

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1717 - HB 1722

February 10, 2018

SUMMARY OF BILL: Enhances by one classification the offense of organized retail crime when the person exercised organizational, supervisory, financial, or management authority over the activity of one or more persons in furtherance of the offense.

Establishes various reporting requirements for merchants who sell stored value cards. Merchants must keep a record of each sale or purchase of a stored value card, and maintain a copy of the record for three years. The record must include the time, date, and place of the transaction; a complete and accurate description of the stored value card sold or purchased, including the name of the original issuer, if available, the amount of the stored value card, and the serial number and pin number of the stored value card; a description of the person purchasing or selling the stored value card; a copy of the purchaser or seller's government issued identification; and a signed statement by the seller that the seller is the rightful owner or is authorized to sell consign, or trade the stored value card.

These records must be delivered to the appropriate local law enforcement agency within 24 hours from the date of the transaction. Local law enforcement agencies must annually provide a record of all stored value card transactions that occurred in their jurisdiction to the chief executive officer on the county. The county must annually provide a record of all stored value card transactions occurring within the county to the Comptroller of the Treasury, which is authorized to use the records for auditing purposes.

Failure to maintain proper records by a merchant is a class A misdemeanor, and could result in the merchant losing its business license. Fine revenue generated from the new offense shall be earmarked for law enforcement purposes.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$91,500 Incarceration*

Increase Local Revenue – Up to \$25,000

Increase Local Expenditures – \$3,828,000**

Assumptions:

- Chapter 472 of the Public Acts of 2017 enacted the Organized Retail Crime Prevention Act. The Act created two new theft offenses.
- The proposed legislation enhances a violation of these offenses one classification if the defendant exercised organizational, supervisory, financial, or management authority over the activity of one or more persons in furtherance of the offense.
- It is assumed that the Act will result in the enhancement of one class E felony to a class D felony admission each year, one class D felony to a class C felony admission each year, and one class C felony to a class B felony admission every two years.
- These offenses would be prosecuted under the criminal responsibility statute, Tenn. Code Ann. § 39-11-402, at the same level as theft, but will be prosecuted one classification higher under the proposed legislation.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this proposed legislation.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2018 is \$71.08.
- The average time served for a class D felony is 2.15 years. The average time served for class E felony is 1.31. The Act will result in one offender serving an additional 0.84 year.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 0.84 years (306.81 days) at a cost of \$21,808 ($\71.08×306.81 days).
- The average time served for a class C felony is 3.28 years. The average time served for a class D felony is 2.15 years. The Act will result in one offender serving an additional 1.13 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.13 years (412.73 days) at a cost of \$29,337 ($\71.08×412.17 days).
- The average time served for a class B felony is 6.39 years. The average time served for a class C felony is 3.28 years. The Act will result in one offender every two years serving an additional 3.11 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every two years serving 3.11 years (1,135.93 days) for an annualized cost of \$40,371 [$(\$71.08 \times 1,135.93 \text{ days}) / 2$].
- The recurring increase in state incarceration costs is estimated to be \$91,516 ($\$21,808 + \$29,337 + \$40,371$).
- The proposed legislation creates a new class A misdemeanor for merchants knowingly failing to follow the reporting requirements. The violation could result in the merchant having its business license suspended or revoked at the discretion of the city or county clerk.
- Any fine revenue generated from the violation shall be earmarked by the city or county for law enforcement purposes. Because a violation could lead to a merchant losing its business license, the proposed legislation will not result in many violations.

- A class A misdemeanor can be punished with a fine up to \$2,500. It is assumed that the average class A misdemeanor fine is \$500.
- It is reasonable to assume that no more than 50 annual violations will result from the proposed legislation, and that the fine collected will be no more than \$500 per violation.
- The proposed legislation will result in a recurring increase in local revenue of up to \$25,000.
- The records produced by merchants must be transmitted to the appropriate local law enforcement agency, which must collect the records and annually report transactions to the chief executive officer of the county in which it serves.
- Local law enforcement agencies will need dedicated staff to receive, compile, and report these records to the chief executive officer of the county.
- There are approximately 319 local law enforcement agencies in Tennessee. Not every agency will need to hire a full-time employee to handle the records sent by merchants. It is assumed that, on average, each local law enforcement agency will require a part-time employee to receive, compile, and report the transaction records at a cost of \$12,000 per year for each part-time employee.
- The recurring increase in local expenditures is estimated to be \$3,828,000 (319 agencies x \$12,000).
- The Comptroller of the Treasury can receive the 95 annual reports from the counties within its existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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