card without knowledge that the card is stolen do not violate s. 817.60, F.S.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.

The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 817.60, F.S., provides criminal penalties punishable as a first degree misdemeanor¹ for several offenses relating to credit cards² including:

- Taking³ a credit card from the person, possession, custody, or control of another without the cardholder's consent, or with knowledge the card has been so taken, receiving the credit card with the intent to use it, to sell it, or to transfer it to another person other than the issuer or the cardholder;
- Receiving a credit card that is known to have been lost, mislaid, or delivered by mistake as to the identity or address of the cardholder, and retaining the card with the intent to use, sell, or transfer the card to another person other than the issuer or the cardholder;
- Selling or buying a credit card from a person other than the issuer;
- Obtaining a credit card as security for debt with intent to defraud; or
- Signing the credit card of another.⁴

Section 817.60, F.S., provides criminal penalties punishable as a third degree felony⁵ for several offenses relating to credit cards including:

- Receiving two or more credit cards within a 12 month period issued in the names of different cardholders, which the person had reason to know were taken or retained under circumstances that constitute credit card theft;
- Possessing two or more counterfeit credit cards;
- Making a device or instrument that purports to be a credit card of a named issuer but which the issuer did not authorize; or
- Falsely embossing a credit card without authorization of the issuer.⁶

¹ A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. Sections 775.082, 775.083, F.S.

² "Credit card" is defined to mean any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device." Section 817.58(4), F.S.

³ Taking a credit card without consent includes obtaining the card by statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, or embezzlement or obtaining property through false pretense, false promise, or extortion. Section 817.60(1), F.S.

⁴ Section 817.60(1)-(4), F.S.

⁵ A third degree felony is punishable by up to five years imprisonment and a maximum \$5,000 fine. Sections 775.082, 775.083, 775.084, F.S.

It is possible that possession of a stolen credit card could be prosecuted as theft under s. 812.014, F.S. Section 812.014(1), F.S., provides a person commits theft if the person knowingly obtains the property of another with the intent to, either temporarily or permanently:

- deprive the other person of a right to the property or 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.⁷

The penalties for a violation of s. 812.014, F.S., are generally tied to value of the stolen goods.⁸ The actual value of a credit card would likely be determined to be the value of the plastic used to make the credit card, which would be a negligible amount. The value of the stolen goods would likely be under \$300 and prosecuted as a second degree misdemeanor^{9, 10}.

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property.¹¹ Section 812.019(1), F.S., provides that a person commits a second degree felony¹² if the person traffics¹³ in or endeavors to traffic in property that he or she knew or should have known was stolen.

Section 812.022, F.S., provides evidence of theft or dealing in stolen property which may be used to create an inference that a person knew, or should have known that the property was stolen.¹⁴ Examples include: possession of recently stolen property, unless satisfactorily explained; the purchase or sale of stolen property at a price substantially below fair market value, unless satisfactorily explained; and the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership, unless satisfactorily explained.¹⁵

Proposed Changes

The bill amends s. 817.60(1), F.S., to provide a person commits a third degree felony if a person takes a credit card from the person, possession, custody, or control of another without the cardholder's consent; a person possesses, receives, or retains custody of a credit card with the knowledge it has been stolen; or who receives the credit card with the intent to use, sell, or transfer the card to a person other than the issuer.

The bill provides that proof of possession of a credit card that has been recently stolen or possession of a credit card in the name of a person other than that of the possessor gives rise to the inference that the person in possession of the credit card knew or should have known the credit card was stolen.¹⁶

⁶ Section 817.60(5), s. 817.60(6), F.S.

⁷ Section 812.014(1), F.S.

⁸ Section 812.014, F.S. If the value of the stolen property is \$100,000 or greater, the offense is punishable as a first degree felony; if the value of the stolen property is between \$20,000 and \$100,000, the offense is a second degree felony; if the value of the stolen property is between \$300 and \$5,000, the offense is a third degree felony; if the value of the stolen goods is valued at between \$100 and \$300, the offense is a first degree misdemeanor; if the value of the stolen goods is valued at less than \$100, the offense is a second degree misdemeanor. Some property is listed specifically in s. 812.014, F.S. Theft of this specified property may be punished at a greater degree of punishment regardless of the value of the stolen items.

⁹ A second degree misdemeanor is punishable by up to 60 days in county jail and a maximum \$500 fine. Sections 775.082, 775.083, F.S.

¹⁰ Section 812.014(3)(a), F.S.

¹¹ Section 812.019(1), F.S.

¹² A second degree felony is punishable by up to 15 years imprisonment and a maximum \$10,000 fine. Sections 775.082, 775.083, 775.084, F.S.

¹³ "Traffic" is defined to mean to sell, transfer, distribute, dispense, or otherwise dispose of property, or to buy, receive possess, obtain control of, or use property with intent to sell, transfer, distribute, dispense, or otherwise dispose of such property. Section 812.012(8), F.S.

¹⁴ Section 812.022, F.S.

¹⁵ Id.

¹⁶ The language in the bill is similar to language in s. 812.022, F.S., relating to evidence of theft or dealing in stolen property. See e.g. s. 812.022(3), F.S. ("Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen").

The bill provides that retailers who in good faith take, accept, retain, or possess a stolen credit card without knowledge that the card is stolen do not violate s. 817.60, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.60, F.S., relating to theft; obtaining credit card through fraudulent means.

Section 2: Provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met March 17, 2010, and determined this bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Public Safety & Domestic Security Policy Committee adopted amendment to the bill. The original bill removed the intent requirement from the credit card theft statute. The amendment restored the intent element to the crime. The bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.

On March 26, 2009, the Criminal and Civil Justice Appropriations Committee adopted an amendment providing that retailers who in good faith take, accept, retain, or possess a stolen credit card without knowledge that the card is stolen do not violate s. 817.60, F.S. The bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.