

By Senator Campbell

33-470-99

See HB

1 A bill to be entitled
2 An act relating to criminal use of personal
3 identification information; creating s.
4 817.568, F.S.; providing definitions; providing
5 that under specified circumstances a person who
6 knowingly uses or attempts to use personal
7 identification information concerning an
8 individual without previously obtaining the
9 individual's consent commits the offense of
10 fraudulent use of personal identification
11 information; providing that under specified
12 circumstances a person who wantonly and
13 maliciously uses or attempts to use personal
14 identification information concerning an
15 individual without first obtaining the
16 individual's consent commits the offense of
17 malicious use of personal identification
18 information; providing penalties; providing for
19 nonapplicability of the new provisions to
20 specified law enforcement activities; providing
21 for restitution, including attorney's fees and
22 costs to the victim; providing for prosecution
23 by the state attorney or the statewide
24 prosecutor; reenacting 464.018(1)(d), F.S.,
25 relating to disciplinary actions for violations
26 of the Nurse Practice Act; reenacting s.
27 772.102(1)(a), F.S., relating to definition of
28 "criminal activity" with respect to the Civil
29 Remedies for Criminal Practices Act; reenacting
30 s. 895.02(1)(a), F.S., relating to definition
31 of "racketeering activity," to provide for

1 incorporation of s. 817.568, F.S., in
2 references to ch. 817, F.S.; providing an
3 effective date.

4
5 Be It Enacted by the Legislature of the State of Florida:

6
7 Section 1. Section 817.568, Florida Statutes, is
8 created to read:

9 817.568 Criminal use of personal identification
10 information.--

11 (1) As used in this section:

12 (a) "Access device" means any card, plate, code,
13 account number, electronic serial number, mobile
14 identification number, personal identification number, or
15 other telecommunications service, equipment, or instrument
16 identifier, or other means of account access that can be used,
17 alone or in conjunction with another access device, to obtain
18 money, goods, services, or any other thing of value, or that
19 can be used to initiate a transfer of funds, other than a
20 transfer originated solely by paper instrument.

21 (b) "Authorization" means empowerment, permission, or
22 competence to act.

23 (c) "Individual" means a single human being and does
24 not mean a firm, association of individuals, corporation,
25 partnership, joint venture, sole proprietorship, or any other
26 entity.

27 (d) "Person" means a "person" as defined in s.
28 1.01(3).

29 (e) "Personal identification information" means any
30 name or number that may be used, alone or in conjunction with
31

1 any other information, to identify a specific individual,
2 including any:
3 1. Name, social security number, date of birth,
4 official state-issued or United States-issued driver's license
5 or identification number, alien registration number,
6 government passport number, employer or taxpayer
7 identification number, or Medicaid or food stamp account
8 number;
9 2. Unique biometric data, such as fingerprint, voice
10 print, retina or iris image, or other unique physical
11 representation;
12 3. Unique electronic identification number, address,
13 or routing code; or
14 4. Telecommunication identifying information or access
15 device.
16 (f) "Scheme or artifice to defraud" means a
17 systematic, ongoing course of conduct which is intended to
18 defraud one or more persons, or to obtain property from one or
19 more persons, by false or fraudulent pretenses,
20 representations, or promises or willful misrepresentations of
21 a future act.
22 (g) "Specific use" means the particular transaction
23 contemplated by the owner of the personal identification
24 information when the owner initially shared it, and may
25 include continuous or repeated usage by the receiver of such
26 personal identification information only if there is a knowing
27 and voluntary agreement in writing or its electronic
28 equivalent between the information's owner and the receiver of
29 such personal identification information allowing for
30 continuous or repeated usage by the receiver of such personal
31 identification information.

1 (h) "Wantonly and maliciously" means willfully and
2 purposely to the prejudice of an individual.

3 (2) Any person who, in executing any scheme or
4 artifice to defraud, willfully, knowingly, and without
5 authorization uses or attempts to use personal identification
6 information concerning an individual without first obtaining
7 that individual's consent to the specific use commits the
8 crime of fraudulent use of personal identification
9 information, punishable as a felony of the third degree as
10 provided in s. 775.082, s. 775.083, or s. 775.084.

11 (3) Any person who, without legal justification or
12 authorization, wantonly and maliciously uses or attempts to
13 use personal identification information concerning an
14 individual without first obtaining that individual's consent
15 to the specific use commits the crime of malicious use of
16 personal identification information, punishable as a
17 misdemeanor of the first degree as provided in s. 775.082 or
18 s. 775.083.

19 (4) This section does not prohibit any lawfully
20 authorized investigative, protective, or intelligence activity
21 of a law enforcement agency of this state or any of its
22 political subdivisions, of any other state or its political
23 subdivisions, or of the Federal Government or its political
24 subdivisions.

25 (5) In sentencing a defendant convicted of an offense
26 under this section, the court may order that the defendant
27 make restitution pursuant to s. 775.089 to any victim of the
28 offense. In addition to the victim's out-of-pocket costs,
29 such restitution may include payment of any other costs,
30 including attorney's fees incurred by the victim in clearing
31 the victim's credit history or credit rating, or any costs

1 incurred in connection with any civil or administrative
2 proceeding to satisfy any debt, lien, or other obligation of
3 the victim arising as the result of the actions of the
4 defendant.

5 (6) Prosecutions for violations of this section may be
6 brought on behalf of the state by any state attorney or by the
7 statewide prosecutor.

8 Section 2. For the purpose of incorporating section
9 817.568, Florida Statutes, as created by this act, in
10 references thereto, paragraph (d) of subsection (1) of section
11 464.018, Florida Statutes, 1998 Supplement, is reenacted to
12 read:

13 464.018 Disciplinary actions.--

14 (1) The following acts shall be grounds for
15 disciplinary action set forth in this section:

16 (d) Being found guilty, regardless of adjudication, of
17 any of the following offenses:

18 1. A forcible felony as defined in chapter 776.

19 2. A violation of chapter 812, relating to theft,
20 robbery, and related crimes.

21 3. A violation of chapter 817, relating to fraudulent
22 practices.

23 4. A violation of chapter 800, relating to lewdness
24 and indecent exposure.

25 5. A violation of chapter 784, relating to assault,
26 battery, and culpable negligence.

27 6. A violation of chapter 827, relating to child
28 abuse.

29 7. A violation of chapter 415, relating to protection
30 from abuse, neglect, and exploitation.

31

1 8. A violation of chapter 39, relating to child abuse,
2 abandonment, and neglect.

3 Section 3. For the purpose of incorporating section
4 817.568, Florida Statutes, as created by this act, in
5 references thereto, paragraph (a) of subsection (1) of section
6 772.102, Florida Statutes, is reenacted to read:

7 772.102 Definitions.--As used in this chapter, the
8 term:

9 (1) "Criminal activity" means to commit, to attempt to
10 commit, to conspire to commit, or to solicit, coerce, or
11 intimidate another person to commit:

12 (a) Any crime which is chargeable by indictment or
13 information under the following provisions:

14 1. Section 210.18, relating to evasion of payment of
15 cigarette taxes.

16 2. Section 414.39, relating to public assistance
17 fraud.

18 3. Section 440.105 or s. 440.106, relating to workers'
19 compensation.

20 4. Part IV of chapter 501, relating to telemarketing.

21 5. Chapter 517, relating to securities transactions.

22 6. Section 550.235, s. 550.3551, or s. 550.3605,
23 relating to dogracing and horseracing.

24 7. Chapter 550, relating to jai alai frontons.

25 8. Chapter 552, relating to the manufacture,
26 distribution, and use of explosives.

27 9. Chapter 562, relating to beverage law enforcement.

28 10. Section 624.401, relating to transacting insurance
29 without a certificate of authority, s. 624.437(4)(c)1.,
30 relating to operating an unauthorized multiple-employer
31

1 welfare arrangement, or s. 626.902(1)(b), relating to
2 representing or aiding an unauthorized insurer.
3 11. Chapter 687, relating to interest and usurious
4 practices.
5 12. Section 721.08, s. 721.09, or s. 721.13, relating
6 to real estate timeshare plans.
7 13. Chapter 782, relating to homicide.
8 14. Chapter 784, relating to assault and battery.
9 15. Chapter 787, relating to kidnapping.
10 16. Chapter 790, relating to weapons and firearms.
11 17. Section 796.01, s. 796.03, s. 796.04, s. 796.05,
12 or s. 796.07, relating to prostitution.
13 18. Chapter 806, relating to arson.
14 19. Section 810.02(2)(c), relating to specified
15 burglary of a dwelling or structure.
16 20. Chapter 812, relating to theft, robbery, and
17 related crimes.
18 21. Chapter 815, relating to computer-related crimes.
19 22. Chapter 817, relating to fraudulent practices,
20 false pretenses, fraud generally, and credit card crimes.
21 23. Section 827.071, relating to commercial sexual
22 exploitation of children.
23 24. Chapter 831, relating to forgery and
24 counterfeiting.
25 25. Chapter 832, relating to issuance of worthless
26 checks and drafts.
27 26. Section 836.05, relating to extortion.
28 27. Chapter 837, relating to perjury.
29 28. Chapter 838, relating to bribery and misuse of
30 public office.
31 29. Chapter 843, relating to obstruction of justice.

1 30. Section 847.011, s. 847.012, s. 847.013, s.
2 847.06, or s. 847.07, relating to obscene literature and
3 profanity.
4 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
5 or s. 849.25, relating to gambling.
6 32. Chapter 893, relating to drug abuse prevention and
7 control.
8 33. Section 914.22 or s. 914.23, relating to
9 witnesses, victims, or informants.
10 34. Section 918.12 or s. 918.13, relating to tampering
11 with jurors and evidence.
12 Section 4. For the purpose of incorporating section
13 817.568, Florida Statutes, as created by this act, in
14 references thereto, paragraph (a) of subsection (1) of section
15 895.02, Florida Statutes, is reenacted to read:
16 895.02 Definitions.--As used in ss. 895.01-895.08, the
17 term:
18 (1) "Racketeering activity" means to commit, to
19 attempt to commit, to conspire to commit, or to solicit,
20 coerce, or intimidate another person to commit:
21 (a) Any crime which is chargeable by indictment or
22 information under the following provisions of the Florida
23 Statutes:
24 1. Section 210.18, relating to evasion of payment of
25 cigarette taxes.
26 2. Section 403.727(3)(b), relating to environmental
27 control.
28 3. Section 414.39, relating to public assistance
29 fraud.
30 4. Section 409.920, relating to Medicaid provider
31 fraud.

- 1 5. Section 440.105 or s. 440.106, relating to workers'
2 compensation.
- 3 6. Part IV of chapter 501, relating to telemarketing.
- 4 7. Chapter 517, relating to sale of securities and
5 investor protection.
- 6 8. Section 550.235, s. 550.3551, or s. 550.3605,
7 relating to dogracing and horseracing.
- 8 9. Chapter 550, relating to jai alai frontons.
- 9 10. Chapter 552, relating to the manufacture,
10 distribution, and use of explosives.
- 11 11. Chapter 562, relating to beverage law enforcement.
- 12 12. Section 624.401, relating to transacting insurance
13 without a certificate of authority, s. 624.437(4)(c)1.,
14 relating to operating an unauthorized multiple-employer
15 welfare arrangement, or s. 626.902(1)(b), relating to
16 representing or aiding an unauthorized insurer.
- 17 13. Section 655.50, relating to reports of currency
18 transactions, when such violation is punishable as a felony.
- 19 14. Chapter 687, relating to interest and usurious
20 practices.
- 21 15. Section 721.08, s. 721.09, or s. 721.13, relating
22 to real estate timeshare plans.
- 23 16. Chapter 782, relating to homicide.
- 24 17. Chapter 784, relating to assault and battery.
- 25 18. Chapter 787, relating to kidnapping.
- 26 19. Chapter 790, relating to weapons and firearms.
- 27 20. Section 796.03, s. 796.04, s. 796.05, or s.
28 796.07, relating to prostitution.
- 29 21. Chapter 806, relating to arson.
- 30 22. Section 810.02(2)(c), relating to specified
31 burglary of a dwelling or structure.

- 1 23. Chapter 812, relating to theft, robbery, and
2 related crimes.
- 3 24. Chapter 815, relating to computer-related crimes.
- 4 25. Chapter 817, relating to fraudulent practices,
5 false pretenses, fraud generally, and credit card crimes.
- 6 26. Chapter 825, relating to abuse, neglect, or
7 exploitation of an elderly person or disabled adult.
- 8 27. Section 827.071, relating to commercial sexual
9 exploitation of children.
- 10 28. Chapter 831, relating to forgery and
11 counterfeiting.
- 12 29. Chapter 832, relating to issuance of worthless
13 checks and drafts.
- 14 30. Section 836.05, relating to extortion.
- 15 31. Chapter 837, relating to perjury.
- 16 32. Chapter 838, relating to bribery and misuse of
17 public office.
- 18 33. Chapter 843, relating to obstruction of justice.
- 19 34. Section 847.011, s. 847.012, s. 847.013, s.
20 847.06, or s. 847.07, relating to obscene literature and
21 profanity.
- 22 35. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
23 or s. 849.25, relating to gambling.
- 24 36. Chapter 874, relating to criminal street gangs.
- 25 37. Chapter 893, relating to drug abuse prevention and
26 control.
- 27 38. Chapter 896, relating to offenses related to
28 financial transactions.
- 29 39. Sections 914.22 and 914.23, relating to tampering
30 with a witness, victim, or informant, and retaliation against
31 a witness, victim, or informant.

1 40. Sections 918.12 and 918.13, relating to tampering
2 with jurors and evidence.

3 Section 5. This act shall take effect July 1, 1999.

4

5

6

LEGISLATIVE SUMMARY

7

8 Provides that a person who knowingly uses or attempts to
9 use personal identification information concerning an
10 individual without previously obtaining the individual's
11 consent commits fraudulent use of personal identification
12 information, under specified circumstances. Provides
13 definitions. Provides that a person who wantonly and
14 maliciously uses or attempts to use personal
15 identification information concerning an individual
16 without first obtaining the individual's consent commits
17 malicious use of personal identification information,
18 under specified circumstances. Provides penalties.
19 Provides for nonapplicability of the new provisions to
20 specified law enforcement activities. Provides for
21 restitution, including attorney's fees and costs, to the
22 victim. Provides for prosecution by the state attorney or
23 the statewide prosecutor.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31