

By the Committee on Criminal Justice; and Senator Crist

307-1970-03

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.; expanding the definition of
 5 personal identification information; revising
 6 the elements of the offense of criminal use of
 7 personal identification information in which
 8 such use results in an unlawful benefit,
 9 injury, or fraud; providing that such criminal
 10 use of personal identification information is a
 11 first degree felony if the unlawful benefit,
 12 injury, or fraud is \$50,000 or more; providing
 13 for mandatory minimum terms of imprisonment for
 14 certain acts of criminal use of personal
 15 identification information; amending s.
 16 921.0022, F.S., relating to the offense
 17 severity ranking chart of the Criminal
 18 Punishment Code; conforming provisions to
 19 changes made by the act; providing an effective
 20 date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 817.568, Florida Statutes, is
 25 amended to read:

26 817.568 Criminal use of personal identification
 27 information.--

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

29 (a) "Access device" means any card, plate, code,
 30 account number, electronic serial number, mobile
 31 identification number, personal identification number, or

1 other telecommunications service, equipment, or instrument
2 identifier, or other means of account access that can be used,
3 alone or in conjunction with another access device, to obtain
4 money, goods, services, or any other thing of value, or that
5 can be used to initiate a transfer of funds, other than a
6 transfer originated solely by paper instrument.

7 (b) "Authorization" means empowerment, permission, or
8 competence to act.

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

17 (d) "Individual" means a single human being and does
18 not mean a firm, association of individuals, corporation,
19 partnership, joint venture, sole proprietorship, or any other
20 entity.

21 (e) "Person" means a "person" as defined in s.
22 1.01(3).

23 (f) "Personal identification information" means any
24 name or number that may be used, alone or in conjunction with
25 any other information, to identify a specific individual,
26 including any:

27 1. Name, social security number, date of birth,
28 official state-issued or United States-issued driver's license
29 or identification number, alien registration number,
30 government passport number, employer or taxpayer
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1 identification number, ~~or~~ Medicaid or food stamp account
2 number, or bank account or credit card number;
3 2. Unique biometric data, such as fingerprint, voice
4 print, retina or iris image, or other unique physical
5 representation;
6 3. Unique electronic identification number, address,
7 or routing code; or
8 4. Telecommunication identifying information or access
9 device.
10 (2)(a) Any person who willfully and without
11 authorization fraudulently uses, or possesses with intent to
12 fraudulently use, personal identification information
13 concerning an individual without first obtaining that
14 individual's consent, commits the offense of fraudulent use of
15 personal identification information, which is a felony of the
16 third degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.
18 (b) Any person who willfully and without authorization
19 fraudulently uses personal identification information
20 concerning an individual without first obtaining that
21 individual's consent commits a felony of the second degree,
22 punishable as provided in s. 775.082, s. 775.083, or s.
23 775.084, if the pecuniary benefit, the value of the services
24 received, the payment sought to be avoided, or the amount of
25 the injury or fraud perpetrated is ~~\$5,000~~~~\$75,000~~ or more or
26 if the person fraudulently uses the personal identification
27 information of 10 or more individuals without their consent.
28 Notwithstanding any other provision of law, the court shall
29 sentence any person convicted of committing the offense
30 described in this paragraph to a mandatory minimum sentence of
31 3 years imprisonment.

1 (c) Any person who willfully and without
2 authorization, fraudulently uses personal identification
3 information concerning an individual without first obtaining
4 that individual's consent commits a felony of the first
5 degree, punishable as provided in s. 775.082, s. 775.083, or
6 s. 775.084, if the pecuniary benefit, the value of the
7 services received, the payment sought to be avoided, or the
8 amount of the injury or fraud perpetrated is \$50,000 or more
9 or if the person fraudulently uses the personal identification
10 information of 20 or more individuals without their consent.
11 Notwithstanding any other provision of law, the court shall
12 sentence any person convicted of committing the offense
13 described in this paragraph:
14 1. To a mandatory minimum sentence of 5 years
15 imprisonment.
16 2. To a mandatory minimum sentence of 10 years
17 imprisonment, if the pecuniary benefit, the value of the
18 services received, the payment sought to be avoided, or the
19 amount of the injury or fraud perpetrated is \$100,000 or more
20 or if the person fraudulently uses the personal identification
21 information of 30 or more individuals without their consent.
22 (3) Nothing in paragraphs (2)(b) or paragraph (2)(c)
23 shall prevent a court from imposing a greater sentence of
24 incarceration as authorized by law. If the minimum mandatory
25 terms of imprisonment imposed pursuant to paragraph (2)(b) or
26 paragraph (2)(c) exceed the maximum sentences authorized by s.
27 775.082, s. 775.084, or the Criminal Punishment Code under
28 chapter 921, the mandatory minimum sentence must be imposed.
29 If the mandatory minimum terms of imprisonment pursuant to
30 paragraph (2)(b) or paragraph (2)(c) are less than the
31 sentences that could be imposed as authorized by s. 775.082,

1 s. 775.084, or the Criminal Punishment Code under chapter 921,
2 the sentence imposed by the court must include the mandatory
3 minimum term of imprisonment as required by paragraph (2)(b)
4 or paragraph (2)(c).

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

13 (5)(4) If an offense prohibited under this section was
14 facilitated or furthered by the use of a public record, as
15 defined in s. 119.011, the offense is reclassified to the next
16 higher degree as follows:

17 (a) A misdemeanor of the first degree is reclassified
18 as a felony of the third degree.

19 (b) A felony of the third degree is reclassified as a
20 felony of the second degree.

21 (c) A felony of the second degree is reclassified as a
22 felony of the first degree.

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

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1 ~~(6)~~(5) This section does not prohibit any lawfully
2 authorized investigative, protective, or intelligence activity
3 of a law enforcement agency of this state or any of its
4 political subdivisions, of any other state or its political
5 subdivisions, or of the Federal Government or its political
6 subdivisions.

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

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

21 ~~(8)~~(7) Prosecutions for violations of this section may
22 be brought on behalf of the state by any state attorney or by
23 the statewide prosecutor.

24 ~~(9)~~(8) The Legislature finds that, in the absence of
25 evidence to the contrary, the location where a victim gives or
26 fails to give consent to the use of personal identification
27 information is the county where the victim generally resides.

28 ~~(10)~~(9) Notwithstanding any other provision of law,
29 venue for the prosecution and trial of violations of this
30 section may be commenced and maintained in any county in which
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1 an element of the offense occurred, including the county where
2 the victim generally resides.

3 (11)~~(10)~~ A prosecution of an offense prohibited under
4 subsection (2) must be commenced within 3 years after the
5 offense occurred. However, a prosecution may be commenced
6 within 1 year after discovery of the offense by an aggrieved
7 party, or by a person who has a legal duty to represent the
8 aggrieved party and who is not a party to the offense, if such
9 prosecution is commenced within 5 years after the violation
10 occurred.

11 Section 2. Paragraph (e) of subsection (3) of section
12 921.0022, Florida Statutes, is amended to read:

13 921.0022 Criminal Punishment Code; offense severity
14 ranking chart.--

15 (3) OFFENSE SEVERITY RANKING CHART

16	17 Florida	18 Statute	19 Felony	20 Degree	21 Description
22		316.027(1)(a)	3rd		(e) LEVEL 5 Accidents involving personal injuries, failure to stop; leaving scene.
23		316.1935(4)	2nd		Aggravated fleeing or eluding.
24		322.34(6)	3rd		Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
25		327.30(5)	3rd		Vessel accidents involving personal injury; leaving scene.
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1	381.0041		
2	(11)(b)	3rd	Donate blood, plasma, or organs
3			knowing HIV positive.
4	790.01(2)	3rd	Carrying a concealed firearm.
5	790.162	2nd	Threat to throw or discharge
6			destructive device.
7	790.163(1)	2nd	False report of deadly explosive
8			or weapon of mass destruction.
9	790.221(1)	2nd	Possession of short-barreled
10			shotgun or machine gun.
11	790.23	2nd	Felons in possession of firearms
12			or electronic weapons or devices.
13	800.04(6)(c)	3rd	Lewd or lascivious conduct;
14			offender less than 18 years.
15	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
16			offender 18 years or older.
17	806.111(1)	3rd	Possess, manufacture, or dispense
18			fire bomb with intent to damage
19			any structure or property.
20	812.0145(2)(b)	2nd	Theft from person 65 years of age
21			or older; \$10,000 or more but
22			less than \$50,000.
23	812.015(8)	3rd	Retail theft; property stolen is
24			valued at \$300 or more and one or
25			more specified acts.
26	812.019(1)	2nd	Stolen property; dealing in or
27			trafficking in.
28	812.131(2)(b)	3rd	Robbery by sudden snatching.
29	812.16(2)	3rd	Owning, operating, or conducting
30			a chop shop.
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1	817.034(4)(a)2.	2nd	Communications fraud, value
2			\$20,000 to \$50,000.
3	817.234(11)(b)	2nd	Insurance fraud; property value
4			\$20,000 or more but less than
5			\$100,000.
6	817.568(2)(b)	2nd	Fraudulent use of personal
7			identification information; value
8			of benefit, services received,
9			payment avoided, or amount of
10			injury or fraud, \$5,000 ^{\$75,000}
11			or more <u>or use of personal</u>
12			<u>identification information of 10</u>
13			<u>or more individuals.</u>
14	817.625(2)(b)	2nd	Second or subsequent fraudulent
15			use of scanning device or
16			reencoder.
17	825.1025(4)	3rd	Lewd or lascivious exhibition in
18			the presence of an elderly person
19			or disabled adult.
20	827.071(4)	2nd	Possess with intent to promote
21			any photographic material, motion
22			picture, etc., which includes
23			sexual conduct by a child.
24	839.13(2)(b)	2nd	Falsifying records of an
25			individual in the care and
26			custody of a state agency
27			involving great bodily harm or
28			death.
29	843.01	3rd	Resist officer with violence to
30			person; resist arrest with
31			violence.

1	874.05(2)	2nd	Encouraging or recruiting another
2			to join a criminal street gang;
3			second or subsequent offense.
4	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
5			cocaine (or other s.
6			893.03(1)(a), (1)(b), (1)(d),
7			(2)(a), (2)(b), or (2)(c)4.
8			drugs).
9	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
10			cannabis (or other s.
11			893.03(1)(c), (2)(c)1., (2)(c)2.,
12			(2)(c)3., (2)(c)5., (2)(c)6.,
13			(2)(c)7., (2)(c)8., (2)(c)9.,
14			(3), or (4) drugs) within 1,000
15			feet of a child care facility or
16			school.
17	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
18			cocaine (or other s.
19			893.03(1)(a), (1)(b), (1)(d),
20			(2)(a), (2)(b), or (2)(c)4.
21			drugs) within 200 feet of
22			university or public park.
23	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver
24			cannabis or other drug prohibited
25			under s. 893.03(1)(c), (2)(c)1.,
26			(2)(c)2., (2)(c)3., (2)(c)5.,
27			(2)(c)6., (2)(c)7., (2)(c)8.,
28			(2)(c)9., (3), or (4) within
29			1,000 feet of property used for
30			religious services or a specified
31			business site.

1 893.13(1)(f)1. 1st Sell, manufacture, or deliver
2 cocaine (or other s.
3 893.03(1)(a), (1)(b), (1)(d), or
4 (2)(a), (2)(b), or (2)(c)4.
5 drugs) within 200 feet of public
6 housing facility.
7 893.13(4)(b) 2nd Deliver to minor cannabis (or
8 other s. 893.03(1)(c), (2)(c)1.,
9 (2)(c)2., (2)(c)3., (2)(c)5.,
10 (2)(c)6., (2)(c)7., (2)(c)8.,
11 (2)(c)9., (3), or (4) drugs).
12 Section 3. This act shall take effect July 1, 2003.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1072

- 4 - Provides that it is a second degree felony with a
5 mandatory minimum sentence of 3-years imprisonment, for a
6 person to willfully and without authorization
7 fraudulently use personal identification information
8 concerning an individual without first obtaining that
9 individual's consent, if the pecuniary benefit, the value
10 of the services received, the payment sought to be
11 avoided, or the amount of the injury or fraud is \$5,000
12 or more or if the person fraudulently uses the personal
13 identification information of 10 or more individuals
14 without their consent.
- 15 - Provides that if the amount is \$50,000 or more or if the
16 person fraudulently uses the personal identification
17 information of 20 or more individuals without their
18 consent, it is a first degree felony. A mandatory
19 sentence of 5 years applies if the amount is \$50,000 to
20 less than \$100,000. A mandatory minimum sentence of 10
21 years applies if the amount is \$100,000 or more or if the
22 person fraudulently uses the personal identification
23 information of 30 or more individuals without their
24 consent.
- 25 - Changes definition of "personal identification
26 information" to include a bank account or credit card
27 number.
- 28 - Describes how mandatory sentencing under this section is
29 to occur in relation to other specified penalty or
30 sentencing laws.
- 31 - Corrects the Criminal Punishment Code offense severity
ranking chart to reflect the change to the second degree
felony offense of criminal use of personal identification
information.