

Bill No. CS for SB 284

Barcode 331646

CHAMBER ACTION

Senate

House

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Senator Aronberg moved the following amendment:

**Senate Amendment (with title amendment)**

On page 3, lines 3-15, delete those lines

and insert:

Section 1. Section 817.568, Florida Statutes, is amended to read:

817.568 Criminal use of personal identification information.--

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

(a) "Access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

(b) "Authorization" means empowerment, permission, or

Barcode 331646

1 competence to act.

2 (c) "Harass" means to engage in conduct directed at a  
 3 specific person that is intended to cause substantial  
 4 emotional distress to such person and serves no legitimate  
 5 purpose. "Harass" does not mean to use personal identification  
 6 information for accepted commercial purposes. The term does  
 7 not include constitutionally protected conduct such as  
 8 organized protests or the use of personal identification  
 9 information for accepted commercial purposes.

10 (d) "Individual" means a single human being and does  
 11 not mean a firm, association of individuals, corporation,  
 12 partnership, joint venture, sole proprietorship, or any other  
 13 entity.

14 (e) "Person" means a "person" as defined in s.  
 15 1.01(3).

16 (f) "Personal identification information" means any  
 17 name or number that may be used, alone or in conjunction with  
 18 any other information, to identify a specific individual,  
 19 including any:

20 1. Name, postal or electronic mail address, telephone  
 21 number, social security number, date of birth, mother's maiden  
 22 name, official state-issued or United States-issued driver's  
 23 license or identification number, alien registration number,  
 24 government passport number, employer or taxpayer  
 25 identification number, Medicaid or food stamp account number,  
 26 or bank account number, or credit or debit card number, or  
 27 personal identification number or code assigned to the holder  
 28 of a debit card by the issuer to permit authorized electronic  
 29 use of such card;

30 2. Unique biometric data, such as fingerprint, voice  
 31 print, retina or iris image, or other unique physical

Bill No. CS for SB 284

Barcode 331646

1 representation;

2           3. Unique electronic identification number, address,  
3 or routing code; ~~or~~

4           4. Medical records;

5           ~~5.4.~~ Telecommunication identifying information or  
6 access device; ~~or.~~

7           6. Other number or information that can be used to  
8 access a person's financial resources.

9           (g) "Counterfeit or fictitious personal identification  
10 information" means any counterfeit, fictitious, or fabricated  
11 information in the similitude of the data outlined in  
12 paragraph (f) that, although not truthful or accurate, would  
13 in context lead a reasonably prudent person to credit its  
14 truthfulness and accuracy.

15           (2)(a) Any person who willfully and without  
16 authorization fraudulently uses, or possesses with intent to  
17 fraudulently use, personal identification information  
18 concerning an individual without first obtaining that  
19 individual's consent, commits the offense of fraudulent use of  
20 personal identification information, which is a felony of the  
21 third degree, punishable as provided in s. 775.082, s.  
22 775.083, or s. 775.084.

23           (b) Any person who willfully and without authorization  
24 fraudulently uses personal identification information  
25 concerning an individual without first obtaining that  
26 individual's consent commits a felony of the second degree,  
27 punishable as provided in s. 775.082, s. 775.083, or s.  
28 775.084, if the pecuniary benefit, the value of the services  
29 received, the payment sought to be avoided, or the amount of  
30 the injury or fraud perpetrated is \$5,000 or more or if the  
31 person fraudulently uses the personal identification

Bill No. CS for SB 284

Barcode 331646

1 information of 10 or more individuals, but fewer than 20  
 2 individuals, without their consent. Notwithstanding any other  
 3 provision of law, the court shall sentence any person  
 4 convicted of committing the offense described in this  
 5 paragraph to a mandatory minimum sentence of 3 years'  
 6 imprisonment.

7 (c) Any person who willfully and without authorization  
 8 fraudulently uses personal identification information  
 9 concerning an individual without first obtaining that  
 10 individual's consent commits a felony of the first degree,  
 11 punishable as provided in s. 775.082, s. 775.083, or s.  
 12 775.084, if the pecuniary benefit, the value of the services  
 13 received, the payment sought to be avoided, or the amount of  
 14 the injury or fraud perpetrated is \$50,000 or more or if the  
 15 person fraudulently uses the personal identification  
 16 information of 20 or more individuals, but fewer than 30  
 17 individuals, without their consent. Notwithstanding any other  
 18 provision of law, the court shall sentence any person  
 19 convicted of committing the offense described in this  
 20 paragraph+

21 ~~1-~~ to a mandatory minimum sentence of 5 years'  
 22 imprisonment. If the pecuniary benefit, the value of the  
 23 services received, the payment sought to be avoided, or the  
 24 amount of the injury or fraud perpetrated is \$100,000 or more,  
 25 or if the person fraudulently uses the personal identification  
 26 information of 30 or more individuals without their consent,  
 27 notwithstanding any other provision of law, the court shall  
 28 sentence any person convicted of committing the offense  
 29 described in this paragraph

30 ~~2-~~ to a mandatory minimum sentence of 10 years'  
 31 imprisonment, ~~if the pecuniary benefit, the value of the~~

Barcode 331646

1 ~~services received, the payment sought to be avoided, or the~~  
 2 ~~amount of the injury or fraud perpetrated is \$100,000 or more~~  
 3 ~~or if the person fraudulently uses the personal identification~~  
 4 ~~information of 30 or more individuals without their consent.~~

5 (3) Neither paragraph (2)(b) nor paragraph (2)(c)  
 6 prevents a court from imposing a greater sentence of  
 7 incarceration as authorized by law. If the minimum mandatory  
 8 terms of imprisonment imposed under paragraph (2)(b) or  
 9 paragraph (2)(c) exceed the maximum sentences authorized under  
 10 s. 775.082, s. 775.084, or the Criminal Punishment Code under  
 11 chapter 921, the mandatory minimum sentence must be imposed.  
 12 If the mandatory minimum terms of imprisonment under paragraph  
 13 (2)(b) or paragraph (2)(c) are less than the sentence that  
 14 could be imposed under s. 775.082, s. 775.084, or the Criminal  
 15 Punishment Code under chapter 921, the sentence imposed by the  
 16 court must include the mandatory minimum term of imprisonment  
 17 as required by paragraph (2)(b) or paragraph (2)(c).

18 (4) Any person who willfully and without authorization  
 19 possesses, uses, or attempts to use personal identification  
 20 information concerning an individual without first obtaining  
 21 that individual's consent, and who does so for the purpose of  
 22 harassing that individual, commits the offense of harassment  
 23 by use of personal identification information, which is a  
 24 misdemeanor of the first degree, punishable as provided in s.  
 25 775.082 or s. 775.083.

26 (5) If an offense prohibited under this section was  
 27 facilitated or furthered by the use of a public record, as  
 28 defined in s. 119.011, the offense is reclassified to the next  
 29 higher degree as follows:

30 (a) A misdemeanor of the first degree is reclassified  
 31 as a felony of the third degree.

Bill No. CS for SB 284

Barcode 331646

1 (b) A felony of the third degree is reclassified as a  
2 felony of the second degree.

3 (c) A felony of the second degree is reclassified as a  
4 felony of the first degree.

5  
6 For purposes of sentencing under chapter 921 and incentive  
7 gain-time eligibility under chapter 944, a felony offense that  
8 is reclassified under this subsection is ranked one level  
9 above the ranking under s. 921.0022 of the felony offense  
10 committed, and a misdemeanor offense that is reclassified  
11 under this subsection is ranked in level 2 of the offense  
12 severity ranking chart in s. 921.0022.

13 (6) Any person who willfully and without authorization  
14 fraudulently uses personal identification information  
15 concerning an individual who is less than 18 years of age  
16 without first obtaining the consent of that individual or of  
17 his or her legal guardian commits a felony of the second  
18 degree, punishable as provided in s. 775.082, s. 775.083, or  
19 s. 775.084.

20 (7) Any person who is in the relationship of parent or  
21 legal guardian, or who otherwise exercises custodial authority  
22 over an individual who is less than 18 years of age, who  
23 willfully and fraudulently uses personal identification  
24 information of that individual commits a felony of the second  
25 degree, punishable as provided in s. 775.082, s. 775.083, or  
26 s. 775.084.

27 (8)(a) Any person who willfully and fraudulently uses,  
28 or possesses with intent to fraudulently use, personal  
29 identification information concerning a deceased individual  
30 commits the offense of fraudulent use or possession with  
31 intent to use personal identification information of a

Bill No. CS for SB 284

Barcode 331646

1 deceased individual, a felony of the third degree, punishable  
2 as provided in s. 775.082, s. 775.083, or s. 775.084.

3       (b) Any person who willfully and fraudulently uses  
4 personal identification information concerning a deceased  
5 individual commits a felony of the second degree, punishable  
6 as provided in s. 775.082, s. 775.083, or s. 775.084, if the  
7 pecuniary benefit, the value of the services received, the  
8 payment sought to be avoided, or the amount of injury or fraud  
9 perpetrated is \$5,000 or more, or if the person fraudulently  
10 uses the personal identification information of 10 or more but  
11 fewer than 20 deceased individuals. Notwithstanding any other  
12 provision of law, the court shall sentence any person  
13 convicted of committing the offense described in this  
14 paragraph to a mandatory minimum sentence of 3 years'  
15 imprisonment.

16       (c) Any person who willfully and fraudulently uses  
17 personal identification information concerning a deceased  
18 individual commits the offense of aggravated fraudulent use of  
19 the personal identification information of multiple deceased  
20 individuals, a felony of the first degree, punishable as  
21 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
22 pecuniary benefit, the value of the services received, the  
23 payment sought to be avoided, or the amount of injury or fraud  
24 perpetrated is \$50,000 or more, or if the person fraudulently  
25 uses the personal identification information of 20 or more but  
26 fewer than 30 deceased individuals. Notwithstanding any other  
27 provision of law, the court shall sentence any person  
28 convicted of the offense described in this paragraph to a  
29 minimum mandatory sentence of 5 years' imprisonment. If the  
30 pecuniary benefit, the value of the services received, the  
31 payment sought to be avoided, or the amount of the injury or

Bill No. CS for SB 284

Barcode 331646

1 fraud perpetrated is \$100,000 or more, or if the person  
 2 fraudulently uses the personal identification information of  
 3 30 or more deceased individuals, notwithstanding any other  
 4 provision of law, the court shall sentence any person  
 5 convicted of an offense described in this paragraph to a  
 6 mandatory minimum sentence of 10 years' imprisonment.

7       (9) Any person who willfully and fraudulently creates  
 8 or uses, or possesses with intent to fraudulently use,  
 9 counterfeit or fictitious personal identification information  
 10 concerning a fictitious individual, or concerning a real  
 11 individual without first obtaining that real individual's  
 12 consent, with intent to use such counterfeit or fictitious  
 13 personal identification information for the purpose of  
 14 committing or facilitating the commission of a fraud on  
 15 another person, commits the offense of fraudulent creation or  
 16 use of, or possession with intent to fraudulently use,  
 17 counterfeit or fictitious personal identification information,  
 18 a felony of the third degree, punishable as provided in s.  
 19 775.082, s. 775.083, or s. 775.084.

20       (10) Any person who commits an offense described in  
 21 this section and for the purpose of obtaining or using  
 22 personal identification information misrepresents himself or  
 23 herself to be a law enforcement officer; an employee or  
 24 representative of a bank, credit card company, credit  
 25 counseling company, or credit reporting agency; or any person  
 26 who wrongfully represents that he or she is seeking to assist  
 27 the victim with a problem with the victim's credit history  
 28 shall have the offense reclassified as follows:

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

31       (b) In the case of a felony of the third degree, the



Bill No. CS for SB 284

Barcode 331646

1 offense is reclassified as a felony of the second degree.

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

4 (d) In the case of a felony of the first degree or a  
5 felony of the first degree punishable by a term of  
6 imprisonment not exceeding life, the offense is reclassified  
7 as a life felony.

8  
9 For purposes of sentencing under chapter 921, a felony offense  
10 that is reclassified under this subsection is ranked one level  
11 above the ranking under s. 921.0022 or s. 921.0023 of the  
12 felony offense committed, and a misdemeanor offense that is  
13 reclassified under this subsection is ranked in level 2 of the  
14 offense severity ranking chart.

15 (11) The prosecutor may move the sentencing court to  
16 reduce or suspend the sentence of any person who is convicted  
17 of a violation of this section and who provides substantial  
18 assistance in the identification, arrest, or conviction of any  
19 of that person's accomplices, accessories, coconspirators, or  
20 principals or of any other person engaged in fraudulent  
21 possession or use of personal identification information. The  
22 arresting agency shall be given an opportunity to be heard in  
23 aggravation or mitigation in reference to any such motion.  
24 Upon good cause shown, the motion may be filed and heard in  
25 camera. The judge hearing the motion may reduce or suspend the  
26 sentence if the judge finds that the defendant rendered such  
27 substantial assistance.

28 (12)(8) This section does not prohibit any lawfully  
29 authorized investigative, protective, or intelligence activity  
30 of a law enforcement agency of this state or any of its  
31 political subdivisions, of any other state or its political

Barcode 331646

1 subdivisions, or of the Federal Government or its political  
2 subdivisions.

3       ~~(13)(9)~~(a) In sentencing a defendant convicted of an  
4 offense under this section, the court may order that the  
5 defendant make restitution under ~~pursuant to~~ s. 775.089 to any  
6 victim of the offense. In addition to the victim's  
7 out-of-pocket costs, ~~such~~ restitution may include payment of  
8 any other costs, including attorney's fees incurred by the  
9 victim in clearing the victim's credit history or credit  
10 rating, or any costs incurred in connection with any civil or  
11 administrative proceeding to satisfy any debt, lien, or other  
12 obligation of the victim arising as the result of the actions  
13 of the defendant.

14       (b) The sentencing court may issue such orders as are  
15 necessary to correct any public record that contains false  
16 information given in violation of this section.

17       ~~(14)(10)~~ Prosecutions for violations of this section  
18 may be brought on behalf of the state by any state attorney or  
19 by the statewide prosecutor.

20       ~~(15)(11)~~ The Legislature finds that, in the absence of  
21 evidence to the contrary, the location where a victim gives or  
22 fails to give consent to the use of personal identification  
23 information is the county where the victim generally resides.

24       ~~(16)(12)~~ Notwithstanding any other provision of law,  
25 venue for the prosecution and trial of violations of this  
26 section may be commenced and maintained in any county in which  
27 an element of the offense occurred, including the county where  
28 the victim generally resides.

29       ~~(17)(13)~~ A prosecution of an offense prohibited under  
30 subsection (2), subsection (6), or subsection (7) must be  
31 commenced within 3 years after the offense occurred. However,

Bill No. CS for SB 284

Barcode 331646

1 a prosecution may be commenced within 1 year after discovery  
 2 of the offense by an aggrieved party, or by a person who has a  
 3 legal duty to represent the aggrieved party and who is not a  
 4 party to the offense, if such prosecution is commenced within  
 5 5 years after the violation occurred.

6

7

8 ===== T I T L E    A M E N D M E N T =====

9 And the title is amended as follows:

10            On page 1, lines 3-8, delete those lines

11

12 and insert:

13            amending s. 817.568, F.S.; including other  
 14            information within the definition of the term  
 15            "personal identification information"; defining  
 16            the term "counterfeit or fictitious personal  
 17            identification information"; revising criminal  
 18            penalties relating to the offense of  
 19            fraudulently using, or possessing with intent  
 20            to fraudulently use, personal identification  
 21            information; providing minimum mandatory terms  
 22            of imprisonment; creating the offenses of  
 23            willfully and fraudulently using, or possessing  
 24            with intent to fraudulently use, personal  
 25            identification information concerning a  
 26            deceased individual; providing criminal  
 27            penalties; providing for minimum mandatory  
 28            terms of imprisonment; creating the offense of  
 29            willfully and fraudulently creating or using,  
 30            or possessing with intent to fraudulently use,  
 31            counterfeit or fictitious personal

Bill No. CS for SB 284

Barcode 331646

1 identification information; providing criminal  
2 penalties; providing for reclassification of  
3 offenses under certain circumstances; providing  
4 for reduction or suspension of sentences under  
5 certain circumstances; creating s.  
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