

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 Fiscal Policy

BILL: CS/SB 912

INTRODUCER: Criminal Justice Committee and Senators Flores and Soto

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: February 16, 2016 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Fav/CS
2. Blizzard	DeLoach	AGG	Recommend: Favorable
3. Pace	Hrdlicka	FP	Pre-meeting

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 the felony classification for unlawful conveyance of fuel; revising the offense of trafficking in counterfeit cards to include possession of cards and making the trafficking or possession of 5 instead of 10 cards unlawful; ranking such offenses as Level 5 offenses in the offense severity level ranking chart used for sentencing; and requiring retail fuel pumps that have credit card scanners to have certain security measures.

The bill has an insignificant fiscal impact on state funds. The Criminal Justice Impact Conference determined that the bill would have a positive insignificant impact on state prison beds, which means that the bill will require 10 or fewer additional prison beds.

II. Present Situation:

Fraudulent Activity Occurring at Fuel Stations

It is the responsibility of the Department of Agriculture and Consumer Services (DACS) to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail.¹ As part of the inspections of retail pumps, the DACS also inspects pumps for devices that steal credit card information from consumers, commonly called “skimmers.” According to the DACS, the consumer’s credit card information obtained by a skimmer is often used to purchase

¹ Section 525.07, F.S.

gasoline fraudulently, and the fuel is then sold on the black market. Both the consumer and the retailer are victimized by the fraudulent fuel purchase and credit card theft. The DACS reports that “in some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.” There are no provisions in current law that would require security measures to be in place to reduce the possibility of skimmers being placed into pumps or to alert a consumer that tampering has been done to a pump. Further, current penalties for the theft of fuel are determined by the amount stolen.²

Unlawful Conveyance of Fuel

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.³

A person commits a third degree felony if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a fraudulent credit card or a credit card account number;⁴
- Using unauthorized access to any computer network; or
- Using a fraudulently scanned or lost or stolen payment access device, whether a credit card or contactless device.⁵

The described offense is not currently ranked in the offense severity level ranking chart in s. 921.0022, 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.⁶

Trafficking In or Possession of Counterfeit Cards

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.⁷ 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.⁸

² DACs, *Legislative Bill Analysis of SB 912* (November 24, 2015), (on file with the Senate Committee on Criminal Justice).

³ Section 316.80(1), F.S.

⁴ Section 817.625, F.S., defines a number of payment card offenses 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.

⁵ Section 316.80(2), F.S.

⁶ Section 921.0022, F.S., ranks offenses for sentencing from Level 1, which is the least severe, to Level 10, the most severe.

⁷ Section 817.611, F.S.

⁸ *Supra* note 6.

III. Effect of Proposed Changes:

The bill addresses fraudulent activity occurring at fuel stations by increasing the felony classification for unlawful conveyance of fuel; revising the offense of trafficking in and possession of counterfeit cards; ranking such offenses; and requiring retail fuel pumps that have credit card scanners to have certain security measures.

Section 1 amends s. 316.80, F.S., to increase the felony classification for unlawful conveyance of fuel to a second degree felony. Currently, the unlawful conveyance of fuel is classified as a third degree felony.⁹

Section 2 amends s. 527.07, F.S., to require each person who owns or manages a retail petroleum fuel measuring device (fuel pump) with a scanning device to affix or install a security measure on the fuel pump to restrict the unauthorized access of customer payment card information.

The bill requires one of the following security measures:

- Placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the fuel pump in a manner that will restrict the unauthorized opening of the panel;
- A device or system that will render the fuel pump or scanning 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 DACS.

The bill authorizes the DACS to prohibit the use of a retail fuel pump until a security measure is installed, replaced, or repaired. The DACs must provide written notice to the owner or manager of noncompliance and allow the owner or manager 5 days to come into compliance.

If a retail fuel pump is found out of compliance more than once then the DACS is authorized to immediately take the device out of service.

The terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.¹⁰

Section 3 amends s. 817.611, F.S., to include possession of counterfeit credit cards as part of the offense. Further, the bill reduces the number of credit cards that a person traffics or possesses which gives rise to the offense from 10 cards to 5 cards.

⁹ A second degree felony carries a maximum penalty of 15 years in state prison, and a fine of up to \$10,000. A third degree felony carries a maximum penalty of five years in state prison, and a fine of up to \$5,000. *See* ss. 775.082 and 775.083, F.S.

¹⁰ Section 817.625(1)(a), F.S. defines “scanning device” as 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)(c), F.S., defines “payment card” as 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 4 amends s. 921.0022, F.S., to rank the unlawful conveyance of fuel as a Level 5 offense in the severity level ranking chart. Currently, this offense is ranked by default as a Level 1 offense.¹¹

The bill also ranks the trafficking in or possession of counterfeit cards as a Level 5 offense in the severity level ranking chart. Currently, this offense is ranked by default as a Level 4 offense.¹²

Section 5 provides that the bill is effective October 1, 2016.

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:

The bill may have a fiscal impact on owners or managers of retail fuel pump due to the requirement for the installation of one or more security measures on such devices.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation, estimated that the original bill will have a positive

¹¹ 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 a Level 5 rather than a Level 1. A Level 5 offense is considered to be more serious than a Level 1 offense and accrues more sentence points. A defendant with a Level 5 offense would score the lowest permissible prison sentence.

¹² The possibility of a defendant receiving a prison sentence is greater if the offense is a Level 5 rather than a Level 4. A Level 5 offense accrues more sentence points than a Level 4 offense. A defendant with a Level 5 offense is more likely to score the lowest permissible prison sentence.

insignificant prison bed impact (an increase of 10 or fewer prison beds).¹³ Changes to the original bill incorporated in CS/SB 912 do not impact the conference's 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 five 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.

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

¹³ Office of Economic and Demographic Research, *Criminal Justice Impact Conference Results for SB 912* (Jan. 5, 2016), available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB912.pdf> (last visited Feb. 12, 2016).