

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 912

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			AGG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 addresses fraudulent activity occurring at fuel stations by:

- Increasing from a third degree felony (maximum penalty of 5 years in state prison) to a second degree felony (maximum penalty of 15 years in state prison) for the unlawful conveyance of fuel;
- Requiring a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one security measure described in the bill and authorizing the Florida Department of Agriculture and Consumer Services, under certain circumstances, to prohibit further use of the measuring device until a security measure is installed, replaced, or repaired;
- Punishing trafficking in or attempting to traffic in 5 counterfeit credit cards (current law: 10 cards);
- Indicating that possession of counterfeit cards is unlawful (not specified in current law); and
- Increasing the offense severity level ranking for unlawful conveyance of fuel and trafficking in or possession of counterfeit credit cards (increasing the possibility that the defendant will fall within the sentencing range in which a prison sentence may be imposed).

II. Present Situation:

Fraudulent Activity Occurring at Fuel Stations

The Florida Department of Agriculture and Consumer Services (FDACS) states:

FDACS is responsible for conducting inspections of the petroleum distribution system and analyzing samples of petroleum products to ensure consumers are being offered quality products at a fair measure. In fulfilling this responsibility, FDACS inspects pumps for devices that steal credit card information from unknowing consumers—commonly called “skimmers.”

Current statutes do not require security measures to be in place to reduce the possibility of placing skimmers into pumps or alerting the consumer that a pump has been opened. The consumer is victimized by credit card theft, while the retailer is victimized by fraudulent fuel purchases. Through elaborate schemes to defraud, a consumers’ information obtained by a skimmer is often used to purchase gasoline fraudulently and subsequently sold on the black market. In some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.

Penalties presently for the theft of fuel depend on the amount stolen as with any other product.¹

Unlawful Conveyance of Fuel

Section 316.80(1), F.S., provides that it is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel over any public highway.

Section 316.80(2), F.S., provides that any person who violates subsection (1) commits a third degree felony, if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a credit card or a credit card account number in violation of ss. 817.57-817.685, F.S.;²
- Using unauthorized access to any computer network in violation of s. 815.06, F.S.; or
- Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.

Trafficking In or Possession of Counterfeit Cards

Section 817.611, F.S., provides that it is a second degree felony for a person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other

¹ Analysis of SB 912 (November 24, 2015), Florida Department of Agriculture and Consumer Services (on file with the Senate Committee on Criminal Justice).

² A number of payment card offenses are included in the referenced statutes, including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant. Section 817.625, F.S.

representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period. Relevant to the bill, this offense does not specifically state that *possession* of counterfeit credit cards is unlawful.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.

III. Effect of Proposed Changes:

The bill, which is effective October 1, 2016, addresses fraudulent activity occurring at fuel stations in the following manner:

- The bill amends s. 316.80(2), F.S., to increase the felony degree for unlawful conveyance of fuel from a third degree felony (maximum penalty of 5 years in state prison)³ to a second degree felony (maximum penalty of 15 years in state prison).⁴
- The bill also amends s. 921.0022, F.S., to rank the offense of unlawful conveyance of fuel in Level 5 of the offense severity level ranking chart. Currently, this offense is ranked in Level 1. An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 1. A Level 5 offense accrues more sentence points than a Level 1 offense. A Level 5 offense is considered to be more serious than a Level 1 offense. A defendant with a Level 5 offense would score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.
- The bill amends s. 525.07, F.S. (powers and duties of the FDACS), to:
 - Require each person who owns or manages a retail petroleum fuel measuring device to have affixed to or installed onto the measuring device at least one listed security measure to restrict the unauthorized access of customer payment card information;
 - Specify security measures;⁵
 - Specify that the owner of a measuring device with a security measure or with an altered or damaged security measure, upon written notice of noncompliance from the FDACS, has 5 calendar days to comply with security measure requirements;
 - Provide that after the fifth day of noncompliance, the FDACS may prohibit further use of the measuring device until a security measure is installed, replaced, or repaired, and that a repeat violation found on the same device will be cause for the FDACS to immediately take the device out of service;
 - Relevant to this new provision, specify that the terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.;⁶ and

³ Section 775.082, F.S.

⁴ *Id.*

⁵ Security measures include: placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the measuring device in a manner that will restrict the unauthorized opening of the panel; a device or system that will render the measuring device or scanning device in the measuring device inoperable if there is an unauthorized opening of the panel; a device or system that encrypts the customer payment card information in the scanning device; or another security measure approved by the FDACS.

⁶ “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(a), F.S. “Payment card” means a credit card, charge card, debit card, or any other card that is issued to an

- Provide that this provision only applies to retail petroleum fuel measuring devices that have a scanning device.
- The bill amends s. 817.611, F.S, which currently punishes trafficking in 10 or more counterfeit credit cards, etc., to reduce the number of cards from 10 to 5 and specify that this offense also includes possession, which is not currently specified.

The bill does not change the felony degree of trafficking in or possession of counterfeit cards (second degree felony) but does amend s. 921.0022, F.S., to rank this offense in Level 5 of the offense severity level ranking chart. Currently this offense is a Level 4 offense. The possibility of a defendant receiving a prison sentence is greater if the offense is in Level 5 than Level 4. A Level 5 offense accrues more sentence points than a Level 4 offense. A Level 5 offense is considered to be more serious than a Level 4 offense. A defendant with a Level 5 offense is more likely to score a lowest permissible sentence that is within the sentencing range in which a court may impose a prison sentence.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact of legislation, estimated that the original bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). Changes to the original bill incorporated in CS/SB 912 do not impact that estimate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.611, and 921.0022.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 25, 2016:

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have 5 calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

B. Amendments:

None.