

By the Committee on Criminal Justice and Senator Burt

307-1627-01

1                                   A bill to be entitled  
2           An act relating to the criminal use of personal  
3           information; amending s. 817.568, F.S.;  
4           providing that the willful and fraudulent use  
5           of personal identification information of  
6           another individual is a felony of the second  
7           degree if the value of the pecuniary benefit  
8           services received, payment sought to be  
9           avoided, or injury or fraud perpetrated is of a  
10          specified amount or more; providing for  
11          reclassification of certain offenses involving  
12          the criminal use of personal-identification  
13          information if the offense was facilitated by  
14          the use of a public record; requiring that such  
15          offense be prosecuted in the county where the  
16          victim resides or in a county where any element  
17          of the offense occurred; limiting the time  
18          within which a person who fraudulently uses  
19          personal-identification information must be  
20          prosecuted; amending s. 921.0022, F.S.,  
21          relating to the the offense severity ranking  
22          chart of the Criminal Punishment Code; ranking  
23          offenses relating to fraudulent use of personal  
24          identification information; providing an  
25          effective date.

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

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29           Section 1.   Section 817.568, Florida Statutes, is  
30   amended to read:

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1           817.568 Criminal use of personal identification  
2 information.--  
3           (1) As used in this section, the term:  
4           (a) "Access device" means any card, plate, code,  
5 account number, electronic serial number, mobile  
6 identification number, personal identification number, or  
7 other telecommunications service, equipment, or instrument  
8 identifier, or other means of account access that can be used,  
9 alone or in conjunction with another access device, to obtain  
10 money, goods, services, or any other thing of value, or that  
11 can be used to initiate a transfer of funds, other than a  
12 transfer originated solely by paper instrument.  
13           (b) "Authorization" means empowerment, permission, or  
14 competence to act.  
15           (c) "Harass" means to engage in conduct directed at a  
16 specific person that is intended to cause substantial  
17 emotional distress to such person and serves no legitimate  
18 purpose. "Harass" does not mean to use personal identification  
19 information for accepted commercial purposes. The term does  
20 not include constitutionally protected conduct such as  
21 organized protests or the use of personal identification  
22 information for accepted commercial purposes.  
23           (d) "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           (e) "Person" means a "person" as defined in s.  
28 1.01(3).  
29           (f) "Personal identification information" means any  
30 name or number that may be used, alone or in conjunction with  
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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 (2)(a) Any person who willfully and without  
17 authorization fraudulently uses, or possesses with intent to  
18 fraudulently use, personal identification information  
19 concerning an individual without first obtaining that  
20 individual's consent, commits the offense of fraudulent use of  
21 personal identification information, which is a felony of the  
22 third degree, punishable as provided in s. 775.082, s.  
23 775.083, or s. 775.084.

24 (b) Any person who willfully and without authorization  
25 fraudulently uses personal identification information  
26 concerning an individual without first obtaining that  
27 individual's consent commits a felony of the second degree,  
28 punishable as provided in s. 775.082, s. 775.083, or s.  
29 775.084, if the pecuniary benefit, the value of the services  
30 received, the payment sought to be avoided, or the amount of  
31 the injury or fraud perpetrated is \$75,000 or more.

1           (3) Any person who willfully and without authorization  
2 possesses, uses, or attempts to use personal identification  
3 information concerning an individual without first obtaining  
4 that individual's consent, and who does so for the purpose of  
5 harassing that individual, commits the offense of harassment  
6 by use of personal identification information, which is a  
7 misdemeanor of the first degree, punishable as provided in s.  
8 775.082 or s. 775.083.

9           (4) If an offense prohibited under this section was  
10 facilitated or furthered by the use of a public record, as  
11 defined in s. 119.011, the offense is reclassified to the next  
12 higher degree as follows:

13           (a) A misdemeanor of the first degree is reclassified  
14 as a felony of the third degree.

15           (b) A felony of the third degree is reclassified as a  
16 felony of the second degree.

17           (c) A felony of the second degree is reclassified as a  
18 felony of the first degree.

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20 For purposes of sentencing under chapter 921 and incentive  
21 gain-time eligibility under chapter 944, a felony offense that  
22 is reclassified under this subsection is ranked one level  
23 above the ranking under s. 921.0022 of the felony offense  
24 committed, and a misdemeanor offense that is reclassified  
25 under this subsection is ranked in level 2 of the offense  
26 severity ranking chart in s. 921.0022.

27           ~~(5)~~ (4) This section does not prohibit any lawfully  
28 authorized investigative, protective, or intelligence activity  
29 of a law enforcement agency of this state or any of its  
30 political subdivisions, of any other state or its political  
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1 subdivisions, or of the Federal Government or its political  
2 subdivisions.

3 (6)~~(5)~~(a) In sentencing a defendant convicted of an  
4 offense under this section, the court may order that the  
5 defendant make restitution pursuant to s. 775.089 to any  
6 victim of the offense. In addition to the victim's  
7 out-of-pocket costs, such restitution may include payment of  
8 any other costs, including attorney's fees incurred by the  
9 victim in clearing the victim's credit history or credit  
10 rating, or any costs incurred in connection with any civil or  
11 administrative proceeding to satisfy any debt, lien, or other  
12 obligation of the victim arising as the result of the actions  
13 of the defendant.

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

17 (7)~~(6)~~ Prosecutions for violations of this section may  
18 be brought on behalf of the state by any state attorney or by  
19 the statewide prosecutor.

20 (8) The proper venue for prosecuting a violation of  
21 this section is the county where the victim resides or a  
22 county in which any element of the violation was committed.

23 (9) A prosecution of an offense prohibited under  
24 subsection (2) must be commenced within 3 years after the  
25 offense occurred. However, a prosecution may be commenced  
26 within 1 year after discovery of the offense by an aggrieved  
27 party, or by a person who has a legal duty to represent the  
28 aggrieved party and who is not a party to the offense, if such  
29 prosecution is commenced within 5 years after the violation  
30 occurred.

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1 Section 2. Paragraphs (d) and (e) of subsection (3) of  
2 section 921.0022, Florida Statutes, are amended to read:

3 921.0022 Criminal Punishment Code; offense severity  
4 ranking chart.--

5 (3) OFFENSE SEVERITY RANKING CHART

6	7 Florida	8 Felony	
9	10 Statute	11 Degree	12 Description
13			14 (d) LEVEL 4
15	16 316.1935(3)	17 2nd	18 Driving at high speed or with 19 wanton disregard for safety while 20 fleeing or attempting to elude 21 law enforcement officer who is in 22 a marked patrol vehicle with 23 siren and lights activated.
24	25 784.07(2)(b)	26 3rd	27 Battery of law enforcement 28 officer, firefighter, intake 29 officer, etc.
30	31 784.075	3rd	Battery on detention or commitment facility staff.
	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
	784.081(3)	3rd	Battery on specified official or employee.
	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
	784.083(3)	3rd	Battery on code inspector.

1	784.085	3rd	Battery of child by throwing,
2			tossing, projecting, or expelling
3			certain fluids or materials.
4	787.03(1)	3rd	Interference with custody;
5			wrongly takes child from
6			appointed guardian.
7	787.04(2)	3rd	Take, entice, or remove child
8			beyond state limits with criminal
9			intent pending custody
10			proceedings.
11	787.04(3)	3rd	Carrying child beyond state lines
12			with criminal intent to avoid
13			producing child at custody
14			hearing or delivering to
15			designated person.
16	790.115(1)	3rd	Exhibiting firearm or weapon
17			within 1,000 feet of a school.
18	790.115(2)(b)	3rd	Possessing electric weapon or
19			device, destructive device, or
20			other weapon on school property.
21	790.115(2)(c)	3rd	Possessing firearm on school
22			property.
23	800.04(7)(d)	3rd	Lewd or lascivious exhibition;
24			offender less than 18 years.
25	810.02(4)(a)	3rd	Burglary, or attempted burglary,
26			of an unoccupied structure;
27			unarmed; no assault or battery.
28	810.02(4)(b)	3rd	Burglary, or attempted burglary,
29			of an unoccupied conveyance;
30			unarmed; no assault or battery.
31	810.06	3rd	Burglary; possession of tools.

1	810.08(2)(c)	3rd	Trespass on property, armed with
2			firearm or dangerous weapon.
3	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000
4			or more but less than \$20,000.
5	812.014		
6	(2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will,
7			firearm, motor vehicle,
8			livestock, etc.
9	817.563(1)	3rd	Sell or deliver substance other
10			than controlled substance agreed
11			upon, excluding s. 893.03(5)
12			drugs.
13	<u>817.568(2)(a)</u>	<u>3rd</u>	<u>Fraudulent use of</u>
14			<u>personal-identification</u>
15			<u>information.</u>
16	828.125(1)	2nd	Kill, maim, or cause great bodily
17			harm or permanent breeding
18			disability to any registered
19			horse or cattle.
20	837.02(1)	3rd	Perjury in official proceedings.
21	837.021(1)	3rd	Make contradictory statements in
22			official proceedings.
23	843.021	3rd	Possession of a concealed
24			handcuff key by a person in
25			custody.
26	843.025	3rd	Deprive law enforcement,
27			correctional, or correctional
28			probation officer of means of
29			protection or communication.
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1	843.15(1)(a)	3rd	Failure to appear while on bail
2			for felony (bond estreature or
3			bond jumping).
4	874.05(1)	3rd	Encouraging or recruiting another
5			to join a criminal street gang.
6	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s.
7			893.03(1)(a), (b), or (d),
8			(2)(a), (2)(b), or (2)(c)4.
9			drugs).
10	914.14(2)	3rd	Witnesses accepting bribes.
11	914.22(1)	3rd	Force, threaten, etc., witness,
12			victim, or informant.
13	914.23(2)	3rd	Retaliation against a witness,
14			victim, or informant, no bodily
15			injury.
16	918.12	3rd	Tampering with jurors.
17			(e) LEVEL 5
18	316.027(1)(a)	3rd	Accidents involving personal
19			injuries, failure to stop;
20			leaving scene.
21	316.1935(4)	2nd	Aggravated fleeing or eluding.
22	322.34(6)	3rd	Careless operation of motor
23			vehicle with suspended license,
24			resulting in death or serious
25			bodily injury.
26	327.30(5)	3rd	Vessel accidents involving
27			personal injury; leaving scene.
28	381.0041(11)(b)	3rd	Donate blood, plasma, or organs
29			knowing HIV positive.
30	790.01(2)	3rd	Carrying a concealed firearm.
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1	790.162	2nd	Threat to throw or discharge
2			destructive device.
3	790.163	2nd	False report of deadly explosive.
4	790.165(2)	3rd	Manufacture, sell, possess, or
5			deliver hoax bomb.
6	790.221(1)	2nd	Possession of short-barreled
7			shotgun or machine gun.
8	790.23	2nd	Felons in possession of firearms
9			or electronic weapons or devices.
10	800.04(6)(c)	3rd	Lewd or lascivious conduct;
11			offender less than 18 years.
12	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
13			offender 18 years or older.
14	806.111(1)	3rd	Possess, manufacture, or dispense
15			fire bomb with intent to damage
16			any structure or property.
17	812.019(1)	2nd	Stolen property; dealing in or
18			trafficking in.
19	812.131(2)(b)	3rd	Robbery by sudden snatching.
20	812.16(2)	3rd	Owning, operating, or conducting
21			a chop shop.
22	817.034(4)(a)2.	2nd	Communications fraud, value
23			\$20,000 to \$50,000.
24	<u>817.568(2)(b)</u>	<u>2nd</u>	<u>Fraudulent use of personal</u>
25			<u>identification information; value</u>
26			<u>of benefit, services received,</u>
27			<u>payment avoided, or amount of</u>
28			<u>injury or fraud, \$75,000 or more.</u>
29	825.1025(4)	3rd	Lewd or lascivious exhibition in
30			the presence of an elderly person
31			or disabled adult.

1	827.071(4)	2nd	Possess with intent to promote
2			any photographic material, motion
3			picture, etc., which includes
4			sexual conduct by a child.
5	843.01	3rd	Resist officer with violence to
6			person; resist arrest with
7			violence.
8	874.05(2)	2nd	Encouraging or recruiting another
9			to join a criminal street gang;
10			second or subsequent offense.
11	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
12			cocaine (or other s.
13			893.03(1)(a), (1)(b), (1)(d),
14			(2)(a), (2)(b), or (2)(c)4.
15			drugs).
16	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
17			cannabis (or other s.
18			893.03(1)(c), (2)(c)1., (2)(c)2.,
19			(2)(c)3., (2)(c)5., (2)(c)6.,
20			(2)(c)7., (2)(c)8., (2)(c)9.,
21			(3), or (4) drugs) within 1,000
22			feet of a child care facility or
23			school.
24	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
25			cocaine (or other s.
26			893.03(1)(a), (1)(b), (1)(d),
27			(2)(a), (2)(b), or (2)(c)4.
28			drugs) within 200 feet of
29			university or public park.
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1 893.13(1)(e)2. 2nd Sell, manufacture, or deliver  
2 cannabis or other drug prohibited  
3 under s. 893.03(1)(c), (2)(c)1.,  
4 (2)(c)2., (2)(c)3., (2)(c)5.,  
5 (2)(c)6., (2)(c)7., (2)(c)8.,  
6 (2)(c)9., (3), or (4) within  
7 1,000 feet of property used for  
8 religious services or a specified  
9 business site.  
10 893.13(1)(f)1. 1st Sell, manufacture, or deliver  
11 cocaine (or other s.  
12 893.03(1)(a), (1)(b), (1)(d), or  
13 (2)(a), (2)(b), or (2)(c)4.  
14 drugs) within 200 feet of public  
15 housing facility.  
16 893.13(4)(b) 2nd Deliver to minor cannabis (or  
17 other s. 893.03(1)(c), (2)(c)1.,  
18 (2)(c)2., (2)(c)3., (2)(c)5.,  
19 (2)(c)6., (2)(c)7., (2)(c)8.,  
20 (2)(c)9., (3), or (4) drugs).  
21 Section 3. This act shall take effect July 1, 2001.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 524

- Creates a new identity theft offense that provides that any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a second degree felony if the pecuniary benefit, the value of services received, the payment sought to be avoided, or the amount of the injury perpetrated is \$75,000 or more.
- Provides for reclassification of identity theft offenses that were furthered or facilitated by the use of a public record, ranks identity theft offenses, and directs how reclassified offenses shall be ranked.