

Bill No. SB 284

Barcode 701584

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

On page 6, between lines 23 and 24,

insert: Section 9. 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

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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

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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

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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 law, the court shall sentence any
 28 person convicted of committing the offense described in this
 29 paragraph

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

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

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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) A ~~Any~~ person who willfully and without
14 authorization fraudulently uses personal identification
15 information concerning an individual who is less than 18 years
16 of age without first obtaining the consent of that individual
17 or of 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) A ~~Any~~ person who is in the relationship of parent
21 or legal guardian, or who otherwise exercises custodial
22 authority over an individual who is less than 18 years of age,
23 who 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) A 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

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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) A 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 law, the court shall sentence any person convicted of
13 committing the offense described in this paragraph to a
14 mandatory minimum sentence of 3 years' imprisonment.

15 (c) A person who willfully and fraudulently uses
16 personal identification information concerning a deceased
17 individual commits the offense of aggravated fraudulent use of
18 the personal identification information of multiple deceased
19 individuals, a felony of the first degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084, if the
21 pecuniary benefit, the value of the services received, the
22 payment sought to be avoided, or the amount of injury or fraud
23 perpetrated is \$50,000 or more, or if the person fraudulently
24 uses the personal identification information of 20 or more but
25 fewer than 30 deceased individuals. Notwithstanding any other
26 law, the court shall sentence a person convicted of the
27 offense described in this paragraph to a minimum mandatory
28 sentence of 5 years' imprisonment. If the pecuniary benefit,
29 the value of the services received, the payment sought to be
30 avoided, or the amount of the injury or fraud perpetrated is
31 \$100,000 or more, or if the person fraudulently uses the

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1 personal identification information of 30 or more deceased
 2 individuals, notwithstanding any other provision of law, the
 3 court shall sentence a person convicted of an offense
 4 described in this paragraph to a mandatory minimum sentence of
 5 10 years' imprisonment.

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

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

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

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

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

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

7
8 For purposes of sentencing under chapter 921, a felony offense
9 that is reclassified under this subsection is ranked one level
10 above the ranking under s. 921.0022 or s. 921.0023 of the
11 felony offense committed, and a misdemeanor offense that is
12 reclassified under this subsection is ranked in level 2 of the
13 offense severity ranking chart.

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

27 (12)(8) This section does not prohibit any lawfully
28 authorized investigative, protective, or intelligence activity
29 of a law enforcement agency of this state or any of its
30 political subdivisions, of any other state or its political
31 subdivisions, or of the Federal Government or its political

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1 subdivisions.

2 ~~(13)(9)~~(a) In sentencing a defendant convicted of an
3 offense under this section, the court may order that the
4 defendant make restitution under ~~pursuant to~~ s. 775.089 to any
5 victim of the offense. In addition to the victim's
6 out-of-pocket costs, ~~such~~ restitution may include payment of
7 any other costs, including attorney's fees incurred by the
8 victim in clearing the victim's credit history or credit
9 rating, or any costs incurred in connection with any civil or
10 administrative proceeding to satisfy any debt, lien, or other
11 obligation of the victim arising as the result of the actions
12 of the defendant.

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

16 ~~(14)(10)~~ Prosecutions for violations of this section
17 may be brought on behalf of the state by any state attorney or
18 by the statewide prosecutor.

19 ~~(15)(11)~~ The Legislature finds that, in the absence of
20 evidence to the contrary, the location where a victim gives or
21 fails to give consent to the use of personal identification
22 information is the county where the victim generally resides.

23 ~~(16)(12)~~ Notwithstanding any other provision of law,
24 venue for the prosecution and trial of violations of this
25 section may be commenced and maintained in any county in which
26 an element of the offense occurred, including the county where
27 the victim generally resides.

28 ~~(17)(13)~~ A prosecution of an offense prohibited under
29 subsection (2), subsection (6), or subsection (7) must be
30 commenced within 3 years after the offense occurred. However,
31 a prosecution may be commenced within 1 year after discovery

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

5

6 (Redesignate subsequent sections.)

7

8

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

10 And the title is amended as follows:

11 On page 2, line 2, after the first semicolon

12

13 insert:

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