

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 741 w/CS Identity Theft

SPONSOR(S): Waters

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>19 Y, 0 N w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 741, with committee substitute 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 a deceased individual commits a third degree felony. The bill also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more but fewer than 20 deceased individuals, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.
- If the value of the pecuniary benefit, services received or injury is \$50,000 or more or if the person uses the personal identification information of 20 or more but fewer than 30 deceased individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.
- If the value of the pecuniary benefit, services received or injury is \$100,000 or more or if the person uses the personal identification information of 30 or more deceased individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

The bill creates a third degree felony offense for willfully and fraudulently creating or using or possessing with the intent to use counterfeit or fictitious personal identification information for the purpose of committing a fraud upon another person.

The bill also provides for the reclassification of an identity theft offense if it is committed by a person who misrepresents themselves to be a law enforcement officer, or an employee of a bank, credit card company, credit counseling company or a credit reporting agency or any person who wrongfully represents that he or she is seeking to assist the victim with a problem with the victim's credit history. This will have the effect of increasing the maximum sentence that can be imposed for these offenses.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0741b.ps.doc
DATE: March 29, 2004

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:

Statewide Grand Jury – Identity Theft

The Sixteenth Statewide Grand Jury of Florida was impaneled on July 17, 2001, and was seated in the Ninth Judicial Circuit to investigate the issues involved in identity theft. The panel was authorized by the Florida Supreme Court at the request of Governor Jeb Bush. The grand jury heard testimony from several law enforcement agencies, representatives of the banking industry, credit card industry and credit reporting industry and from victims of identity theft. The grand jury released two interim reports as well as a final report on November 12, 2002. The reports contained extensive findings and recommendations relating to improving the security of drivers licenses, changing Florida's public records laws, and increasing governmental assistance to victims of identity theft.

Criminal Use of Personal Identification Information:

Section 817.568, F.S., provides that any person who willfully and without authorization fraudulently uses or possesses with intent to fraudulently use, personal identification information¹ concerning an individual without first obtaining that person's consent commits a third degree felony. This offense is commonly known as "identity theft". The section also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is \$5,000 or more or if the person fraudulently uses the personal identification information of ten or more individuals without their consent, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.
- If the value of the pecuniary benefit, services received or injury is \$50,000 or more or if the person uses the personal identification information of 20 or more individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.
- If the value of the pecuniary benefit, services received or injury is \$100,000 or more or if the person uses the personal identification information of 30 or more individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

¹ 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.

This section also provides penalties for the offense of harassment² by use of personal identification information as well as using a public record to commit identity theft.³ Further, the section provides penalties if an offense prohibited under the section was committed using the personal identification information of a individual less than 18 years of age.⁴

Changes made by HB 741

HB 741 with committee substitute amends section 817.568, F.S.. The bill amends the definition of the term "personal identification information" to include an address.

The bill clarifies the minimum mandatory sentences relevant to the offense of identity theft of more than \$50,000 or from more than 20 individuals.

The bill also provides that any person who willfully and fraudulently uses or possesses with intent to fraudulently use personal identification information concerning a *deceased* individual commits a third degree felony. The bill also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more but fewer than 20 deceased individuals, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.
- If the value of the pecuniary benefit, services received or injury is \$50,000 or more or if the person uses the personal identification information of 20 or more but fewer than 30 deceased individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.
- If the value of the pecuniary benefit, services received or injury is \$100,000 or more or if the person uses the personal identification information of 30 or more deceased individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

The bill provides that any person who willfully and fraudulently creates or uses or possesses with intent to use, counterfeit or fictitious personal identification information either concerning a fictitious individual or concerning a real individual without first obtaining that real individual's consent, intending to use such counterfeit or fictitious personal identification information for the purpose of committing or facilitating the commission of a fraud against another person commits a third degree felony.⁵

The bill further provides that any person who commits an offense prohibited by section 817.568, F.S. and for the purpose of obtaining or using personal identification information misrepresents himself or herself to be a law enforcement officer, an employee or representative of a bank, credit card company, credit counseling company or a credit reporting agency, or any person who wrongfully represents that he or she is seeking to assist the victim with a problem with the victim's credit history shall have the offense reclassified as follows:

1. In the case of a misdemeanor, the offense is reclassified as a third degree felony

² The term "harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. s. 817.568(1)(c), F.S.

³ 817.568(4) and (5), F.S.

⁴ s. 817.568(6) and (7), F.S.

⁵ The bill also defines the term "counterfeit or fictitious personal identification information" to mean "any counterfeit, fictitious, or fabricated information in the similitude of the data outlined [in the definition of personal identification information] which, though not truthful or accurate, would in the context lead a reasonably prudent person to credit its truthfulness and accuracy."

2. In the case of a third degree felony, the offense is reclassified as a second degree felony
3. In the case of a second degree felony, the offense is reclassified as a first degree felony
4. In the case of a first degree felony, the offense is reclassified as a life felony.

The bill also allows a prosecutor to move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of the section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in fraudulent possession or use of personal identification information. The bill requires that the arresting agency be given an opportunity to be heard in aggravation or mitigation in reference to this motion and allows the motion to be filed and heard in camera upon good cause shown

C. SECTION DIRECTORY:

Section 1: Amends s. 817.568, F.S., relating to identity theft.

Section 2. Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of this bill with the committee substitute on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Original Bill: As originally filed, HB 741 created a first degree misdemeanor offense relating to identity theft. The bill also created a process for a victim of identity theft to petition a court for an "expedited judicial determination of such person's factual innocence" when the perpetrator of the identity theft has been arrested or convicted of a crime using the petitioner's identity. The original bill also required every consumer credit reporting agency, upon receipt from a victim of identity theft of a police report, to provide the victim, free of charge, with up to 12 copies of his or her file during the one year period following the date of the police report.

Committee Amendments: The Committee on Public Safety & Crime Prevention adopted a strike-all amendment that removed all of the language of the original bill and adopted the provisions described in the EFFECT OF PROPOSED CHANGES section above.