

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 621 Possession of Stolen Credit Cards

**SPONSOR(S):** Brandenburg

**TIED BILLS:** **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u></u>	<u>Padgett</u>	<u>Cunningham</u>
2)	<u>Criminal &amp; Civil Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Criminal &amp; Civil Justice Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**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 or a person possesses, receives, or retains custody of a credit card without the cardholder's consent. These changes remove the element of intent required in current s. 817.60(1), 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.

## 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 misdemeanor<sup>1</sup> for several offenses relating to credit cards<sup>2</sup> including:

- Taking<sup>3</sup> 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.<sup>4</sup>

Section 817.60, F.S. provides criminal penalties punishable as a third degree felony<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> 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.

<sup>2</sup> "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.

<sup>3</sup> 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.

<sup>4</sup> Section 817.60(1)-(4), F.S.

<sup>5</sup> 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.<sup>7</sup>

The penalties for a violation of s. 812.014, F.S. are generally tied to value of the stolen goods.<sup>8</sup> 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<sup>9, 10</sup>.

It is possible that possession of a stolen credit card could be prosecuted as the offense of dealing in stolen property.<sup>11</sup> Section 812.019(1), F.S. provides that a person commits a second degree felony<sup>12</sup> if the person traffics<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

#### 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 or a person possesses, receives, or retains custody of a credit card without the cardholder's consent. These changes remove the element of intent required in current s. 817.60(1), 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.

#### B. SECTION DIRECTORY:

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

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<sup>6</sup> Section 817.60(5), s. 817.60(6), F.S.

<sup>7</sup> Section 812.014(1), F.S.

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> Section 812.014(3)(a), F.S.

<sup>11</sup> Section 812.019(1), F.S.

<sup>12</sup> 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.

<sup>13</sup> "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.

<sup>14</sup> Section 812.022, F.S.

<sup>15</sup> Id.

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:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill.

## 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:

Removing the element of intent from the offense could possibly criminalize innocent conduct. For example, if a person finds a credit card on the ground that had been taken from someone else without consent, picking up the credit card could possibly subject the person to criminal charges under the bill, even if the person's intent was to return the card to the owner.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES