

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1525 Fraudulent Practices/ID Cards
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N</u>	<u>Kramer</u>	<u>De La Paz</u>
2) <u>Appropriations</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1525 amends section 322.051, F.S. to make it a first degree misdemeanor, rather than a second degree misdemeanor, for a person to commit an offense relating to identification cards issued by the Department of Highway Safety and Motor Vehicles including: displaying or possessing any fictitious, fraudulently altered, or fraudulently obtained identification card; or reproducing any identification card in such a manner that it could be mistaken for a valid identification card.

HB 1525 amends section 322.212, F.S. to provide that it is a second degree felony, rather than a third degree felony, to commit several acts relating to a drivers license of identification card including:

- Knowingly to have in his or her possession or to display any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card or any instrument in the similitude of a driver's license or identification card unless possession by such person has been duly authorized by the department; or
- Knowingly to sell, manufacture, or deliver, or knowingly offer to sell, manufacture, or deliver, a blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card, or an instrument in the similitude of a driver's license or identification card, unless that person is authorized to do so by the department.

HB 1525 amends the White Collar Crime Prevention Act to include offenses that involve fraud concerning Medicaid, insurance or securities. The bill makes a violation of this provision, where the offender victimizes 20 or more persons, a first degree felony, and requires the imposition of a ten year minimum mandatory sentence.

HB 1525 also amends section 817.568, F.S., related to identity theft, to provide that any person who willfully and fraudulently uses or possesses with intent to use, personal identification information concerning an individual, without first obtaining that individual's consent, commits a second degree felony, rather than a third degree felony.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Identification Cards: Section 322.051, F.S. requires the Department of Highway Safety and Motor Vehicles to issue identification cards to qualified applicants. The section provides that it is unlawful for any person:

- To display, cause or permit to be displayed, or have in his or her possession any fictitious, fraudulently altered, or fraudulently obtained identification card.
- To lend his or her identification card to any other person or knowingly permit the use thereof by another.
- To display or represent any identification card not issued to him or her as being his or her card.
- To permit any unlawful use of an identification card issued to him or her.
- To do any act forbidden, or fail to perform any act required, by this section.
- To photograph, photostat, duplicate, or in any way reproduce any identification card or facsimile thereof in such a manner that it could be mistaken for a valid identification card, or to display or have in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this section.

A violation of any of these provisions is a second degree misdemeanor as a result of the provisions of s. 322.39, F.S., which apply generally to Chapter 322. *HB 1525 amends s. 322.051, F.S. to provide that a person 21 years or older who violates the section commits a first degree misdemeanor.* This will have the effect of increasing the maximum penalty for a violation from 60 days in county jail to one year in county jail.

Drivers Licenses/Identification Cards: Section 322.212, F.S. provides that it is unlawful for any person to:

- Knowingly have in his or her possession or to display any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card or any instrument in the similitude of a driver's license or identification card unless possession by such person has been duly authorized by the department.

- Knowingly have in his or her possession any instrument in the similitude of a driver's license or identification card issued by the department or by any state or jurisdiction issuing licenses or identification cards recognized in this state.
- Knowingly sell, manufacture, or deliver, or knowingly offer to sell, manufacture, or deliver, a blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license or identification card, or an instrument in the similitude of a driver's license or identification card, unless that person is authorized to do so by the department.
- Barter, trade, sell, or give away any driver's license or identification card or to perpetrate a conspiracy to barter, trade, sell, or give away any such license or identification card unless such person has been duly authorized to issue the license or identification card by the department as provided in this chapter or in the adopted rules of the department.
- For any employee of the department to allow or permit the issuance of a driver's license or identification card when he or she knows that the applicant has not lawfully fulfilled the requirements of this chapter for the issuance of such license or identification card.
- Agree to supply or to aid in supplying any person with a driver's license or identification card by any means whatsoever not in accordance with the provisions of this chapter.
- Use a false or fictitious name in any application for a driver's license or identification card or knowingly to make a false statement, knowingly conceal a material fact, or otherwise commit a fraud in any such application.
- Have in his or her possession a driver's license or identification card upon which the date of birth has been altered.

A violation of this section is currently a third degree felony, except that a person who violates the section by giving a false age in an application for a license, or possesses a drivers license or identification card with an altered date of birth, commits a second degree misdemeanor. *HB 1525 increases a violation of the section to a second degree felony.* This will have the effect of increasing the maximum sentence for a violation of this section from five years to fifteen years in prison. A violation of the section relating to giving a false age to obtain a license or possessing a license with an altered date of birth will remain a second degree misdemeanor.

White Collar Crime Protection Act: Section 775.0844, F.S. defines the term "white collar crime" to mean the commission of any felony offense contained in specified chapters of statute¹: The section defines the term "aggravated white collar crime" as at least two white collar crimes that have the same or similar intents, results, accomplices, victims or methods of commission, or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents. The section provides that a person who commits an aggravated white collar crime and victimizes either: 10 or more elderly persons or disabled adults; twenty or more persons; or any agency or subdivision of the State of Florida and obtains or attempts to obtain \$50,000 or more, commits a first degree felony.

HB 1525 provides an alternative definition of the term aggravated white collar crime by providing that the term is defined as engaging in at least one white collar crime that is a felony offense that involves

¹ Included in the list are the following chapters: chapter 560 (relating to the Money Transmitters' Code), chapter 812 (relating to theft, robbery, and related crimes), chapter 815 (relating to computer-related crimes), chapter 817 (relating to fraudulent practices), chapter 825 (relating to abuse, neglect, and exploitation of elderly persons and disabled adults), chapter 831 (relating to forgery and counterfeiting), chapter 832 (relating to the issuance of worthless checks and drafts), chapter 838 (relating to bribery and misuse of public office), chapter 839 (relating to offenses by public officers and employees), chapter 895 (relating to offenses concerning racketeering and illegal debts) or chapter 896 (relating to offenses related to financial transactions).

fraud concerning Medicaid, insurance or securities. The bill also provides that a person who commits this newly defined aggravated white collar crime, and in so doing, victimizes 20 or more persons, commits a first degree felony. The bill requires the imposition of a ten year minimum mandatory sentence for a violation of this provision.

Identity Theft: Section 817.568(2)(a), F.S., provides that any person who willfully and without authorization fraudulently uses or possesses with intent to fraudulently use, personal identification information² concerning an individual without first obtaining that person's consent, commits a third degree felony. This offense is commonly known as "identity theft". *HB 1525 amends this provision to make the offense a second degree felony.*

C. SECTION DIRECTORY:

Section 1. Amends s. 322.051, F.S.; increasing criminal penalty for persons 21 years of age or older who commit prohibited acts relating to identification cards.

Section 2. Amends s. 322.212, F.S., increasing criminal penalty for certain prohibited acts committed relating to driver's license of identification card.

Section 3. Amends s. 775.0844, F.S.; expanding the definition of white collar crime; providing for minimum mandatory sentence.

Section 4. Amends s. 817.568, F.S.; increasing criminal penalty for offense of criminal use of personal identification information.

Section 5. Amends s. 921.0022, F.S.; making corresponding changes to offense severity ranking chart of Criminal Punishment Code.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

As of March 20, 2004, the Criminal Justice Impact Conference has not considered the prison bed impact of this bill on the Department of Corrections. The bill increases the severity of the offenses contained in s. 322.212, F.S., relating to drivers licenses, from a third degree felony to a second degree felony. This will increase the maximum sentence which can be imposed. However, the offense will be ranked, by default, in level 4 of the offense severity ranking chart of the Criminal Punishment. As a result, the lowest permissible sentence for this offense (for an offender who has no prior convictions) will be any non-state prison sentence. As a result, this provision is unlikely to have a significant prison bed impact on the Department of Corrections.

² This section defines "personal identification information" to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1) Name, social security number, date of birth, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, or Medicaid or food stamp account number, or bank account or credit card number; 2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3) Unique electronic identification number, address, or routing code; or 4) Telecommunication identifying information or access device.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

This bill may be challenged as violating Florida's constitutional single subject requirement which states that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title." Art. III, § 6, Fla. Const. In determining whether an act violates the single subject rule, the Florida Supreme Court has examined whether the provisions of an act have a "natural or logical connection". State v. Thompson, 750 So.2d 643, 647 (Fla. 1999); Florida Dept. of Highway Safety and Motor Vehicles v. Critchfield, 842 So.2d 782 (Fla.2003)(holding that section of chapter law involving assigning bad check debt to a private debt collector had no natural or logical connection to the law's subject matter of driver's licenses, operation of motor vehicles, and vehicle registrations).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a person 21 years of age or older who violates s. 322.051(6), F.S., relating to identification cards, commits a first degree misdemeanor. The bill does not clarify what type of offense would be committed if this subsection were violated by someone under the age of 21.

This bill amends s. 322.051 to make it a *first degree misdemeanor* (rather than a second degree misdemeanor) to commit several specified acts with a state issued identification card. Currently, section 322.32, F.S. provides that it a *second degree misdemeanor* to commit several acts with a driver's license that are very similar to the acts which are made a first degree misdemeanor by the bill when they are committed with an identification card. Section 322.32, F.S. is not amended by the bill to conform these provisions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES