

**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 Rules

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BILL: CS/CS/CS/SB 912

INTRODUCER: Rules Committee; Fiscal Policy Committee; Criminal Justice Committee; and Senators Flores and Soto

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: February 24, 2016 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Blizzard</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>
4.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 912 addresses fraudulent activity occurring at fuel stations by increasing the penalties for offenses related to the fraudulent activity and requiring retail fuel pumps that have credit card scanners to have certain security measures. Related to the offenses, the bill:

- Increases the felony classification for unlawful conveyance of fuel;
- Revises the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that it is unlawful to traffic in or possess 5 such cards or documents (current law: 10);
- Creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved; and
- Ranks the offenses in the Criminal Punishment Code offense severity level ranking chart.

The Legislature's Office of Economic and Demographic Research preliminary estimate is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require unquantifiable increase in 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.<sup>1</sup> 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 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.<sup>2</sup>

### 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.<sup>3</sup>

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;<sup>4</sup>
- 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.<sup>5</sup>

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.<sup>6</sup>

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<sup>1</sup> Section 525.07, F.S.

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

<sup>3</sup> Section 316.80(1), F.S.

<sup>4</sup> 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.

<sup>5</sup> Section 316.80(2), F.S.

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

### Trafficking In or Possession of Counterfeit Cards

It is a second degree felony for a person to traffic <sup>7</sup>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.<sup>8</sup> 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.<sup>9</sup>

### III. Effect of Proposed Changes:

The bill addresses fraudulent activity occurring at fuel stations by:

- Increasing the felony classification for unlawful conveyance of fuel;
- Requiring retail fuel pumps that have credit card scanners to have certain security measures;
- Revising the offense of trafficking in and possession of counterfeit cards and related documents;
- Creating tiered penalties for trafficking in or possession of counterfeit cards or related documents; and
- Ranking such offenses in the Criminal Punishment Code offense severity ranking chart.

**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 a third degree felony.<sup>10</sup>

**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.

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<sup>7</sup> Section 817.58(10), F.S., defines “traffic” to mean “sell, transfer, distribute, dispense, or otherwise dispose of a property or to buy, receive, possess, obtain control of, or use the property with the intent to sell, transfer, distribute, or otherwise dispose of such property.”

<sup>8</sup> Section 817.611, F.S.

<sup>9</sup> *Supra* note 6.

<sup>10</sup> 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 5 years in state prison, and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

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.<sup>11</sup>

**Section 3** amends the definition of “traffic” in s. 817.58, F.S., which is relevant to trafficking in counterfeit credit cards, to delete reference to “possess.” Currently, the term “traffic,” is defined to include, in part, possession with the intent to sell, transfer, distribute, dispense, or otherwise dispose of property.

**Sections 4** amends s. 817.611, F.S., to revise the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that this offense applies to trafficking in or possession of 5 such cards or documents (current law: 10).

The bill also creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents<sup>12</sup> based upon the number of items involved. Specifically, the bill provides that trafficking in or possession of:

- 15-14 counterfeit cards or related documents is a second degree felony;
- 15-49 counterfeit cards or related documents is a second degree felony; and
- 50 or more counterfeit cards or related documents is a first degree felony.<sup>13</sup>

**Section 5** amends s. 921.0022, F.S., to rank the unlawful conveyance of fuel as a Level 5 offense in the Criminal Punishment Code offense severity level ranking chart. Currently, this offense is ranked by default as a Level 1 offense.<sup>14</sup>

Currently, the offense of trafficking in counterfeit credit cards is ranked by default as a Level 4 offense. The bill provides that trafficking in or possession of:

- 5-14 counterfeit cards or related documents is a Level 5 second degree felony;
- 15-49 counterfeit cards or related documents is a Level 7 second degree felony; and

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<sup>11</sup> 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.

<sup>12</sup> “Related documents” are defined as invoices, vouchers, sales drafts, or other representations or manifestations of a counterfeit credit card or a credit card number of a cardholder if not authorized by the cardholder.

<sup>13</sup> A first degree felony is generally punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>14</sup> 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 ranked in Level 5 rather than Level 1.

- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.<sup>15</sup>

**Section 6** 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 final, official estimate of the prison bed impact, if any, of legislation has not reviewed CS/CS/CS/SB 912. A preliminary estimate by the Legislature's Office of Economic and Demographic Research (EDR) is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require an unquantifiable increase in prison beds.

The EDR provided the following information regarding the penalty provisions of the bill:

#### **Unlawful Conveyance of Fuel**

The bill increases the offense to a second degree felony ranked in Level 5 of the Criminal Punishment Code offense severity level ranking chart. According to the Department of Corrections, in FY 2014-15, there was one (adj.) offender sentenced for fraudulently obtaining motor or diesel fuel, but that person did not receive a prison sentence. In FY 2014-2015, the incarceration rate for a Level 5 second degree felony was 37.3 percent.

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<sup>15</sup> The possibility of a defendant receiving a prison sentence is greater if the offense is a Level 5 rather than a Level 4. An offender with a Level 7 or Level 8 primary offense would score prison as the lowest permissible sentence.

**Trafficking in or Possession of Counterfeit Credit Cards:**

The bill revises the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that this offense applies to trafficking in or possession of 5 such cards or documents (current law: 10).

The bill also creates tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved and ranks those penalties in the Criminal Punishment Code offense severity ranking chart. Specifically, the bill provides that trafficking in or possession of:

- 15-14 counterfeit cards or related documents is a Level 5 second degree felony;
- 15-49 counterfeit cards or related documents is a Level 7 second degree felony; and
- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.

According to the Department of Corrections, in FY 2014-15:

- There were 35 (adj.) offenders sentenced for trafficking in counterfeit credit cards, and 12 (adj.) received a prison sentence (mean sentence length of 30.4 months and incarceration rate of 34.3 percent adj. to 33.3 percent unadj.);
- The incarceration rate for a second degree felony ranked in Level 7 was 57.1 percent; and
- The incarceration rate for a Level 8 first degree felony was 74.7 percent.

The EDR states that it is unknown how many cards were involved in each separate offense.

**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, 817.58, 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/CS/CS by Rules on February 24, 2016:**

- Revises the definition of “traffic” in s. 817.58, F.S., which is relevant to trafficking in counterfeit credit cards, to delete reference to “possesses.”
- Provides that trafficking in, attempting to traffic in, or possessing:

- 15-49 counterfeit cards or related documents is a Level 7 second degree felony;  
and
- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.

**CS/CS by Fiscal Policy on February 17, 2016:**

The committee substitute establishes a tiered penalty system for persons who traffic in, attempt to traffic in, or possess counterfeit cards or related documents depending on the number of cards trafficked or possesses.

**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.