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A bill to be entitled
 An act relating to identity theft and Internet fraud prevention, investigation, and prosecution; amending s. 817.568, F.S.; providing for penalty provisions for the commission of a first degree and second degree felony concerning identity theft under certain circumstances; providing for higher offense severity levels in identity theft cases under certain circumstances; providing that every Florida consumer may be provided two free credit reports a year; amending s. 934.23, F.S.; providing a definition; clarifying that Florida judges with jurisdiction over specific crimes have authority to issue search warrants for electronic evidence relating thereto, regardless of where the electronic evidence is situated; creating s. 92.605, F.S.; providing definitions; providing for self-authentication for out-of-state business records under certain circumstances with notice to opponent; providing for procedures; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 817.568, Florida Statutes, is amended, paragraph (c) is added to said subsection, subsections (5), (6), (7), (8), (9), and (10) are renumbered as subsections (7), (8), (9), (10), (11), and (12), respectively, and new subsections (5) and (6) are added to said section, to read:

817.568 Criminal use of personal identification information.--

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31 (b) Any person who willfully and without authorization
32 fraudulently uses personal identification information concerning
33 an individual without first obtaining that individual's consent
34 commits a felony of the second degree, punishable as provided in
35 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
36 the value of the services received, the payment sought to be
37 avoided, or the amount of the injury or fraud perpetrated is not
38 less than \$20,000 or more than \$100,000 ~~\$75,000 or more~~.

39 (c) Any person who willfully and without authorization
40 fraudulently uses personal identification information concerning
41 an individual without first obtaining that individual's consent
42 commits a felony of the first degree, punishable as provided in
43 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
44 the value of the services received, the payment sought to be
45 avoided, or the amount of the injury or fraud perpetrated is
46 \$100,000 or more.

47 (5) If an offense prohibited under this section was
48 committed using the personal identification information of a
49 child, its offense severity level shall be increased to offense
50 severity level 8; if the child involved was the defendant's
51 natural child or any child over whom the defendant had custodial
52 authority, the offense severity level shall be increased to
53 offense severity level 9.

54 (6) Any consumer reporting agency as defined in s. 603(f)
55 of the Fair Credit Reporting Act shall provide, free of charge,
56 upon the request of any person and without regard to any failure
57 to extend credit to that person, up to two consumer reports each
58 calendar year, including explanations of any codes contained
59 therein.



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60 Section 2. Subsection (1) of section 934.23, Florida
61 Statutes, is amended to read:

62 934.23 Required disclosure of customer communications or
63 records.--

64 (1) An investigative or law enforcement officer may
65 require the disclosure by a provider of electronic communication
66 service of the contents of a wire or electronic communication
67 that has been in electronic storage in an electronic
68 communications system for 180 days or less only pursuant to a
69 warrant issued by the judge of a court of competent
70 jurisdiction. For purposes of this section, "a court of
71 competent jurisdiction" means a court having jurisdiction over
72 the investigation or otherwise authorized by law. An
73 investigative or law enforcement officer may require the
74 disclosure by a provider of electronic communication services of
75 the contents of a wire or electronic communication that has been
76 in electronic storage in an electronic communications system for
77 more than 180 days by the means available under subsection (2).

78 Section 3. Section 92.605, Florida Statutes, is created to
79 read:

80 92.605 Production of certain records by Florida
81 corporations and out-of-state corporations.

82 (1) For the purposes of this section, the term:

83 (a) "Adverse result" includes one of the following
84 consequences to notification of the existence of a court order,
85 a subpoena, or a search warrant:

86 1. Danger to the life or physical safety of an individual.

87 2. A flight from prosecution.

88 3. The destruction of or tampering with evidence.

89 4. The intimidation of potential witnesses.



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90 5. Serious jeopardy to an investigation or undue delay of
91 a trial.

92 (b) "Applicant" means a law enforcement officer who is
93 seeking a court order or subpoena under s. 16.56, s. 27.04, s.
94 905.185, or s. 914.04 or who is issued a search warrant under s.
95 933.01, or anyone who is authorized to issue a subpoena under
96 the Florida Rules of Criminal Procedure.

97 (c) "Business" means any business, institution,
98 association, profession, occupation, or calling of any kind,
99 whether or not conducted for profit.

100 (d) "Electronic communication services" and "remote
101 computing services" have the same meaning as provided in the
102 Electronic Communications Privacy Act in chapter 121 (commencing
103 with section. 2701) of Part I of Title 18 of the United States
104 Code Annotated. This section does not apply to corporations that
105 do not provide those services to the public.

106 (e) "Florida corporation" means any corporation or other
107 entity that is regulated under chapter 607, excluding out-of-
108 state corporations.

109 (f) "Out-of-state corporation" means any corporation that
110 is qualified to do business in this state under s. 607.1501.

111 (g) "Out-of-state record of regularly conducted business
112 activity" means a memorandum, report, record, or data
113 compilation, in any form, of acts, events, conditions, opinions,
114 or diagnoses, maintained in another state or country.

115 (h) "Out-of-state certification" means a written
116 declaration made and signed in another state or country by the
117 custodian of an out-of-state record of regularly conducted
118 business activity or another qualified person that, if falsely
119 made, would subject the declarant to criminal penalty under the



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120 laws of another state or country.

121 (i) "Properly served" means delivery by hand or in a
122 manner reasonably allowing for proof of delivery if delivered by
123 United States mail, overnight-delivery service, or facsimile to
124 a person or entity properly registered to do business in any
125 state.

126 (2) The following provisions apply to any subpoena, court
127 order, or search warrant issued in compliance with the
128 Electronic Communications Privacy Act in chapter 121 (commencing
129 with s. 2701) of Part I of Title 18 of the United States Code
130 and that is subject to this chapter, which allows a search for
131 records that are in the actual or constructive possession of an
132 out-of-state corporation that provides electronic communication
133 services or remote computing services to the public, when those
134 records would reveal the identity of the customers using those
135 services; data stored by, or on behalf of, the customers; the
136 customers' usage of those services; the recipients or
137 destinations of communications sent to or from those customers.

138 (a) When properly served with a subpoena, court order, or
139 search warrant issued by a Florida court, an out-of-state
140 corporation subject to this section shall provide to the
141 applicant all records sought pursuant to such subpoena, court
142 order, or warrant within 10 business days after receipt, or the
143 date indicated within the subpoena, if later, including those
144 records maintained or located outside the State of Florida.

145 (b) When the applicant makes a showing and the court finds
146 that failure to produce records within 10 business days would
147 cause an adverse result, the subpoena, court order, or warrant
148 may require production of records within less than 10 business
149 days. A court may reasonably extend the time required for



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150 production of the records upon finding that the out-of-state
151 corporation has shown good cause for that extension and that an
152 extension of time would not cause an adverse result.

153 (c) An out-of-state corporation seeking to quash the
154 subpoena, court order, or warrant must seek relief from the
155 court issuing such subpoena, court order, or warrant within the
156 time required for production of records under this section. The
157 issuing court shall hear and decide that motion within 5 court
158 days after the motion is filed.

159 (d) The out-of-state corporation shall verify the
160 authenticity of records that it produces by providing an
161 affidavit that complies with the requirements set forth in this
162 section. Records produced in compliance with this section are
163 admissible in evidence as set forth in subsection (5).

164 (3) A Florida corporation that provides electronic
165 communication services or remote computing services to the
166 public, when served with a subpoena, court order, or warrant
167 issued by another state to produce records that would reveal the
168 identity of the customers using those services; data stored by,
169 or on behalf of, the customers; the customers' usage of those
170 services; or the recipients or destinations of communications
171 sent to or from those customers shall produce
172 those records as if that subpoena, court order, or warrant had
173 been issued by a Florida court.

174 (4) A cause of action does not arise against any out-of-
175 state or Florida corporation subject to this section, or its
176 officers, employees, agents, or other specified persons, for
177 providing records, information, facilities, or assistance in
178 accordance with the terms of a subpoena, court order, or warrant
179 subject to this section.



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180 (5) In a criminal proceeding in a court of this state, an
181 out-of-state record of regularly conducted business activity, or
182 a copy of such record, shall not be excluded as hearsay evidence
183 by s. 90.802, if an out-of-state certification attests that:

184 (a) Such record was made at or near the time of the
185 occurrence of the matters set forth by, or from information
186 transmitted by, a person with knowledge of those matters.

187 (b) Such record was kept in the course of a regularly
188 conducted business activity.

189 (c) The business activity made such a record as a regular
190 practice.

191 (d) If such record is not the original, it is a duplicate
192 of the original, unless the source of information or the method
193 or circumstances of preparation indicate lack of
194 trustworthiness.

195 (6) An out-of-state certification under this section shall
196 authenticate such record or duplicate.

197 (7) No evidence in such records in the form of opinion or
198 diagnosis is admissible under subsection (5) unless such opinion
199 or diagnosis would be admissible under ss. 90.701-90.705 if the
200 person whose opinion is recorded were to testify to the opinion
201 directly.

202 (8) As soon after the arraignment as practicable, or 60
203 days prior to trial, a party intending to offer in evidence
204 under this section an out-of-state record of regularly conducted
205 business activity shall provide written notice of that intention
206 to each other party. A motion opposing admission in evidence of
207 such record shall be made by the opposing party and determined
208 by the court before trial. Failure by a party to file such
209 motion before trial shall constitute a waiver of objection to



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210 such record or duplicate, but the court for cause shown may
211 grant relief from the waiver.

212 (9) In any criminal case, the content of any electronic
213 communication may be obtained under this section only by court
214 order or by the issuance of a search warrant, unless otherwise
215 provided under the Electronic Communications Privacy Act or
216 other provision of law.

217 Section 4. This act shall take effect July 1, 2003.