



HB 1095

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1 A bill to be entitled

2 An act relating to identity theft; amending s. 817.568,
3 F.S.; increasing the level of felony for certain offenses
4 involving identity theft; providing minimum mandatory
5 penalties; amending s. 921.0022, F.S.; deleting reference
6 to identity theft felonies subject to a minimum mandatory
7 penalty from the offense severity ranking chart; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 817.568, Florida Statutes, is amended
13 to read:

14 817.568 Criminal use of personal identification
15 information.--

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

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

26 (b) "Authorization" means empowerment, permission, or
27 competence to act.

28 (c) "Harass" means to engage in conduct directed at a
29 specific person that is intended to cause substantial emotional
30 distress to such person and serves no legitimate purpose.



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31 "Harass" does not mean to use personal identification
32 information for accepted commercial purposes. The term does not
33 include constitutionally protected conduct such as organized
34 protests or the use of personal identification information for
35 accepted commercial purposes.

36 (d) "Individual" means a single human being and does not
37 mean a firm, association of individuals, corporation,
38 partnership, joint venture, sole proprietorship, or any other
39 entity.

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

41 (f) "Personal identification information" means any name
42 or number that may be used, alone or in conjunction with any
43 other information, to identify a specific individual, including
44 any:

45 1. Name, social security number, date of birth, official
46 state-issued or United States-issued driver's license or
47 identification number, alien registration number, government
48 passport number, employer or taxpayer identification number, ~~or~~
49 Medicaid or food stamp account number, bank account or credit
50 card number;

51 2. Unique biometric data, such as fingerprint, voice
52 print, retina or iris image, or other unique physical
53 representation;

54 3. Unique electronic identification number, address, or
55 routing code; or

56 4. Telecommunication identifying information or access
57 device.

58 (2)(a) Any person who willfully and without authorization
59 fraudulently uses, or possesses with intent to fraudulently use,
60 personal identification information concerning an individual



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61 without first obtaining that individual's consent, commits the
62 offense of fraudulent use of personal identification
63 information, which is a felony of the third degree, punishable
64 as provided in s. 775.082, s. 775.083, or s. 775.084.

65 (b) Any person who willfully and without authorization
66 fraudulently uses personal identification information concerning
67 an individual without first obtaining that individual's consent
68 commits a felony of the second degree, punishable as provided in
69 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
70 the value of the services received, the payment sought to be
71 avoided, or the amount of the injury or fraud perpetrated is
72 \$10,000 ~~\$75,000~~ or more or if the number of victims involved is
73 10 or more.

74 (3) Any person who willfully and without authorization
75 fraudulently uses personal identification information concerning
76 an individual without first obtaining that individual's consent
77 commits a felony of the first degree, punishable as provided in
78 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
79 the value of the services received, the payment sought to be
80 avoided, or the amount of the injury or fraud perpetrated is
81 \$50,000 or more or if the number of victims involved is 15 or
82 more.

83 (a) A person convicted under this subsection shall be
84 sentenced to a term of imprisonment not to exceed 30 years and
85 shall not be eligible for release for 10 years if the pecuniary
86 benefit, the value of the services received, the payment sought
87 to be avoided, or the amount of the injury or fraud perpetrated
88 is \$100,000 or more or the number of victims involved is 25 or
89 more.



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90 (b) A person convicted under this subsection shall be
91 sentenced to a term of imprisonment not to exceed 30 years and
92 shall not be eligible for release for 5 years if the pecuniary
93 benefit, the value of the services received, the payment sought
94 to be avoided, or the amount of the injury or fraud perpetrated
95 is \$50,000 or more or the number of victims involved is 10 or
96 more.

97 (c) A person convicted under this subsection shall be
98 sentenced to a term of imprisonment not to exceed 15 years and
99 shall not be eligible for release for 3 years if the pecuniary
100 benefit, the value of the services received, the payment sought
101 to be avoided, or the amount of the injury or fraud perpetrated
102 is \$10,000 or more or the number of victims involved is 10 or
103 more.

104 (4)(3) Any person who willfully and without authorization
105 possesses, uses, or attempts to use personal identification
106 information concerning an individual without first obtaining
107 that individual's consent, and who does so for the purpose of
108 harassing that individual, commits the offense of harassment by
109 use of personal identification information, which is a
110 misdemeanor of the first degree, punishable as provided in s.
111 775.082 or s. 775.083.

112 (5)(4) If an offense prohibited under this section was
113 facilitated or furthered by the use of a public record, as
114 defined in s. 119.011, the offense is reclassified to the next
115 higher degree as follows:

116 (a) A misdemeanor of the first degree is reclassified as a
117 felony of the third degree.

118 (b) A felony of the third degree is reclassified as a
119 felony of the second degree.



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120 ~~(c) A felony of the second degree is reclassified as a~~
121 ~~felony of the first degree.~~

122

123 For purposes of sentencing under chapter 921 and incentive gain-
124 time eligibility under chapter 944, a felony offense that is
125 reclassified under this subsection is ranked one level above the
126 ranking under s. 921.0022 of the felony offense committed, and a
127 misdemeanor offense that is reclassified under this subsection
128 is ranked in level 2 of the offense severity ranking chart in s.
129 921.0022.

130 (6)~~(5)~~ This section does not prohibit any lawfully
131 authorized investigative, protective, or intelligence activity
132 of a law enforcement agency of this state or any of its
133 political subdivisions, of any other state or its political
134 subdivisions, or of the Federal Government or its political
135 subdivisions.

136 (7)~~(6)~~(a) In sentencing a defendant convicted of an
137 offense under this section, the court may order that the
138 defendant make restitution pursuant to s. 775.089 to any victim
139 of the offense. In addition to the victim's out-of-pocket costs,
140 such restitution may include payment of any other costs,
141 including attorney's fees incurred by the victim in clearing the
142 victim's credit history or credit rating, or any costs incurred
143 in connection with any civil or administrative proceeding to
144 satisfy any debt, lien, or other obligation of the victim
145 arising as the result of the actions of the defendant.

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



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149 (8)~~(7)~~ Prosecutions for violations of this section may be
 150 brought on behalf of the state by any state attorney or by the
 151 statewide prosecutor.

152 (9)~~(8)~~ The Legislature finds that, in the absence of
 153 evidence to the contrary, the location where a victim gives or
 154 fails to give consent to the use of personal identification
 155 information is the county where the victim generally resides.

156 (10)~~(9)~~ Notwithstanding any other provision of law, venue
 157 for the prosecution and trial of violations of this section may
 158 be commenced and maintained in any county in which an element of
 159 the offense occurred, including the county where the victim
 160 generally resides.

161 (11)~~(10)~~ A prosecution of an offense prohibited under
 162 subsection (2) must be commenced within 3 years after the
 163 offense occurred. However, a prosecution may be commenced within
 164 1 year after discovery of the offense by an aggrieved party, or
 165 by a person who has a legal duty to represent the aggrieved
 166 party and who is not a party to the offense, if such prosecution
 167 is commenced within 5 years after the violation occurred.

168 Section 2. Paragraph (e) of subsection (3) of section
 169 921.0022, Florida Statutes, is amended to read:

170 921.0022 Criminal Punishment Code; offense severity
 171 ranking chart.--

172 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(e) LEVEL 5
316.027(1)(a)	3rd	Accidents involving personal



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			injuries, failure to stop; leaving scene.
175	316.1935(4)	2nd	Aggravated fleeing or eluding.
176	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
177	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
178	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
179	790.01(2)	3rd	Carrying a concealed firearm.
180	790.162	2nd	Threat to throw or discharge destructive device.
181	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
182	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
183	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
184	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
185	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
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187	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
188	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
189	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
190	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
191	812.131(2)(b)	3rd	Robbery by sudden snatching.
192	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
193	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
194	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
195	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.



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196	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
197	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
198	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
199	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
200	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
201	874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
202	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,



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(2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility or school.

203

893.13(1)(d)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of university or public park.

204

893.13(1)(e)2. 2nd

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

205

893.13(1)(f)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.

206

893.13(4)(b) 2nd

Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

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Section 3. This act shall take effect October 1, 2003.