

STORAGE NAME: h1123b.sa.doc
DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1123
RELATING TO: Public Records/Criminal Use
SPONSOR(S): Representative(s) Wishner

TIED BILL(S):

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS & SAFETY
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

The Florida Criminal Code does not currently impose punishment for the use of public records or information obtained from public records in the commission of a misdemeanor or a felony.

This bill creates criminal offenses for the knowing use of a public record or public information obtained from a public record. When the record or information is used in the commission of a misdemeanor of the first degree, the person commits a misdemeanor of the first degree. When the record or information is used in the commission of a felony, the person commits a felony of the third degree. The bill provides for fines and imprisonment commensurate with the severity of the crime. The bill also amends the Criminal Punishment Code to provide for the inclusion of the felony crime as one in the offense severity ranking chart.

The bill does not appear to have a significant fiscal impact on the state or local governments.

The bill takes effect July 1, 2002.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

This bill creates criminal offenses for the knowing use of a public record or public information obtained from a public record used in the commission of a misdemeanor or a felony.

B. PRESENT SITUATION:

Chapter 119, F.S., relating to public records, prescribes the criminal penalties for the violation of its provisions. Section 119.10(1), F.S., provides that a public officer who violates the chapter's provisions is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. Section 119.10(2), F.S., provides that any person (includes public officers) who willingly and knowingly violates the provisions of the chapter is guilty of a misdemeanor in the first degree, punishable under s. 775.082, F.S. (imprisonment not to exceed one year) or s. 775.083, F.S. (a fine not to exceed \$1,000). Additionally, s. 119.10(3), F.S., provides that a person who violates s.119.105, F.S., relating to the protection of victims of crimes or accidents, commits a felony of the 3rd degree and is punishable as provided under 775.082, F.S. (imprisonment not to exceed 5 years), s. 775.083, F.S. (a fine not to exceed \$1,000), or s. 775.084, F.S. (enhanced criminal penalties for conviction as a habitual felony offender).

The Florida Criminal Code does not currently impose punishment for the use of public records or information obtained from public records in the commission of a misdemeanor or a felony.

C. EFFECT OF PROPOSED CHANGES:

This bill creates two criminal offenses for the knowing use of a public record or public information obtainable from a public record used in the commission of a crime. When the record or information is used in the commission of a misdemeanor of the first degree, the person commits a misdemeanor of the first degree. When the record or information is used in the commission of a felony, the person commits a felony of the third degree. The bill also amends the Criminal Punishment Code to provide for the inclusion of the felony crime as one in the offense severity ranking chart.

D. SECTION-BY-SECTION ANALYSIS:

Section One. Creates s. 875.569, F.S., to provide that a person who knowingly uses any public record or information obtainable only through public records to further the commission of a:

- Misdemeanor of the first degree, commits a misdemeanor of the first degree which is punishable as provided for in ss. 775.082 or 775.083, F.S.; and

- Felony, commits a felony of the third degree which is punishable as provided for in ss. 775.082 or 775.083, F.S.

Section Two. Amends s. 921.0022(3), F.S., the Criminal Punishment Code, to include the use of public records or public records information to facilitate the commission of a felony as a crime in the offense severity ranking chart.

Section Three. Provides that the bill takes effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If a person is convicted under the provisions of this bill, there will be costs associated with that prosecution and the imprisonment of that person. However, it is unlikely that the volume of prosecutions under these two criminal provisions will result in a significant fiscal impact on judicial or executive branch expenditures.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill requires counties or municipalities to spend funds or to take action requiring the expenditure of funds. However, this bill is exempted from the provisions of the mandate requirement because it affects criminal laws.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The staff of the Senate Committee on Criminal Justice, in its analysis of this bill's companion (Senate Bill 140), discusses the issue of double jeopardy. That discussion is set out below in its entirety.

There should be no double jeopardy issue with regard to convictions for the new offense and somewhat interrelated crimes such as identity theft. Under double jeopardy analysis, a court is required to examine each of a defendant's convictions arising out of the same incident to determine whether each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial. *Blockburger v. United States*, 284 U.S. 299 (1932). The test is referred to as the "*Blockburger* test" or "same-elements" test. One statutory exception to the "same-elements" test is when the offense is a lesser-included offense. s. 775.021, F.S. However, the "same-elements" test distinguishes between offenses that are necessarily lesser included offenses and offenses that are not. If two statutory offenses are found to be separate under the "same-elements" test than the lesser offense is not subsumed by the greater offense.

The elements of the public records offense are not the same as, for example, the elements of identity theft. An identity theft offense could be committed by the use of personal identification information from a public record but need not be. The use of a public record is not an element of the offense.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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