

A bill to be entitled

An act relating to criminal use of personal identification; amending s. 817.568, F.S.; providing that it is a third-degree felony to willfully and without authorization disclose, sell, or transfer, or attempt to disclose, sell, or transfer, personal identification information concerning an individual, including information sent to a foreign country, without first obtaining the consent of the individual; providing criminal penalties; providing that a violation of s. 817.568, F.S., is a deceptive and unfair trade practice and a violation of part II of ch. 501, F.S.; providing civil penalties; providing that the remedies are cumulative and not exclusive; providing an effective date.

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

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

HB 1043

2006

29 | other thing of value, or that can be used to initiate a transfer  
30 | of funds, other than a transfer originated solely by paper  
31 | instrument.

32 | (b) "Authorization" means empowerment, permission, or  
33 | competence to act.

34 | (c) "Harass" means to engage in conduct directed at a  
35 | specific person that is intended to cause substantial emotional  
36 | distress to such person and serves no legitimate purpose.

37 | "Harass" does not mean to use personal identification  
38 | information for accepted commercial purposes. The term does not  
39 | include constitutionally protected conduct such as organized  
40 | protests or the use of personal identification information for  
41 | accepted commercial purposes.

42 | (d) "Individual" means a single human being and does not  
43 | mean a firm, association of individuals, corporation,  
44 | partnership, joint venture, sole proprietorship, or any other  
45 | entity.

46 | (e) "Person" means a "person" as defined in s. 1.01(3).

47 | (f) "Personal identification information" means any name  
48 | or number that may be used, alone or in conjunction with any  
49 | other information, to identify a specific individual, including  
50 | any:

51 | 1. Name, postal or electronic mail address, telephone  
52 | number, social security number, date of birth, mother's maiden  
53 | name, official state-issued or United States-issued driver's  
54 | license or identification number, alien registration number,  
55 | government passport number, employer or taxpayer identification  
56 | number, Medicaid or food stamp account number, bank account

HB 1043

2006

57 | number, credit or debit card number, or personal identification  
58 | number or code assigned to the holder of a debit card by the  
59 | issuer to permit authorized electronic use of such card;

60 |       2. Unique biometric data, such as fingerprint, voice  
61 | print, retina or iris image, or other unique physical  
62 | representation;

63 |       3. Unique electronic identification number, address, or  
64 | routing code;

65 |       4. Medical records;

66 |       5. Telecommunication identifying information or access  
67 | device; or

68 |       6. Other number or information that can be used to access  
69 | a person's financial resources.

70 |       (g) "Counterfeit or fictitious personal identification  
71 | information" means any counterfeit, fictitious, or fabricated  
72 | information in the similitude of the data outlined in paragraph  
73 | (f) that, although not truthful or accurate, would in context  
74 | lead a reasonably prudent person to credit its truthfulness and  
75 | accuracy.

76 |       (2) (a) Any person who willfully and without authorization  
77 | fraudulently uses, or possesses with intent to fraudulently use,  
78 | personal identification information concerning an individual  
79 | without first obtaining that individual's consent, commits the  
80 | offense of fraudulent use of personal identification  
81 | information, which is a felony of the third degree, punishable  
82 | as provided in s. 775.082, s. 775.083, or s. 775.084.

83 |       (b) Any person who willfully and without authorization  
84 | fraudulently uses personal identification information concerning

HB 1043

2006

85 an individual without first obtaining that individual's consent  
86 commits a felony of the second degree, punishable as provided in  
87 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,  
88 the value of the services received, the payment sought to be  
89 avoided, or the amount of the injury or fraud perpetrated is  
90 \$5,000 or more or if the person fraudulently uses the personal  
91 identification information of 10 or more individuals, but fewer  
92 than 20 individuals, without their consent. Notwithstanding any  
93 other provision of law, the court shall sentence any person  
94 convicted of committing the offense described in this paragraph  
95 to a mandatory minimum sentence of 3 years' imprisonment.

96 (c) Any person who willfully and without authorization  
97 fraudulently uses personal identification information concerning  
98 an individual without first obtaining that individual's consent  
99 commits a felony of the first degree, punishable as provided in  
100 s. 775.082, s. 775.083, or s. 775.084, if the pecuniary benefit,  
101 the value of the services received, the payment sought to be  
102 avoided, or the amount of the injury or fraud perpetrated is  
103 \$50,000 or more or if the person fraudulently uses the personal  
104 identification information of 20 or more individuals, but fewer  
105 than 30 individuals, without their consent. Notwithstanding any  
106 other provision of law, the court shall sentence any person  
107 convicted of committing the offense described in this paragraph  
108 to a mandatory minimum sentence of 5 years' imprisonment. If the  
109 pecuniary benefit, the value of the services received, the  
110 payment sought to be avoided, or the amount of the injury or  
111 fraud perpetrated is \$100,000 or more, or if the person  
112 fraudulently uses the personal identification information of 30

HB 1043

2006

113 or more individuals without their consent, notwithstanding any  
114 other provision of law, the court shall sentence any person  
115 convicted of committing the offense described in this paragraph  
116 to a mandatory minimum sentence of 10 years' imprisonment.

117 (3) Neither paragraph (2)(b) nor paragraph (2)(c) prevents  
118 a court from imposing a greater sentence of incarceration as  
119 authorized by law. If the minimum mandatory terms of  
120 imprisonment imposed under paragraph (2)(b) or paragraph (2)(c)  
121 exceed the maximum sentences authorized under s. 775.082, s.  
122 775.084, or the Criminal Punishment Code under chapter 921, the  
123 mandatory minimum sentence must be imposed. If the mandatory  
124 minimum terms of imprisonment under paragraph (2)(b) or  
125 paragraph (2)(c) are less than the sentence that could be  
126 imposed under s. 775.082, s. 775.084, or the Criminal Punishment  
127 Code under chapter 921, the sentence imposed by the court must  
128 include the mandatory minimum term of imprisonment as required  
129 by paragraph (2)(b) or paragraph (2)(c).

130 (4) Any person who willfully and without authorization  
131 possesses, uses, or attempts to use personal identification  
132 information concerning an individual without first obtaining  
133 that individual's consent, and who does so for the purpose of  
134 harassing that individual, commits the offense of harassment by  
135 use of personal identification information, which is a  
136 misdemeanor of the first degree, punishable as provided in s.  
137 775.082 or s. 775.083.

138 (5) If an offense prohibited under this section was  
139 facilitated or furthered by the use of a public record, as  
140 defined in s. 119.011, the offense is reclassified to the next

141 higher degree as follows:

142 (a) A misdemeanor of the first degree is reclassified as a  
 143 felony of the third degree.

144 (b) A felony of the third degree is reclassified as a  
 145 felony of the second degree.

146 (c) A felony of the second degree is reclassified as a  
 147 felony of the first degree.

148

149 For purposes of sentencing under chapter 921 and incentive gain-  
 150 time eligibility under chapter 944, a felony offense that is  
 151 reclassified under this subsection is ranked one level above the  
 152 ranking under s. 921.0022 of the felony offense committed, and a  
 153 misdemeanor offense that is reclassified under this subsection  
 154 is ranked in level 2 of the offense severity ranking chart in s.  
 155 921.0022.

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

162 (7) Any person who is in the relationship of parent or  
 163 legal guardian, or who otherwise exercises custodial authority  
 164 over an individual who is less than 18 years of age, who  
 165 willfully and fraudulently uses personal identification  
 166 information of that individual commits a felony of the second  
 167 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 168 775.084.

169 (8) (a) Any person who willfully and fraudulently uses, or  
 170 possesses with intent to fraudulently use, personal  
 171 identification information concerning a deceased individual  
 172 commits the offense of fraudulent use or possession with intent  
 173 to use personal identification information of a deceased  
 174 individual, a felony of the third degree, punishable as provided  
 175 in s. 775.082, s. 775.083, or s. 775.084.

176 (b) Any person who willfully and fraudulently uses  
 177 personal identification information concerning a deceased  
 178 individual commits a felony of the second degree, punishable as  
 179 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
 180 pecuniary benefit, the value of the services received, the  
 181 payment sought to be avoided, or the amount of injury or fraud  
 182 perpetrated is \$5,000 or more, or if the person fraudulently  
 183 uses the personal identification information of 10 or more but  
 184 fewer than 20 deceased individuals. Notwithstanding any other  
 185 provision of law, the court shall sentence any person convicted  
 186 of committing the offense described in this paragraph to a  
 187 mandatory minimum sentence of 3 years' imprisonment.

188 (c) Any person who willfully and fraudulently uses  
 189 personal identification information concerning a deceased  
 190 individual commits the offense of aggravated fraudulent use of  
 191 the personal identification information of multiple deceased  
 192 individuals, a felony of the first degree, punishable as  
 193 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
 194 pecuniary benefit, the value of the services received, the  
 195 payment sought to be avoided, or the amount of injury or fraud  
 196 perpetrated is \$50,000 or more, or if the person fraudulently

HB 1043

2006

197 uses the personal identification information of 20 or more but  
198 fewer than 30 deceased individuals. Notwithstanding any other  
199 provision of law, the court shall sentence any person convicted  
200 of the offense described in this paragraph to a minimum  
201 mandatory sentence of 5 years' imprisonment. If the pecuniary  
202 benefit, the value of the services received, the payment sought  
203 to be avoided, or the amount of the injury or fraud perpetrated  
204 is \$100,000 or more, or if the person fraudulently uses the  
205 personal identification information of 30 or more deceased  
206 individuals, notwithstanding any other provision of law, the  
207 court shall sentence any person convicted of an offense  
208 described in this paragraph to a mandatory minimum sentence of  
209 10 years' imprisonment.

210 (9) Any person who willfully and fraudulently creates or  
211 uses, or possesses with intent to fraudulently use, counterfeit  
212 or fictitious personal identification information concerning a  
213 fictitious individual, or concerning a real individual without  
214 first obtaining that real individual's consent, with intent to  
215 use such counterfeit or fictitious personal identification  
216 information for the purpose of committing or facilitating the  
217 commission of a fraud on another person, commits the offense of  
218 fraudulent creation or use, or possession with intent to  
219 fraudulently use, counterfeit or fictitious personal  
220 identification information, a felony of the third degree,  
221 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

222 (10) Any person who commits an offense described in this  
223 section and for the purpose of obtaining or using personal  
224 identification information misrepresents himself or herself to



HB 1043

2006

225 be a law enforcement officer; an employee or representative of a  
 226 bank, credit card company, credit counseling company, or credit  
 227 reporting agency; or any person who wrongfully represents that  
 228 he or she is seeking to assist the victim with a problem with  
 229 the victim's credit history shall have the offense reclassified  
 230 as follows:

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

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

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

237 (d) In the case of a felony of the first degree or a  
 238 felony of the first degree punishable by a term of imprisonment  
 239 not exceeding life, the offense is reclassified as a life  
 240 felony.

241  
 242 For purposes of sentencing under chapter 921, a felony offense  
 243 that is reclassified under this subsection is ranked one level  
 244 above the ranking under s. 921.0022 or s. 921.0023 of the felony  
 245 offense committed, and a misdemeanor offense that is  
 246 reclassified under this subsection is ranked in level 2 of the  
 247 offense severity ranking chart.

248 (11) A person who willfully and without authorization  
 249 discloses, sells, or transfers, or attempts to disclose, sell,  
 250 or transfer, personal identification information concerning an  
 251 individual, including personal identification information sent  
 252 to a foreign country, without first obtaining the consent of the

253 individual commits the offense of fraudulent disclosure, sale,  
 254 or transfer of personal identification information, a felony of  
 255 the third degree.

256 (12) A person who violates this section commits a  
 257 deceptive and unfair trade practice in violation of part II of  
 258 chapter 501 and is subject to the penalties and remedies  
 259 provided under that chapter, in addition to remedies otherwise  
 260 available for such conduct.

261 (13)~~(11)~~ The prosecutor may move the sentencing court to  
 262 reduce or suspend the sentence of any person who is convicted of  
 263 a violation of this section and who provides substantial  
 264 assistance in the identification, arrest, or conviction of any  
 265 of that person's accomplices, accessories, coconspirators, or  
 266 principals or of any other person engaged in fraudulent  
 267 possession or use of personal identification information. The  
 268 arresting agency shall be given an opportunity to be heard in  
 269 aggravation or mitigation in reference to any such motion. Upon  
 270 good cause shown, the motion may be filed and heard in camera.  
 271 The judge hearing the motion may reduce or suspend the sentence  
 272 if the judge finds that the defendant rendered such substantial  
 273 assistance.

274 (14)~~(12)~~ This section does not prohibit any lawfully  
 275 authorized investigative, protective, or intelligence activity  
 276 of a law enforcement agency of this state or any of its  
 277 political subdivisions, of any other state or its political  
 278 subdivisions, or of the Federal Government or its political  
 279 subdivisions.

280 (15)~~(13)~~(a) In sentencing a defendant convicted of an

HB 1043

2006

281 offense under this section, the court may order that the  
282 defendant make restitution under s. 775.089 to any victim of the  
283 offense. In addition to the victim's out-of-pocket costs,  
284 restitution may include payment of any other costs, including  
285 attorney's fees incurred by the victim in clearing the victim's  
286 credit history or credit rating, or any costs incurred in  
287 connection with any civil or administrative proceeding to  
288 satisfy any debt, lien, or other obligation of the victim  
289 arising as the result of the actions of the defendant.

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

293 ~~(16)~~(14) Prosecutions for violations of this section may  
294 be brought on behalf of the state by any state attorney or by  
295 the statewide prosecutor.

296 ~~(17)~~(15) The Legislature finds that, in the absence of  
297 evidence to the contrary, the location where a victim gives or  
298 fails to give consent to the use of personal identification  
299 information is the county where the victim generally resides.

300 ~~(18)~~(16) Notwithstanding any other provision of law, venue  
301 for the prosecution and trial of violations of this section may  
302 be commenced and maintained in any county in which an element of  
303 the offense occurred, including the county where the victim  
304 generally resides.

305 ~~(19)~~(17) A prosecution of an offense prohibited under  
306 subsection (2), subsection (6), or subsection (7) must be  
307 commenced within 3 years after the offense occurred. However, a  
308 prosecution may be commenced within 1 year after discovery of

HB 1043

2006

309 | the offense by an aggrieved party, or by a person who has a  
310 | legal duty to represent the aggrieved party and who is not a  
311 | party to the offense, if such prosecution is commenced within 5  
312 | years after the violation occurred.

313 |       Section 2. This act shall take effect July 1, 2006.