

By Senator Crist

12-188-03

1 A bill to be entitled
2 An act relating to the criminal use of personal
3 identification information; amending s.
4 817.568, F.S.; revising the elements of the
5 offense to reduce the amount required for
6 unlawful benefit, injury, or fraud; providing
7 that such criminal use of personal
8 identification information is a second-degree
9 felony; amending s. 921.0022, F.S., relating to
10 the offense severity ranking chart of the
11 Criminal Punishment Code; conforming provisions
12 to changes made by the act; providing an
13 effective date.

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

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17 Section 1. Section 817.568, Florida Statutes, is
18 amended to read:

19 817.568 Criminal use of personal identification
20 information.--

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

22 (a) "Access device" means any card, plate, code,
23 account number, electronic serial number, mobile
24 identification number, personal identification number, or
25 other telecommunications service, equipment, or instrument
26 identifier, or other means of account access that can be used,
27 alone or in conjunction with another access device, to obtain
28 money, goods, services, or any other thing of value, or that
29 can be used to initiate a transfer of funds, other than a
30 transfer originated solely by paper instrument.

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1 (b) "Authorization" means empowerment, permission, or
2 competence to act.

3 (c) "Harass" means to engage in conduct directed at a
4 specific person that is intended to cause substantial
5 emotional distress to such person and serves no legitimate
6 purpose. "Harass" does not mean to use personal identification
7 information for accepted commercial purposes. The term does
8 not include constitutionally protected conduct such as
9 organized protests or the use of personal identification
10 information for accepted commercial purposes.

11 (d) "Individual" means a single human being and does
12 not mean a firm, association of individuals, corporation,
13 partnership, joint venture, sole proprietorship, or any other
14 entity.

15 (e) "Person" means a "person" as defined in s.
16 1.01(3).

17 (f) "Personal identification information" means any
18 name or number that may be used, alone or in conjunction with
19 any other information, to identify a specific individual,
20 including any:

21 1. Name, social security number, date of birth,
22 official state-issued or United States-issued driver's license
23 or identification number, alien registration number,
24 government passport number, employer or taxpayer
25 identification number, or Medicaid or food stamp account
26 number;

27 2. Unique biometric data, such as fingerprint, voice
28 print, retina or iris image, or other unique physical
29 representation;

30 3. Unique electronic identification number, address,
31 or routing code; or

1 4. Telecommunication identifying information or access
2 device.

3 (2)(a) Any person who willfully and without
4 authorization fraudulently uses, or possesses with intent to
5 fraudulently use, personal identification information
6 concerning an individual without first obtaining that
7 individual's consent, commits the offense of fraudulent use of
8 personal identification information, which is a felony of the
9 third degree, punishable as provided in s. 775.082, s.
10 775.083, or s. 775.084.

11 (b) Any person who willfully and without authorization
12 fraudulently uses personal identification information
13 concerning an individual without first obtaining that
14 individual's consent commits a felony of the second degree,
15 punishable as provided in s. 775.082, s. 775.083, or s.
16 775.084, if the pecuniary benefit, the value of the services
17 received, the payment sought to be avoided, or the amount of
18 the injury or fraud perpetrated is \$5,000~~\$75,000~~ or more.

19 (3) Any person who willfully and without authorization
20 possesses, uses, or attempts to use personal identification
21 information concerning an individual without first obtaining
22 that individual's consent, and who does so for the purpose of
23 harassing that individual, commits the offense of harassment
24 by use of personal identification information, which is a
25 misdemeanor of the first degree, punishable as provided in s.
26 775.082 or s. 775.083.

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

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1 (a) A misdemeanor of the first degree is reclassified
2 as a felony of the third degree.

3 (b) A felony of the third degree is reclassified as a
4 felony of the second degree.

5 (c) A felony of the second degree is reclassified as a
6 felony of the first degree.

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8 For purposes of sentencing under chapter 921 and incentive
9 gain-time eligibility under chapter 944, a felony offense that
10 is reclassified under this subsection is ranked one level
11 above the ranking under s. 921.0022 of the felony offense
12 committed, and a misdemeanor offense that is reclassified
13 under this subsection is ranked in level 2 of the offense
14 severity ranking chart in s. 921.0022.

15 (5) This section does not prohibit any lawfully
16 authorized investigative, protective, or intelligence activity
17 of a law enforcement agency of this state or any of its
18 political subdivisions, of any other state or its political
19 subdivisions, or of the Federal Government or its political
20 subdivisions.

21 (6)(a) In sentencing a defendant convicted of an
22 offense under this section, the court may order that the
23 defendant make restitution pursuant to s. 775.089 to any
24 victim of the offense. In addition to the victim's
25 out-of-pocket costs, such restitution may include payment of
26 any other costs, including attorney's fees incurred by the
27 victim in clearing the victim's credit history or credit
28 rating, or any costs incurred in connection with any civil or
29 administrative proceeding to satisfy any debt, lien, or other
30 obligation of the victim arising as the result of the actions
31 of the defendant.

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

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

7 (8) The Legislature finds that, in the absence of
8 evidence to the contrary, the location where a victim gives or
9 fails to give consent to the use of personal identification
10 information is the county where the victim generally resides.

11 (9) Notwithstanding any other provision of law, venue
12 for the prosecution and trial of violations of this section
13 may be commenced and maintained in any county in which an
14 element of the offense occurred, including the county where
15 the victim generally resides.

16 (10) A prosecution of an offense prohibited under
17 subsection (2) must be commenced within 3 years after the
18 offense occurred. However, a prosecution may be commenced
19 within 1 year after discovery of the offense by an aggrieved
20 party, or by a person who has a legal duty to represent the
21 aggrieved party and who is not a party to the offense, if such
22 prosecution is commenced within 5 years after the violation
23 occurred.

24 Section 2. Paragraph (e) of subsection (3) of section
25 921.0022, Florida Statutes, is amended to read:

26 921.0022 Criminal Punishment Code; offense severity
27 ranking chart.--

28 (3) OFFENSE SEVERITY RANKING CHART
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	Florida	Felony	
	Statute	Degree	Description
1			
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5			(e) LEVEL 5
6	316.027(1)(a)	3rd	Accidents involving personal
7			injuries, failure to stop;
8			leaving scene.
9	316.1935(4)	2nd	Aggravated fleeing or eluding.
10	322.34(6)	3rd	Careless operation of motor
11			vehicle with suspended license,
12			resulting in death or serious
13			bodily injury.
14	327.30(5)	3rd	Vessel accidents involving
15			personal injury; leaving scene.
16	381.0041		
17	(11)(b)	3rd	Donate blood, plasma, or organs
18			knowing HIV positive.
19	790.01(2)	3rd	Carrying a concealed firearm.
20	790.162	2nd	Threat to throw or discharge
21			destructive device.
22	790.163(1)	2nd	False report of deadly explosive
23			or weapon of mass destruction.
24	790.221(1)	2nd	Possession of short-barreled
25			shotgun or machine gun.
26	790.23	2nd	Felons in possession of firearms
27			or electronic weapons or devices.
28	800.04(6)(c)	3rd	Lewd or lascivious conduct;
29			offender less than 18 years.
30	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
31			offender 18 years or older.

1	806.111(1)	3rd	Possess, manufacture, or dispense
2			fire bomb with intent to damage
3			any structure or property.
4	812.0145(2)(b)	2nd	Theft from person 65 years of age
5			or older; \$10,000 or more but
6			less than \$50,000.
7	812.015(8)	3rd	Retail theft; property stolen is
8			valued at \$300 or more and one or
9			more specified acts.
10	812.019(1)	2nd	Stolen property; dealing in or
11			trafficking in.
12	812.131(2)(b)	3rd	Robbery by sudden snatching.
13	812.16(2)	3rd	Owning, operating, or conducting
14			a chop shop.
15	817.034(4)(a)2.	2nd	Communications fraud, value
16			\$20,000 to \$50,000.
17	817.234(11)(b)	2nd	Insurance fraud; property value
18			\$20,000 or more but less than
19			\$100,000.
20	817.568(2)(b)	2nd	Fraudulent use of personal
21			identification information; value
22			of benefit, services received,
23			payment avoided, or amount of
24			injury or fraud, <u>\$5,000</u> \$75,000
25			or more.
26	817.625(2)(b)	2nd	Second or subsequent fraudulent
27			use of scanning device or
28			reencoder.
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	839.13(2)(b)	2nd	Falsifying records of an
6			individual in the care and
7			custody of a state agency
8			involving great bodily harm or
9			death.
10	843.01	3rd	Resist officer with violence to
11			person; resist arrest with
12			violence.
13	874.05(2)	2nd	Encouraging or recruiting another
14			to join a criminal street gang;
15			second or subsequent offense.
16	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
17			cocaine (or other s.
18			893.03(1)(a), (1)(b), (1)(d),
19			(2)(a), (2)(b), or (2)(c)4.
20			drugs).
21	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
22			cannabis (or other s.
23			893.03(1)(c), (2)(c)1., (2)(c)2.,
24			(2)(c)3., (2)(c)5., (2)(c)6.,
25			(2)(c)7., (2)(c)8., (2)(c)9.,
26			(3), or (4) drugs) within 1,000
27			feet of a child care facility or
28			school.
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1 893.13(1)(d)1. 1st Sell, manufacture, or deliver
2 cocaine (or other s.
3 893.03(1)(a), (1)(b), (1)(d),
4 (2)(a), (2)(b), or (2)(c)4.
5 drugs) within 200 feet of
6 university or public park.
7 893.13(1)(e)2. 2nd Sell, manufacture, or deliver
8 cannabis or other drug prohibited
9 under s. 893.03(1)(c), (2)(c)1.,
10 (2)(c)2., (2)(c)3., (2)(c)5.,
11 (2)(c)6., (2)(c)7., (2)(c)8.,
12 (2)(c)9., (3), or (4) within
13 1,000 feet of property used for
14 religious services or a specified
15 business site.
16 893.13(1)(f)1. 1st Sell, manufacture, or deliver
17 cocaine (or other s.
18 893.03(1)(a), (1)(b), (1)(d), or
19 (2)(a), (2)(b), or (2)(c)4.
20 drugs) within 200 feet of public
21 housing facility.
22 893.13(4)(b) 2nd Deliver to minor cannabis (or
23 other s. 893.03(1)(c), (2)(c)1.,
24 (2)(c)2., (2)(c)3., (2)(c)5.,
25 (2)(c)6., (2)(c)7., (2)(c)8.,
26 (2)(c)9., (3), or (4) drugs).
27 Section 3. This act shall take effect July 1, 2003.
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SENATE SUMMARY

Revises the elements of the offense involving the criminal use of personal identification information to provide that committing such offense is a second-degree felony if the amount of the benefit, value of services, or amount of injury or fraud perpetrated is more than \$5,000 rather than more than \$75,000.