

CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the
2 following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to identity theft; amending s. 817.568,
8 F.S.; revising a definition; defining the term
9 "counterfeit or fictitious personal identification
10 information"; revising criminal penalties relating to the
11 offense of fraudulently using, or possessing with intent
12 to fraudulently use, personal identification information;
13 providing minimum mandatory terms of imprisonment;
14 creating the offenses of willfully and fraudulently using,
15 or possessing with intent to fraudulently use, personal
16 identification information concerning a deceased
17 individual; providing criminal penalties; providing for
18 minimum mandatory terms of imprisonment; creating the
19 offense of willfully and fraudulently creating or using,
20 or possessing with intent to fraudulently use, counterfeit
21 or fictitious personal identification information;
22 providing criminal penalties; providing for
23 reclassification of offenses under certain circumstances;

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24 | providing for reduction or suspension of sentences under
25 | certain circumstances; providing an effective date.

26 |

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

28 |

29 | Section 1. Paragraph (f) of subsection (1) and paragraphs
30 | (b) and (c) of subsection (2) of section 817.568, Florida
31 | Statutes, are amended, paragraph (g) is added to subsection (1)
32 | of said section, present subsections (8) through (13) are
33 | renumbered as subsections (12) through (17), respectively, and
34 | new subsections (8), (9), (10), and (11) are added to said
35 | section, to read:

36 | 817.568 Criminal use of personal identification
37 | information.--

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

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

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

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

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52 3. Unique electronic identification number, address, or
53 routing code; or

54 4. Telecommunication identifying information or access
55 device.

56 (g) "Counterfeit or fictitious personal identification
57 information" means any counterfeit, fictitious, or fabricated
58 information in the similitude of the data outlined in paragraph
59 (f) that, although not truthful or accurate, would in context
60 nevertheless lead a reasonably prudent person to credit its
61 truthfulness and accuracy.

62 (2)(a) Any person who willfully and without authorization
63 fraudulently uses, or possesses with intent to fraudulently use,
64 personal identification information concerning an individual
65 without first obtaining that individual's consent, commits the
66 offense of fraudulent use of personal identification
67 information, which is a felony of the third degree, punishable
68 as provided in s. 775.082, s. 775.083, or s. 775.084.

69 (b) Any person who willfully and without authorization
70 fraudulently uses personal identification information concerning
71 an individual without first obtaining that individual's consent
72 commits a felony of the second degree, punishable as provided in
73 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
74 the value of the services received, the payment sought to be
75 avoided, or the amount of the injury or fraud perpetrated is
76 \$5,000 or more or if the person fraudulently uses the personal
77 identification information of 10 or more individuals but fewer
78 than 20 individuals without their consent. Notwithstanding any
79 other provision of law, the court shall sentence any person

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80 convicted of committing the offense described in this paragraph
81 to a mandatory minimum sentence of 3 years' imprisonment.

82 (c) Any person who willfully and without authorization
83 fraudulently uses personal identification information concerning
84 an individual without first obtaining that individual's consent
85 commits a felony of the first degree, punishable as provided in
86 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
87 the value of the services received, the payment sought to be
88 avoided, or the amount of the injury or fraud perpetrated is
89 \$50,000 or more or if the person fraudulently uses the personal
90 identification information of 20 or more individuals without
91 their consent. Notwithstanding any other provision of law, the
92 court shall sentence any person convicted of committing the
93 offense described in this paragraph:

94 ~~1-~~ to a mandatory minimum sentence of 5 years'
95 imprisonment. If the pecuniary benefit, the value of the
96 services received, the payment sought to be avoided, or the
97 amount of the injury or fraud perpetrated is \$100,000 or more,
98 or if the person fraudulently uses the personal identification
99 information of 30 or more individuals without their consent,
100 notwithstanding any other provision of law, the court shall
101 sentence any person convicted of committing the offense
102 described in this paragraph

103 ~~2-~~ to a mandatory minimum sentence of 10 years'
104 imprisonment, ~~if the pecuniary benefit, the value of the~~
105 ~~services received, the payment sought to be avoided, or the~~
106 ~~amount of the injury or fraud perpetrated is \$100,000 or more or~~

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107 ~~if the person fraudulently uses the personal identification~~
 108 ~~information of 30 or more individuals without their consent.~~

109 (8)(a) Any person who willfully and fraudulently uses, or
 110 possesses with intent to fraudulently use, personal
 111 identification information concerning a deceased individual
 112 commits the offense of fraudulent use or possession with intent
 113 to use personal identification information of a deceased
 114 individual, a felony of the third degree, punishable as provided
 115 in s. 775.082, s. 775.083, or s. 775.084.

116 (b) Any person who willfully and fraudulently uses
 117 personal identification information concerning a deceased
 118 individual commits a felony of the second degree, punishable as
 119 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 120 pecuniary benefit, the value of the services received, the
 121 payment sought to be avoided, or the amount of injury or fraud
 122 perpetrated is \$5,000 or more, or if the person fraudulently
 123 uses the personal identification information of 10 or more but
 124 fewer than 20 deceased individuals. Notwithstanding any other
 125 provision of law, the court shall sentence any person convicted
 126 of committing the offense described in this paragraph to a
 127 mandatory minimum sentence of 3 years' imprisonment.

128 (c) Any person who willfully and fraudulently uses
 129 personal identification information concerning a deceased
 130 individual commits the offense of aggravated fraudulent use of
 131 the personal identification information of multiple deceased
 132 individuals, a felony of the first degree, punishable as
 133 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 134 pecuniary benefit, the value of the services received, the

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135 payment sought to be avoided, or the amount of injury or fraud
 136 perpetrated is \$50,000 or more, or if the person fraudulently
 137 uses the personal identification information of 20 or more
 138 deceased individuals. Notwithstanding any other provision of
 139 law, the court shall sentence any person convicted of the
 140 offense described in this paragraph to a minimum mandatory
 141 sentence of 5 years' imprisonment. If the pecuniary benefit, the
 142 value of the services received, the payment sought to be
 143 avoided, or the amount of the injury or fraud perpetrated is
 144 \$100,000 or more, or if the person fraudulently uses the
 145 personal identification information of 30 or more deceased
 146 individuals, notwithstanding any other provision of law, the
 147 court shall sentence any person convicted of an offense
 148 described in this paragraph to a mandatory minimum sentence of
 149 10 years' imprisonment.

150 (9) Any person who willfully and fraudulently creates or
 151 uses, or possesses with the intent to fraudulently use,
 152 counterfeit or fictitious personal identification information
 153 concerning a fictitious individual, or concerning a real
 154 individual without first obtaining that real individual's
 155 consent, intending to use such counterfeit or fictitious
 156 personal identification information for the purpose of
 157 committing or facilitating the commission of a fraud on another
 158 person, commits the offense of fraudulent creation, use, or
 159 possession with intent to fraudulently use counterfeit or
 160 fictitious personal identification information, a felony of the
 161 third degree, punishable as provided in s. 775.082, s. 775.083,
 162 or s. 775.084.

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163 (10) Any person who commits an offense described in this
164 section and for the purpose of obtaining or using personal
165 identification information misrepresents himself or herself to
166 be a law enforcement officer; an employee or representative of a
167 bank, credit card company, credit counseling company, or credit
168 reporting agency; or any person who wrongfully represents that
169 he or she is seeking to assist the victim with a problem with
170 the victim's credit history shall have the offense reclassified
171 as follows:

172 (a) In the case of a misdemeanor, the offense is
173 reclassified as a felony of the third degree.

174 (b) In the case of a felony of the third degree, the
175 offense is reclassified as a felony of the second degree.

176 (c) In the case of a felony of the second degree, the
177 offense is reclassified as a felony of the first degree.

178 (d) In the case of a felony of the first degree or a
179 felony of the first degree punishable by a term of imprisonment
180 not exceeding life, the offense is reclassified as a life
181 felony.

182
183 For purposes of sentencing under chapter 921, a felony offense
184 that is reclassified under this subsection is ranked one level
185 above the ranking under s. 921.0022 or s. 921.0023 of the felony
186 offense committed, and a misdemeanor offense that is
187 reclassified under this subsection is ranked in level 2 of the
188 offense severity ranking chart.

189 (11) The prosecutor may move the sentencing court to
190 reduce or suspend the sentence of any person who is convicted of

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191 a violation of this section and who provides substantial
192 assistance in the identification, arrest, or conviction of any
193 of that person's accomplices, accessories, coconspirators, or
194 principals or of any other person engaged in fraudulent
195 possession or use of personal identification information. The
196 arresting agency shall be given an opportunity to be heard in
197 aggravation or mitigation in reference to any such motion. Upon
198 good cause shown, the motion may be filed and heard in camera.
199 The judge hearing the motion may reduce or suspend the sentence
200 if the judge finds that the defendant rendered such substantial
201 assistance.

202 Section 2. This act shall take effect October 1, 2004.