

By Senator Aronberg

27-1333A-03

See HB 1161

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

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

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27 Section 1. Paragraph (b) of subsection (2) of section
28 817.568, Florida Statutes, is amended, paragraph (c) is added
29 to that subsection, subsections (5), (6), (7), (8), (9), and
30 (10) are renumbered as subsections (7), (8), (9), (10), (11),
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1 and (12), respectively, and new subsections (5) and (6) are
2 added to that section, to read:

3 817.568 Criminal use of personal identification
4 information.--

5 (2)

6 (b) Any person who willfully and without authorization
7 fraudulently uses personal identification information
8 concerning an individual without first obtaining that
9 individual's consent commits a felony of the second degree,
10 punishable as provided in s. 775.082, s. 775.083, or s.
11 775.084, if the pecuniary benefit, the value of the services
12 received, the payment sought to be avoided, or the amount of
13 the injury or fraud perpetrated is not less than \$20,000 or
14 more than \$100,000~~\$75,000 or more~~.

15 (c) Any person who willfully and without authorization
16 fraudulently uses personal identification information
17 concerning an individual without first obtaining that
18 individual's consent commits a felony of the first degree,
19 punishable as provided in s. 775.082, s. 775.083, or s.
20 775.084, if the pecuniary benefit, the value of the services
21 received, the payment sought to be avoided, or the amount of
22 the injury or fraud perpetrated is \$100,000 or more.

23 (5) If an offense prohibited under this section was
24 committed using the personal identification information of a
25 child, its offense severity level shall be increased to
26 offense severity level 8; if the child involved was the
27 defendant's natural child or any child over whom the defendant
28 had custodial authority, the offense severity level shall be
29 increased to offense severity level 9.

30 (6) Any consumer reporting agency as defined in s.
31 603(f) of the Fair Credit Reporting Act shall provide, free of

1 charge, upon the request of any person and without regard to
2 any failure to extend credit to that person, up to two
3 consumer reports each calendar year, including explanations of
4 any codes contained therein.

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

7 934.23 Required disclosure of customer communications
8 or records.--

9 (1) An investigative or law enforcement officer may
10 require the disclosure by a provider of electronic
11 communication service of the contents of a wire or electronic
12 communication that has been in electronic storage in an
13 electronic communications system for 180 days or less only
14 pursuant to a warrant issued by the judge of a court of
15 competent jurisdiction. For purposes of this section, "a court
16 of competent jurisdiction" means a court having jurisdiction
17 over the investigation or otherwise authorized by law.An
18 investigative or law enforcement officer may require the
19 disclosure by a provider of electronic communication services
20 of the contents of a wire or electronic communication that has
21 been in electronic storage in an electronic communications
22 system for more than 180 days by the means available under
23 subsection (2).

24 Section 3. Section 92.605, Florida Statutes, is
25 created to read:

26 92.605 Production of certain records by Florida
27 corporations and out-of-state corporations.

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

29 (a) "Adverse result" includes one of the following
30 consequences to notification of the existence of a court
31 order, a subpoena, or a search warrant:

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

3 2. A flight from prosecution.

4 3. The destruction of or tampering with evidence.

5 4. The intimidation of potential witnesses.

6 5. Serious jeopardy to an investigation or undue delay
7 of a trial.

8 (b) "Applicant" means a law enforcement officer who is
9 seeking a court order or subpoena under s. 16.56, s. 27.04, s.
10 905.185, or s. 914.04 or who is issued a search warrant under
11 s. 933.01, or anyone who is authorized to issue a subpoena
12 under the Florida Rules of Criminal Procedure.

13 (c) "Business" means any business, institution,
14 association, profession, occupation, or calling of any kind,
15 whether or not conducted for profit.

16 (d) "Electronic communication services" and "remote
17 computing services" have the same meaning as provided in the
18 Electronic Communications Privacy Act in chapter 121
19 (commencing with s. 2701) of Part I of Title 18 of the United
20 States Code Annotated. This section does not apply to
21 corporations that do not provide those services to the public.

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

25 (f) "Out-of-state corporation" means any corporation
26 that is qualified to do business in this state under s.
27 607.1501.

28 (g) "Out-of-state record of regularly conducted
29 business activity" means a memorandum, report, record, or data
30 compilation, in any form, of acts, events, conditions,
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1 opinions, or diagnoses, maintained in another state or
2 country.

3 (h) "Out-of-state certification" means a written
4 declaration made and signed in another state or country by the
5 custodian of an out-of-state record of regularly conducted
6 business activity or another qualified person that, if falsely
7 made, would subject the declarant to criminal penalty under
8 the laws of another state or country.

9 (i) "Properly served" means delivery by hand or in a
10 manner reasonably allowing for proof of delivery if delivered
11 by United States mail, overnight delivery service, or
12 facsimile to a person or entity properly registered to do
13 business in any state.

14 (2) The following provisions apply to any subpoena,
15 court order, or search warrant issued in compliance with the
16 Electronic Communications Privacy Act in chapter 121
17 (commencing with s. 2701) of Part I of Title 18 of the United
18 States Code and that is subject to this chapter, which allows
19 a search for records that are in the actual or constructive
20 possession of an out-of-state corporation that provides
21 electronic communication services or remote computing services
22 to the public, when those records would reveal the identity of
23 the customers using those services; data stored by, or on
24 behalf of, the customers; the customers' usage of those
25 services; the recipients or destinations of communications
26 sent to or from those customers.

27 (a) When properly served with a subpoena, court order,
28 or search warrant issued by a Florida court, an out-of-state
29 corporation subject to this section shall provide to the
30 applicant all records sought pursuant to such subpoena, court
31 order, or warrant within 10 business days after receipt, or

1 the date indicated within the subpoena, if later, including
2 those records maintained or located outside the State of
3 Florida.

4 (b) When the applicant makes a showing and the court
5 finds that failure to produce records within 10 business days
6 would cause an adverse result, the subpoena, court order, or
7 warrant may require production of records within less than 10
8 business days. A court may reasonably extend the time required
9 for production of the records upon finding that the
10 out-of-state corporation has shown good cause for that
11 extension and that an extension of time would not cause an
12 adverse result.

13 (c) An out-of-state corporation seeking to quash the
14 subpoena, court order, or warrant must seek relief from the
15 court issuing such subpoena, court order, or warrant within
16 the time required for production of records under this
17 section. The issuing court shall hear and decide that motion
18 within 5 court days after the motion is filed.

19 (d) The out-of-state corporation shall verify the
20 authenticity of records that it produces by providing an
21 affidavit that complies with the requirements set forth in
22 this section. Records produced in compliance with this section
23 are admissible in evidence as set forth in subsection (5).

24 (3) A Florida corporation that provides electronic
25 communication services or remote computing services to the
26 public, when served with a subpoena, court order, or warrant
27 issued by another state to produce records that would reveal
28 the identity of the customers using those services; data
29 stored by, or on behalf of, the customers; the customers'
30 usage of those services; or the recipients or destinations of
31 communications sent to or from those customers shall produce

1 those records as if that subpoena, court order, or warrant had
2 been issued by a Florida court.

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

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

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

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

19 (c) The business activity made such a record as a
20 regular practice.

21 (d) If such record is not the original, it is a
22 duplicate of the original, unless the source of information or
23 the method or circumstances of preparation indicate lack of
24 trustworthiness.

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

27 (7) No evidence in such records in the form of opinion
28 or diagnosis is admissible under subsection (5) unless such
29 opinion or diagnosis would be admissible under ss.
30 90.701-90.705 if the person whose opinion is recorded were to
31 testify to the opinion directly.

1 (8) As soon after the arraignment as practicable, or
2 60 days prior to trial, a party intending to offer in evidence
3 under this section an out-of-state record of regularly
4 conducted business activity shall provide written notice of
5 that intention to each other party. A motion opposing
6 admission in evidence of such record shall be made by the
7 opposing party and determined by the court before
8 trial. Failure by a party to file such motion before trial
9 shall constitute a waiver of objection to such record or
10 duplicate, but the court for cause shown may grant relief from
11 the waiver.

12 (9) In any criminal case, the content of any
13 electronic communication may be obtained under this section
14 only by court order or by the issuance of a search warrant,
15 unless otherwise provided under the Electronic Communications
16 Privacy Act or other provision of law.

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