

1989

Session Law 89-027

Florida Senate & House of Representatives

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S 428 GENERAL BILL/1ST ENG by Weinstein (Similar 1ST ENG/H 1182)

Credit Card Transactions/Crimes: prohibits, without authorization of acquirer, employment or solicitation of person who is authorized by acquirer to accept payment by credit card for furnishing money, goods, or services, or employment or solicitation of agent or employee of such authorized person, for purpose of remitting to acquirer credit card transaction record of sale that was not made by such authorized person or his agent or employee, etc. Amends 817.62,.67. Effective Date: 10/01/89.

03/09/89 SENATE Prefiled
03/24/89 SENATE Referred to Judiciary-Criminal
04/04/89 SENATE Introduced, referred to Judiciary-Criminal -SJ 43; On Committee agenda—Judiciary-Criminal, 04/06/89, 1:15 pm, Room-2C-(301)
04/06/89 SENATE Comm. Report: Favorable by Judiciary-Criminal, placed on Calendar -SJ 97
04/18/89 SENATE Placed on Special Order Calendar -SJ 173
04/25/89 SENATE Placed on Special Order Calendar -SJ 198
04/27/89 SENATE Placed on Special Order Calendar -SJ 210; Passed; YEAS 38 NAYS 0 -SJ 231
05/02/89 HOUSE In Messages
05/04/89 HOUSE Received, placed on Calendar -HJ 373
05/09/89 HOUSE Substituted for HB 1182; Read second time; Amendment adopted; Read third time; Passed as amended; YEAS 113 NAYS 0 -HJ 423
05/10/89 SENATE In Messages
05/18/89 SENATE Concurred; Passed as amended; YEAS 37 NAYS 0 -SJ 393
05/18/89 Ordered engrossed. then enrolled -SJ 393
05/23/89 Signed by Officers and presented to Governor -SJ 448
05/29/89 Approved by Governor; Chapter No. 89-27 -SJ 495

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u> <i>DP</i>	<u>Liepschutz</u> <i>ML</i>	1. <u>JCR</u>	<u>Fav</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Credit Card Crimes

BILL NO. AND SPONSOR:

SB 428 by
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Credit card crimes are proscribed by ch. 817, F.S. Last year the Legislature made it a third degree felony for a merchant to illegally "factor" credit card transaction slips. s. 817.62(3), F.S. Factoring occurs when a merchant or his employee, with intent to defraud an issuer (financial institution issuing the credit card), an acquirer (merchant bank or financial institution authorizing merchants to accept payment by credit card), or a cardholder, presents for payment to the issuer or acquirer, the credit card transaction record of sales made by a person other than the merchant or his employee.

Factoring seems to arise most commonly in the context of boiler room schemes where a person who defrauds consumers and solicits their credit card numbers over the phone, arranges with a merchant who has an authorized merchant bank account to process these fraudulently obtained credit card transaction slips through that account. If there is intent to defraud on the part of a merchant, he can be criminally prosecuted for factoring. The person who does not have an authorized merchant bank account and who therefore arranges with another merchant to process his unauthorized credit card transaction slips through that merchant's bank account, on the other hand, is not currently covered under the factoring statute.

Sections 501.201-501.213, F.S., contain the Florida Deceptive and Unfair Trade Practices Act. The purpose of this Act is to protect consumers from suppliers who commit deceptive and unfair trade practices. The Attorney General or a state attorney can bring a civil action against suppliers violating this Act. Civil remedies include declaratory judgment, injunction, actual damages, cease and desist orders, and fines not exceeding \$5,000 for each violation.

B. Effect of Proposed Changes:

SB 428 would broaden the factoring statute to include within its coverage a person who does not have an authorized merchant bank account and who therefore arranges with another merchant who does have one, to process his unauthorized credit card transaction slips through that merchant's authorized account. Thus, not only would it be a third degree felony for a merchant, possessing fraudulent intent, to factor credit card transaction slips through his account, but it would also be a third degree felony for a person who is not authorized by an acquirer to accept credit cards, to employ the merchant to factor such slips. Fraudulent intent on the part of a person who does not have an acquirer's authorization to accept credit cards would not be required under the bill.

The bill would also declare that this type of unauthorized transfer of credit card transaction records would be an unfair and deceptive practice within the meaning of the Florida Deceptive and Unfair Trade Practices Act. By so declaring, the bill would enable the Attorney General or a state attorney to bring a civil action against any person not authorized by an acquirer to accept credit card transaction slips for engaging in an activity that is defined under the bill as an unfair trade practice.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that this bill acts as a deterrent to illegal credit card factoring, it could result in indeterminable savings to certain financial institutions and business organizations.

B. Government:

According to the Department of Corrections, the fiscal impact of this bill would be minimal.

III. COMMENTS:

Technically, a person who is not authorized by an acquirer to accept credit cards could be prosecuted under this bill, even though he has no intent to defraud the cardholder or acquirer; that is, he could fully intend to fulfill his obligations to the cardholder (i.e., deliver the goods) and expect the cardholder to pay the acquirer.

IV. AMENDMENTS:

None.

STORAGE NAME: s428-f.com
DATE: 06/22/89

HOUSE OF REPRESENTATIVES
COMMERCE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: SB 428
RELATING TO: Credit Card Crimes
SPONSOR(S): Senator Weinstein
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: May 29, 1989
CHAPTER #: 89-27, Laws of Florida
COMPANION BILL(S): HB 1182
OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SUMMARY:

This bill expands the scope of the criminal provisions relating to illegal factoring of credit card transactions.

A. PRESENT SITUATION:

Part II of chapter 817, F.S., is the "State Credit Card Crime Act." In 1988, the legislature made illegally factoring credit card transactions a third degree felony. Illegal factoring occurs when a merchant or his employee, with intent to defraud the financial institution which issued the credit card, presents for payment, the credit card transaction slip made by a person other than the merchant or his employee.

Factoring typically arises in the case of boiler room operations where sales are made over the phone and the customer has given out his credit card number for the purchase of goods from a bogus sales operation. The boiler room operator who cannot present this credit card transaction to a bank because the financial community is aware of the operator's reputation and refuses him a merchant account, arranges with a legitimate merchant to purchase the credit card sale and run it through their bank account. If the merchant processes this transaction with intent to defraud, the crime of illegal factoring has occurred and the merchant is liable. Under the current factoring statute, however, there has been no crime committed by the boiler room operator.

B. EFFECT OF PROPOSED CHANGES:

This bill expands the scope of the factoring statute to embrace the person who arranges with a merchant to process his unauthorized credit card transaction slips through another merchant's authorized account. Therefore, like the authorized merchant, the boiler room operator would be guilty of a third degree felony for employing the merchant. The boiler room operator, however, would be guilty regardless of intent.

Additionally, a transaction of this nature would be a violation of the Unfair and Deceptive Trade Practices Act (part II, chapter 501, F.S.). This would enable the Attorney General or a state attorney to bring a civil action against any person who engaged in illegal factoring of credit cards. Civil remedies would include injunction, cease and desist orders, and fines of up to \$5,000 per violation.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None, other than costs associated with criminal prosecution.

2. Recurring or Annualized Continuation Effects:

None, other than costs associated with criminal prosecution.

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

To the extent that this bill acts as a deterrent to illegal credit card factoring, it could result in indeterminable savings to certain financial institutions and business organizations.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill comports with the state policy of strengthening its commitment to pursue, both criminally and civilly, those individuals who profit from economic crimes (s. 187.201(7)(b)15., F.S.).

IV. COMMENTS:

Issuers of credit cards (Mastercard, American Express) typically include a prohibition against factoring provision in their contract with merchants. Since no specific intent would be necessary to commit the crime established in this bill, a legitimate business that factored its transactions because of an inability to obtain a merchant's account would be in violation of the law and the merchant that processed the paper would be in violation of the merchant's agreement.

V. LEGISLATIVE HISTORY:

A. ENACTED BILL:

Senate Bill 428 was introduced on April 4 and referred to the Committee on Judiciary-Criminal. The committee on April 6 reported the bill out favorably and placed it on the calendar. On April 27, the Senate passed the bill by a vote of 38-0 (SJ 00231). The House received the bill and substituted it for HB 1182. On May 9, the House amended the bill and passed it by unanimous vote (113-0) (HJ 00423). The Senate concurred in the amendment and passed the bill 37-0 (SJ 0393). The bill was approved by the Governor on May 29 (SJ 00495). (Chapter Law 89-27).

B. DISPOSITION OF COMPANION:

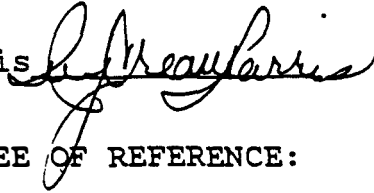
House Bill 1182 by Representative Wallace was introduced on April 4 and referred to the Commerce Committee. On April 18, the Banking and Commerce Subcommittee favorably recommended the bill. On April 26, the full Commerce Committee also reported the bill out favorably. After adopting an amendment, the House, on May 9, substituted the Senate bill, laid the House bill on the table and passed the Senate bill (HJ 00423).

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

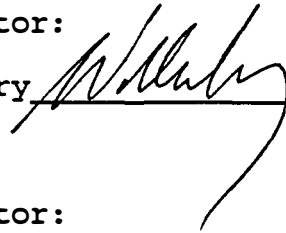
Prepared by:

Ivy Cream Harris



Staff Director:

William Leary



SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director: