

STORAGE NAME: h0049.cp
DATE: December 22, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 49
RELATING TO: Criminal Use of Personal ID Information
SPONSOR(S): Trovillion
COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) JUDICIARY
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

As advancing technology impacts financial transactions, public concern for theft of personal identification information to obtain credit or property is increasing.

HB 49 makes it a third degree felony to use any personal identification information without authorization to engage in fraudulent conduct.

The bill makes it a first degree misdemeanor to wantonly and maliciously use or attempt to use personal identification information without authorization. "Wantonly and maliciously" is defined by the bill to mean willfully and purposely to the prejudice of an individual.

The bill defines the term "personal identification information" very broadly to include: name, address, social security number, date of birth, driver's license or identification number, any account number, passport number, telecommunication identifying information, etc.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Theft

A person violates Florida's theft statute if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to deprive the other person of a right to the property or a benefit from the property. The term "obtains or uses" is defined by the theft statute to include obtaining property by fraud, willful misrepresentation of a future act, or false promise. "Obtains or uses" is also defined to mean making any unauthorized use, disposition, or transfer of property.

The appellate courts in Florida have held that Florida's broad theft statute encompasses criminal frauds, and that an act of criminal fraud should be prosecuted either under Florida's broad theft statute, or under a more specific statute proscribing fraud in chapter 817. State v. McDonald, 690 So. 2d 1317 (2nd DCA 1997); Thompson v. State, 585 So. 2d 492 (5th DCA 1991).

Uttering

Section 831.02, Florida Statutes, creates the offense of Uttering, a third degree felony. A person commits the offense of uttering a forgery if that person passed or offered to pass as true a document that the defendant knew to be false or altered, and the defendant intended to injure or defraud another person.

Forgery

Section 831.01, Florida Statutes, creates the offense of Forgery, a third degree felony. A person commits the offense of forgery if that person falsely made, altered, forged or counterfeited a document with the intent to injure or defraud another person.

False Statement to Obtain Credit or Property

Section 817.031, F.S., makes it a first degree misdemeanor to make a false statement with fraudulent intent about one's assets or liabilities to obtain credit or property. Section 817.59, F.S., makes it a misdemeanor to make a false statement, including the giving of a false identity, with the intent that it be relied on for the purpose of obtaining a credit card.

Florida Communications Fraud Act

Section 817.034 creates the offense of "organized fraud" for a person to engage in a scheme to defraud that causes the offender to obtain property.

DEFINITIONS

Scheme or Artifice to Defraud

According to Black's, "scheme or artifice to defraud", for the purposes of fraudulent representation, consists of forming a plan or devising some trick to perpetuate fraud upon another. "Artifice" is defined as an ingenious contrivance or device of some kind, and when used in a bad sense, it corresponds with trick or fraud. It implies craftiness and deceit, and imports some element of moral obliquity.

Wanton

According to Black's, "wanton" is defined as reckless, heedless, malicious; characterized by extreme reckless or foolhardiness; recklessly disregarding of the rights or safety of others or of consequences.

Malicious/Maliciously

Black's defines "malicious" as characterized by, or involving malice; having, or done with, wicked, evil or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse or as a result of ill will. "Maliciously" imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in a reckless disregard of another's rights. Staff was unable to find an example of the term "wanton and malicious" as it is used in this bill.

B. EFFECT OF PROPOSED CHANGES:

As advancing technology impacts financial transactions, public concern for theft of personal identification information to obtain credit or property is increasing. The bill would prevent use of personal identification information that was legally obtained to fraudulently obtain monies, goods, or services. For instance, personal identification information recovered from trash receptacles, credit reports, or even purchased from the state would be subject to the new law, if the possession of the information was for fraudulent purposes.

The bill makes it a first degree misdemeanor to wantonly and maliciously use or attempt to use personal identification information without authorization. "Wantonly and maliciously" is defined by the bill to mean willfully and purposely to the prejudice of an individual.

The bill defines the term "personal identification information" very broadly to include, in part: name, address, social security number, date of birth, driver's license or identification number, any account number, passport number, telecommunication identifying information, etc.

Third degree felonies are punishable by a maximum of 5 years in prison. First degree misdemeanors are punishable by a maximum of one year in a county jail.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 464.018, 772.102, 895.02, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Section 1 Providing definitions; providing that a person knowingly uses or attempts to use personal identification information concerning an individual without previously obtaining the individual's consent commits fraudulent use of personal identification information, under specified circumstances; providing that a person who wantonly and maliciously use or attempts to use personal identification information concerning an

individual's consent commits malicious use of personal identification information, under certain circumstances; providing penalties; providing for nonapplicability of the new provisions to specified law enforcement activities; providing for restitution, including attorney's fees and costs to the victim and providing for prosecution by the statewide attorney of the statewide prosecutor

Section 2 Providing cross-references by reenacting s. 464.018, F.S., relating to disciplinary actions for violations of the Nurse Practice Act, reenacting s. 772.102, F.S., relating to definition of "criminal activity" with respect to the Civil Remedies for Criminal Practices Act and s. 895.02, F.S., relating to definition of "racketeering activity"; and providing for incorporation of the newly created statute in references.

Section 3 Providing for an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

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

See, Fiscal Comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to determine the fiscal impact of this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It is anticipated that the sponsor will offer an amendment to remove the definition of "wantonly and maliciously" on page 3, line 30-31. The phrase "wantonly and maliciously" seems contradictory since wanton generally means a reckless intent and maliciously generally meant an evil intent to do harm. The definition for "scheme or artifice to defraud" page 3, lines 14-19 is removed by the proposed amendment and the term is incorporated into the proscribed act.

It is also anticipated that the amendment will change the misdemeanor offense created by the bill on page 4, lines 9-13 so that the wanton and malicious intent is replaced with an

intent to harass. Generally, a person who misuses personal identification information would be acting intentionally and not with a "wanton" (reckless) intent.

Any legislation attempting to proscribe identity theft may need to include a requirement that the offender had the intent to defraud or harass the person whose name or other identification was improperly used. However, this bill with the fraudulent intent requirement may not proscribe certain acts, including using another persons identification to conduct transactions such as signing leases so long as the intent is not to defraud or steal from another person. Using and applying for a false credit card is currently a crime in Florida, but the possession of a fraudulent credit card may not be criminal, nor may the possession large amounts of credit card receipts be criminal, even if the purpose is plainly improper. Fraud and theft generally requires a victim to suffer a loss that can be measured. If the injury to the victim is the actual or potential loss of something intangible like credit, then it may be very difficult to prove intent to defraud. Even when a credit card with an individual's name is used, the fraud is against the seller of the merchandise and not the person whose identification is used because the "victim" of the "I.D. theft" has no financial obligation from the fraudulent transaction.

The State of Wisconsin has a statute bill that became effective in April of 1998 that makes it a felony to use personal identifying information without consent to obtain anything credit or anything of value. Section 943.201, Wisconsin Statutes. While this law appears broader than HB 49, the Wisconsin law may capture all the merchants who sell the names and addresses of their customers if it did not include intent to defraud.

A person who uses a stolen or false credit card to make purchases over \$300 can now be charged with grand theft, forgery, uttering and a felony count fraudulent use of credit cards if the card has been used twice in six months. The bill would add an additional count that a person could be charged with for using a stolen or false credit card. (There would be a double jeopardy issue only if the counts charged were petit theft instead of grand theft, or if the fraudulent use of a credit card occurred only once.)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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