

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 140
 SPONSOR: Senator Burt
 SUBJECT: Public Records/Criminal Use
 DATE: October 29, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 140 makes it a crime to knowingly use any public record or information obtainable only through a public record, to facilitate or further the commission of a first degree misdemeanor or a felony. The crime is a first degree misdemeanor, if the public record is used to facilitate or further the commission of a first degree misdemeanor, and is a third degree felony, if the public record is used to facilitate or further the commission of a felony. The third degree felony receives a level 1 offense severity ranking for the purpose of sentencing.

This bill creates s. 817.569, F.S., a new section of the Florida Statutes, and amends s. 921.0022, F.S.

II. Present Situation:

Florida has a very open public records law which, while affording the citizens of Florida greater access to and knowledge of their government than afforded in many other states, also makes the citizens of Florida more susceptible to crimes facilitated or furthered by use of personal information that appears in public records.

The Task Force on Privacy and Technology indicated its concern about the problem of use of personal information appearing in public records. *See Executive Summary of Policy Recommendations*, Task Force on Privacy and Technology (January 11, 2001). The Task Force reported that there was a need to make government-issued identification (*e.g.*, birth certificates or driver’s licenses) more secure. *Id.*, at page 6. The Task Force “also received testimony about the immense amount of sensitive personal information collected, used, sold and/or shared by the government – much of it needlessly.” *Id.*, at page 7. An example provided by the Task Force was the marketing by the Department of Highway Safety and Motor Vehicles of “personally

identifiable information – including social security numbers – without affirmatively requesting permission from the individual. The department allows an individual to opt-out of some disclosure, but a citizen must opt-out twice to restrict the information from disclosure to certain personal information marketing companies.” *Id.* Further, the Task Force noted:

. . . [R]ecent advances in computer technology have created new markets for information brokering. For instance, private entities now access public databases to obtain civil judgments, criminal histories, social security data, driving records, real estate transactions, and wage and employment history data about Florida citizens. Other data that is collected by the government, but not yet sold or shared, includes even more sensitive information, such as medical history records. Moreover, over time, as citizens interact with their government in new ways – purchasing services online and providing data to the government in electronic formats – the amount of sensitive data that is shared with government is likely to increase.

Id. at page 8.

Staff of the Office of Statewide Prosecution have provided several examples in which public record information has been used to facilitate or further criminal activity:

- ▶ Third party administrator used federal drug ID (DEA numbers) to create false doctor bills and have payments mailed to false address. More than \$500,000 was stolen from State Health Self Insurance Trust Fund (1997).
- ▶ Former employee used internal HRS records to both find existing but dormant (not in present use) Food Stamp/WIC accounts and hijack them to her own use, issuing and then collecting hundreds of thousands of dollars in benefits, and also creating wholly counterfeit new identities to be used the same way (1994-95).
- ▶ Runners from unethical doctors/lawyers collected auto crash reports from police agencies by PR requests to use to approach automobile crash participants and herd them into medical clinics to collect PIP insurance benefits. Millions of dollars were lost to various insurance companies (1999-2000). *Report on Insurance Fraud Related to Personal Injury Protection*, Case No. 95,746, Second Interim Report of the Fifteenth Statewide Grand Jury (September 2000), page 4 (Office of Statewide Prosecution web page).

Professional identity thieves use small portions of information to get access to larger amounts. For example, using only a prosecutor's name, one of the prosecutor's targets obtained a new driver's license in the prosecutor's name with the target's photo and a new false address. If not caught, the target could have destroyed the prosecutor's credit rating and even involved his name in criminal activity, endangering the prosecutor with possible criminal liability and even the loss of the prosecutor's law license.

III. Effect of Proposed Changes:

Senate Bill 140 makes it a crime to knowingly use any public record or information obtainable only through a public record, to facilitate or further the commission of a first degree misdemeanor or a felony. The crime is a first degree misdemeanor, if the public record is used to facilitate or further the commission of a first degree misdemeanor, and is a third degree felony, if the public record is used to facilitate or further the commission of a felony. The third degree felony receives a level 1 offense severity ranking for the purpose of sentencing.

The effective date of the bill is July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An impact analysis was not available at the time this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In light of information surrounding the recent terrorist attacks on the World Trade Center and the Pentagon, it is possible that terrorists could use public records information to facilitate or further acts of terrorism. For example, the terrorist may be able to obtain enough information on another person to assume that person's identity to conceal the terrorist's identity. Also, some terrorists support their cell activities through criminal illegal proceeds gained from identity theft.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
