

**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.)

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

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BILL: SB 912

INTRODUCER: Senator Flores

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: January 22, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			AGG	
3.			FP	

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**I. Summary:**

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 retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures and authorizing the Florida Department of Agriculture and Consumer Services, under certain circumstances, to prohibit use of or remove from service noncompliant devices;
- 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);
- 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.<sup>1</sup>

### **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.;
- 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 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.

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

### 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)<sup>2</sup> to a second degree felony (maximum penalty of 15 years in state prison).<sup>3</sup>
- 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 a person who owns or operates a retail petroleum fuel measuring device to have affixed to the measuring device a security measure to hinder or prohibit the unauthorized access of customer payment card information;
  - Specify minimum security measures;
  - Specify that the owner has 5 days to comply with security measure requirements after notice of noncompliance from FDACS;
  - Provide that after the fifth day of noncompliance, the FDACS may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, 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.;<sup>4</sup>
  - Provide that this provision only applies to retail petroleum fuel measuring devices that have a scanning device; and
  - Require the FDACS to enforce this provision and authorize the FDACS to adopt rules to implement it.
- 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

<sup>2</sup> Section 775.082, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> “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 authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant. Section 817.625(1)(c), F.S.

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, estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds).

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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