

1 A bill to be entitled

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

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (f) of subsection (1) and paragraphs
25 (b) and (c) of subsection (2) of section 817.568, Florida
26 Statutes, are amended, paragraph (g) is added to subsection (1)
27 of said section, present subsections (8) through (13) are
28 renumbered as subsections (12) through (17), respectively, and

29 new subsections (8), (9), (10), and (11) are added to said
 30 section, to read:

31 817.568 Criminal use of personal identification
 32 information.--

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

34 (f) "Personal identification information" means any name
 35 or number that may be used, alone or in conjunction with any
 36 other information, to identify a specific individual, including
 37 any:

38 1. Name, address, social security number, date of birth,
 39 official state-issued or United States-issued driver's license
 40 or identification number, alien registration number, government
 41 passport number, employer or taxpayer identification number,
 42 Medicaid or food stamp account number, or bank account or credit
 43 card number;

44 2. Unique biometric data, such as fingerprint, voice
 45 print, retina or iris image, or other unique physical
 46 representation;

47 3. Unique electronic identification number, address, or
 48 routing code; or

49 4. Telecommunication identifying information or access
 50 device.

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

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

64 (b) Any person who willfully and without authorization
65 fraudulently uses personal identification information concerning
66 an individual without first obtaining that individual's consent
67 commits a felony of the second degree, punishable as provided in
68 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
69 the value of the services received, the payment sought to be
70 avoided, or the amount of the injury or fraud perpetrated is
71 \$5,000 or more or if the person fraudulently uses the personal
72 identification information of 10 or more individuals but fewer
73 than 20 individuals without their consent. Notwithstanding any
74 other provision of law, the court shall sentence any person
75 convicted of committing the offense described in this paragraph
76 to a mandatory minimum sentence of 3 years' imprisonment.

77 (c) Any person who willfully and without authorization
78 fraudulently uses personal identification information concerning
79 an individual without first obtaining that individual's consent
80 commits a felony of the first degree, punishable as provided in
81 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,
82 the value of the services received, the payment sought to be
83 avoided, or the amount of the injury or fraud perpetrated is
84 \$50,000 or more or if the person fraudulently uses the personal

85 identification information of 20 or more individuals without
86 their consent. Notwithstanding any other provision of law, the
87 court shall sentence any person convicted of committing the
88 offense described in this paragraph-

89 ~~1-~~ to a mandatory minimum sentence of 5 years'
90 imprisonment. If the pecuniary benefit, the value of the
91 services received, the payment sought to be avoided, or the
92 amount of the injury or fraud perpetrated is \$100,000 or more,
93 or if the person fraudulently uses the personal identification
94 information of 30 or more individuals without their consent,
95 notwithstanding any other provision of law, the court shall
96 sentence any person convicted of committing the offense
97 described in this paragraph

98 ~~2-~~ to a mandatory minimum sentence of 10 years'
99 imprisonment, ~~if the pecuniary benefit, the value of the~~
100 ~~services received, the payment sought to be avoided, or the~~
101 ~~amount of the injury or fraud perpetrated is \$100,000 or more or~~
102 ~~if the person fraudulently uses the personal identification~~
103 ~~information of 30 or more individuals without their consent.~~

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

111 (b) Any person who willfully and fraudulently uses
112 personal identification information concerning a deceased

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

123 (c) Any person who willfully and fraudulently uses
124 personal identification information concerning a deceased
125 individual commits the offense of aggravated fraudulent use of
126 the personal identification information of multiple deceased
127 individuals, a felony of the first degree, punishable as
128 provided in s. 775.082, s. 775.083, or s. 775.084, if the
129 pecuniary benefit, the value of the services received, the
130 payment sought to be avoided, or the amount of injury or fraud
131 perpetrated is \$50,000 or more, or if the person fraudulently
132 uses the personal identification information of 20 or more
133 deceased individuals. Notwithstanding any other provision of
134 law, the court shall sentence any person convicted of the
135 offense described in this paragraph to a minimum mandatory
136 sentence of 5 years' imprisonment. If the pecuniary benefit, the
137 value of the services received, the payment sought to be
138 avoided, or the amount of the injury or fraud perpetrated is
139 \$100,000 or more, or if the person fraudulently uses the
140 personal identification information of 30 or more deceased

141 individuals, notwithstanding any other provision of law, the
142 court shall sentence any person convicted of an offense
143 described in this paragraph to a mandatory minimum sentence of
144 10 years' imprisonment.

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

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

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

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

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

173 (d) In the case of a felony of the first degree or a
174 felony of the first degree punishable by a term of imprisonment
175 not exceeding life, the offense is reclassified as a life
176 felony.

177
178 For purposes of sentencing under chapter 921, a felony offense
179 that is reclassified under this subsection is ranked one level
180 above the ranking under s. 921.0022 or s. 921.0023 of the felony
181 offense committed, and a misdemeanor offense that is
182 reclassified under this subsection is ranked in level 2 of the
183 offense severity ranking chart.

184 (11) The prosecutor may move the sentencing court to
185 reduce or suspend the sentence of any person who is convicted of
186 a violation of this section and who provides substantial
187 assistance in the identification, arrest, or conviction of any
188 of that person's accomplices, accessories, coconspirators, or
189 principals or of any other person engaged in fraudulent
190 possession or use of personal identification information. The
191 arresting agency shall be given an opportunity to be heard in
192 aggravation or mitigation in reference to any such motion. Upon
193 good cause shown, the motion may be filed and heard in camera.
194 The judge hearing the motion may reduce or suspend the sentence
195 if the judge finds that the defendant rendered such substantial
196 assistance.

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