

By the Committee on Criminal Justice and Senators Campbell,
Silver and Hargrett

307-1769B-99

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 a person who willfully and without
6 authorization uses, or possesses with intent to
7 use, personal identification information
8 concerning an individual without previously
9 obtaining the individual's consent commits
10 either the offense of fraudulent use of
11 personal identification information or the
12 offense of harassment by use of personal
13 identification information, depending on
14 specified circumstances; providing penalties;
15 providing for nonapplicability of the new
16 provisions to specified law enforcement
17 activities; providing for restitution,
18 including attorney's fees and costs, to the
19 victim; providing that the court may issue
20 orders to correct public records that contain
21 false information given in violation of this
22 section; providing for prosecution by the state
23 attorney or the statewide prosecutor;
24 reenacting s. 464.018(1)(d), F.S., relating to
25 disciplinary actions for violations of the
26 Nurse Practice Act, s. 772.102(1)(a), F.S.,
27 relating to definition of "criminal activity"
28 with respect to the Civil Remedies for Criminal
29 Practices Act, and s. 895.02(1)(a), F.S.,
30 relating to definition of "racketeering
31 activity," to provide for incorporation of said

1 new section in references to ch. 817, F.S.;

2 providing an effective date.

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

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

8 817.568 Criminal use of personal identification
9 information.--

10 (1) As used in this section, the term:

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

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

22 (c) "Harass" means to engage in conduct directed at a
23 specific person that is intended to cause substantial
24 emotional distress to such person and serves no legitimate
25 purpose. "Harass" does not mean to use personal identification
26 information for accepted commercial purposes. The term does
27 not include constitutionally protected conduct such as
28 organized protests or the use of personal identification
29 information for accepted commercial purposes.

30 (d) "Individual" means a single human being and does
31 not mean a firm, association of individuals, corporation,

1 partnership, joint venture, sole proprietorship, or any other
2 entity.

3 (e) "Person" means a "person" as defined in s.
4 1.01(3).

5 (f) "Personal identification information" means any
6 name or number that may be used, alone or in conjunction with
7 any other information, to identify a specific individual,
8 including any:

9 1. Name, social security number, date of birth,
10 official state-issued or United States-issued driver's license
11 or identification number, alien registration number,
12 government passport number, employer or taxpayer
13 identification number, or Medicaid or food stamp account
14 number;

15 2. Unique biometric data, such as fingerprint, voice
16 print, retina or iris image, or other unique physical
17 representation;

18 3. Unique electronic identification number, address,
19 or routing code; or

20 4. Telecommunication identifying information or access
21 device.

22 (2) Any person who willfully and without authorization
23 fraudulently uses, or possesses with intent to fraudulently
24 use, personal identification information concerning an
25 individual without first obtaining that individual's consent,
26 commits the offense of fraudulent use of personal
27 identification information, which is a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084.

30 (3) Any person who willfully and without authorization
31 possesses, uses, or attempts to use personal identification

1 information concerning an individual without first obtaining
2 that individual's consent, and who does so for the purpose of
3 harassing that individual, commits the offense of harassment
4 by use of personal identification information, which is a
5 misdemeanor of the first degree, punishable as provided in s.
6 775.082 or s. 775.083.

7 (4) This section does not prohibit any lawfully
8 authorized investigative, protective, or intelligence activity
9 of a law enforcement agency of this state or any of its
10 political subdivisions, of any other state or its political
11 subdivisions, or of the Federal Government or its political
12 subdivisions.

13 (5)(a) In sentencing a defendant convicted of an
14 offense under this section, the court may order that the
15 defendant make restitution pursuant to s. 775.089 to any
16 victim of the offense. In addition to the victim's
17 out-of-pocket costs, such restitution may include payment of
18 any other costs, including attorney's fees incurred by the
19 victim in clearing the victim's credit history or credit
20 rating, or any costs incurred in connection with any civil or
21 administrative proceeding to satisfy any debt, lien, or other
22 obligation of the victim arising as the result of the actions
23 of the defendant.

24 (b) The sentencing court may issue such orders as are
25 necessary to correct any public record that contains false
26 information given in violation of this section.

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

30 Section 2. For the purpose of incorporating section
31 817.568, Florida Statutes, as created by this act, in

1 references to chapter 817, Florida Statutes, paragraph (d) of
2 subsection (1) of section 464.018, Florida Statutes, 1998
3 Supplement, paragraph (a) of subsection (1) of section
4 772.102, Florida Statutes, and paragraph (a) of subsection (1)
5 of section 895.02, Florida Statutes, are reenacted to read:

6 464.018 Disciplinary actions.--

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

9 (d) Being found guilty, regardless of adjudication, of
10 any of the following offenses:

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

12 2. A violation of chapter 812, relating to theft,
13 robbery, and related crimes.

14 3. A violation of chapter 817, relating to fraudulent
15 practices.

16 4. A violation of chapter 800, relating to lewdness
17 and indecent exposure.

18 5. A violation of chapter 784, relating to assault,
19 battery, and culpable negligence.

20 6. A violation of chapter 827, relating to child
21 abuse.

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

24 8. A violation of chapter 39, relating to child abuse,
25 abandonment, and neglect.

26 772.102 Definitions.--As used in this chapter, the
27 term:

28 (1) "Criminal activity" means to commit, to attempt to
29 commit, to conspire to commit, or to solicit, coerce, or
30 intimidate another person to commit:

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- 1 (a) Any crime which is chargeable by indictment or
2 information under the following provisions:
- 3 1. Section 210.18, relating to evasion of payment of
4 cigarette taxes.
 - 5 2. Section 414.39, relating to public assistance
6 fraud.
 - 7 3. Section 440.105 or s. 440.106, relating to workers'
8 compensation.
 - 9 4. Part IV of chapter 501, relating to telemarketing.
 - 10 5. Chapter 517, relating to securities transactions.
 - 11 6. Section 550.235, s. 550.3551, or s. 550.3605,
12 relating to dogracing and horseracing.
 - 13 7. Chapter 550, relating to jai alai frontons.
 - 14 8. Chapter 552, relating to the manufacture,
15 distribution, and use of explosives.
 - 16 9. Chapter 562, relating to beverage law enforcement.
 - 17 10. Section 624.401, relating to transacting insurance
18 without a certificate of authority, s. 624.437(4)(c)1.,
19 relating to operating an unauthorized multiple-employer
20 welfare arrangement, or s. 626.902(1)(b), relating to
21 representing or aiding an unauthorized insurer.
 - 22 11. Chapter 687, relating to interest and usurious
23 practices.
 - 24 12. Section 721.08, s. 721.09, or s. 721.13, relating
25 to real estate timeshare plans.
 - 26 13. Chapter 782, relating to homicide.
 - 27 14. Chapter 784, relating to assault and battery.
 - 28 15. Chapter 787, relating to kidnapping.
 - 29 16. Chapter 790, relating to weapons and firearms.
 - 30 17. Section 796.01, s. 796.03, s. 796.04, s. 796.05,
31 or s. 796.07, relating to prostitution.

- 1 18. Chapter 806, relating to arson.
- 2 19. Section 810.02(2)(c), relating to specified
- 3 burglary of a dwelling or structure.
- 4 20. Chapter 812, relating to theft, robbery, and
- 5 related crimes.
- 6 21. Chapter 815, relating to computer-related crimes.
- 7 22. Chapter 817, relating to fraudulent practices,
- 8 false pretenses, fraud generally, and credit card crimes.
- 9 23. Section 827.071, relating to commercial sexual
- 10 exploitation of children.
- 11 24. Chapter 831, relating to forgery and
- 12 counterfeiting.
- 13 25. Chapter 832, relating to issuance of worthless
- 14 checks and drafts.
- 15 26. Section 836.05, relating to extortion.
- 16 27. Chapter 837, relating to perjury.
- 17 28. Chapter 838, relating to bribery and misuse of
- 18 public office.
- 19 29. Chapter 843, relating to obstruction of justice.
- 20 30. Section 847.011, s. 847.012, s. 847.013, s.
- 21 847.06, or s. 847.07, relating to obscene literature and
- 22 profanity.
- 23 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
- 24 or s. 849.25, relating to gambling.
- 25 32. Chapter 893, relating to drug abuse prevention and
- 26 control.
- 27 33. Section 914.22 or s. 914.23, relating to
- 28 witnesses, victims, or informants.
- 29 34. Section 918.12 or s. 918.13, relating to tampering
- 30 with jurors and evidence.
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1 895.02 Definitions.--As used in ss. 895.01-895.08, the
2 term:

3 (1) "Racketeering activity" means to commit, to
4 attempt to commit, to conspire to commit, or to solicit,
5 coerce, or intimidate another person to commit:

6 (a) Any crime which is chargeable by indictment or
7 information under the following provisions of the Florida
8 Statutes:

9 1. Section 210.18, relating to evasion of payment of
10 cigarette taxes.

11 2. Section 403.727(3)(b), relating to environmental
12 control.

13 3. Section 414.39, relating to public assistance
14 fraud.

15 4. Section 409.920, relating to Medicaid provider
16 fraud.

17 5. Section 440.105 or s. 440.106, relating to workers'
18 compensation.

19 6. Part IV of chapter 501, relating to telemarketing.

20 7. Chapter 517, relating to sale of securities and
21 investor protection.

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

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

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

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

28 12. 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
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- 1 welfare arrangement, or s. 626.902(1)(b), relating to
2 representing or aiding an unauthorized insurer.
- 3 13. Section 655.50, relating to reports of currency
4 transactions, when such violation is punishable as a felony.
- 5 14. Chapter 687, relating to interest and usurious
6 practices.
- 7 15. Section 721.08, s. 721.09, or s. 721.13, relating
8 to real estate timeshare plans.
- 9 16. Chapter 782, relating to homicide.
- 10 17. Chapter 784, relating to assault and battery.
- 11 18. Chapter 787, relating to kidnapping.
- 12 19. Chapter 790, relating to weapons and firearms.
- 13 20. Section 796.03, s. 796.04, s. 796.05, or s.
14 796.07, relating to prostitution.
- 15 21. Chapter 806, relating to arson.
- 16 22. Section 810.02(2)(c), relating to specified
17 burglary of a dwelling or structure.
- 18 23. Chapter 812, relating to theft, robbery, and
19 related crimes.
- 20 24. Chapter 815, relating to computer-related crimes.
- 21 25. Chapter 817, relating to fraudulent practices,
22 false pretenses, fraud generally, and credit card crimes.
- 23 26. Chapter 825, relating to abuse, neglect, or
24 exploitation of an elderly person or disabled adult.
- 25 27. Section 827.071, relating to commercial sexual
26 exploitation of children.
- 27 28. Chapter 831, relating to forgery and
28 counterfeiting.
- 29 29. Chapter 832, relating to issuance of worthless
30 checks and drafts.
- 31 30. Section 836.05, relating to extortion.

- 1 31. Chapter 837, relating to perjury.
- 2 32. Chapter 838, relating to bribery and misuse of
- 3 public office.
- 4 33. Chapter 843, relating to obstruction of justice.
- 5 34. Section 847.011, s. 847.012, s. 847.013, s.
- 6 847.06, or s. 847.07, relating to obscene literature and
- 7 profanity.
- 8 35. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
- 9 or s. 849.25, relating to gambling.
- 10 36. Chapter 874, relating to criminal street gangs.
- 11 37. Chapter 893, relating to drug abuse prevention and
- 12 control.
- 13 38. Chapter 896, relating to offenses related to
- 14 financial transactions.
- 15 39. Sections 914.22 and 914.23, relating to tampering
- 16 with a witness, victim, or informant, and retaliation against
- 17 a witness, victim, or informant.
- 18 40. Sections 918.12 and 918.13, relating to tampering
- 19 with jurors and evidence.
- 20 Section 3. This act shall take effect July 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill's 286, 722 & 1074

1. Combines SB's 286, 722 & 1074.
2. Changes the elements of the identity theft offenses created by the three senate bills to willfully and fraudulently possessing or using an individual's personal identification information for the third degree felony, and to willfully possessing or using an individual's personal identification information to cause harassment for the first degree misdemeanor.
3. Adds a definition of harassment.
4. Limits the sentencing court to rendering orders necessary to clear the victim's public records, rather than SB 1074's provision which permits the trial court to render orders for both public and private records.
5. Deletes SB 1074's provision that prosecution of the two new offenses created by the bill has no affect on the prosecution of ss. 817.02, 817.03, and 817.54, F.S., or any other state law.