

20.30 FRAUDULENT USE OF A GIFT CARD

§ 817.091(2), Fla. Stat.

To prove the crime of Fraudulent Use of a Gift Card, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give as applicable:

- a. acquired or retained possession of a [gift card] [gift card redemption information] without the consent of the [cardholder] [card issuer] [gift card seller].**
- b. altered or tampered with a gift card or its packaging.**
- c. devised a scheme to obtain a [gift card] [gift card redemption information] from [a] [cardholder] [card issuer] [gift card seller] by means of false or fraudulent pretenses, representations, or promises.**
- d. used, for the purpose of obtaining [money] [goods] [services] or anything else of value, a [gift card] [gift card redemption information] that had been obtained (insert the way that § 817.091(2), Fla. Stat. had been violated).**

2. [He] [She] did so with the intent to defraud.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Give if applicable.

If you find the defendant guilty of Fraudulent Use of a Gift Card, you must also determine if the State proved beyond a reasonable doubt that the value of any [gift card(s)] [gift card redemption information] [money] [goods] [services] [or other thing of value] obtained exceeded \$750.

“Value” means the greatest amount of economic loss the card issuer, gift card seller, or cardholder might reasonably suffer, including the full or maximum monetary face or load value of the gift card, regardless of whether the gift card has been activated.

The value of any [gift card] [gift card redemption information] [money] [goods] [services] [or other thing of value] obtained may be aggregated to determine the total value.

“Defraud” means to obtain something from another by deception.

Give definitions below as applicable.

“Cardholder” means a person to whom a physical or virtual gift card is sold, gifted, or issued following the authorized sale of the gift card.

“Card issuer” means a person that issues a gift card or the agent of that person with respect to that card.

“Gift card” means a physical or virtual card, code, or device that may be issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment, and that is redeemable upon presentation by a consumer at a single merchant, a group of affiliated merchants, or a group of unaffiliated merchants.

“Gift card redemption information” means information unique to each gift card which allows the cardholder to access, transfer, or spend the funds on that gift card.

“Gift card seller” means a merchant that is engaged in the business of selling gift cards to consumers.

“Possession” of an item means the State must prove beyond a reasonable doubt that the defendant a) knew of the existence of the item and b) intentionally exercised control over that item.

Control can be exercised over an item whether the item is carried on a person, near a person, or in a completely separate location. Mere proximity to an item does not establish that the person intentionally exercised control over the item in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the item or the present ability to direct its control by another.

Possession of an item may be sole or joint, that is, two or more persons may possess an item.

Lesser Included Offense

20.30 FRAUDULENT USE OF A GIFT CARD – 817.091(2)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
None			
	Theft	812.014	14.1

Comments

Fraudulent Use of a Gift Card becomes a third degree felony if the defendant had previously been convicted of violating § 817.091(2), Fla. Stat.

As of February 2026, it was undecided whether a prior conviction is an element of the crime that must be proven to the jury beyond a reasonable doubt or is a recidivist factor that can be proven to the judge at sentencing under the preponderance of the evidence standard. If treated as an element, it is error to inform the jury of the prior conviction prior to a verdict. If the charging document contains an allegation of a prior conviction, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty of Fraudulent Use of a Gift Card, the historical fact of a prior conviction should be determined in a bifurcated proceeding.

As of February 2026, it was also unclear whether a prior conviction requires an adjudication of guilt.

This instruction was adopted on March 20, 2026.