



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill will make it a felony for a person to possess sensitive personal information of an individual without first obtaining their permission.

Promote personal responsibility: The bill makes it a first degree felony to commit identity theft of a person age 65 or older.

#### B. EFFECT OF PROPOSED CHANGES:

Currently, s. 817.568, F.S., provides that, “[a]ny person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information<sup>1</sup> concerning an individual without first obtaining that individual’s consent, commits” a third degree felony. This offense is commonly known as “identity theft”. This section also provides for enhanced penalties as follows:

- If the value of the pecuniary benefit, services received or injury is \$5,000 or more or if the person fraudulently uses the personal identification information of ten or more individuals without their consent, the offense is a second degree felony and the judge must impose a three year minimum mandatory term of imprisonment.
- If the value of the pecuniary benefit, services received or injury is \$50,000 or more or if the person uses the personal identification information of 20 or more individuals, the offense is a first degree felony and the judge must impose a five year minimum mandatory sentence.
- If the value of the pecuniary benefit, services received or injury is \$100,000 or more or if the person uses the personal identification information of 30 or more individuals, the offense is a first degree felony and the judge must impose of a ten year minimum mandatory sentence.

Further, this section makes it a second degree felony for a person to commit identity theft of a person less than 18 years of age.<sup>2</sup>

HB 1117 amends s. 817.568, F.S., to provide that it is a first degree felony for any person to willfully and without authorization fraudulently use personal identification information concerning an individual who is 65 years of age or older without first obtaining the consent of that individual. The bill does not require proof that the offender knew that the victim was age 65 or older. The first degree felony offense will apply regardless of the amount of financial benefit to the offender or injury to the victim.

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<sup>1</sup> S. 817.568(f), F.S., defines “personal identification information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any: 1) Name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3) Unique electronic identification number, address, or routing code; 4) Medical records; 5) Telecommunication identifying information or access device; or 6) Other number or information that can be used to access a person’s financial resources.”

<sup>2</sup> S. 817.568(6) and (7), F.S.

HB 1117 also creates section 817.5682, F.S. which provides that any person who willfully possesses sensitive personal information concerning an individual without first obtaining that individual's consent commits a third degree felony. The term "sensitive personal information" is defined to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual<sup>3</sup> including any:

- Alien registration number
- Government passport number
- Employer or taxpayer identification number
- Medicaid or food stamp account number
- Bank account number
- Credit or debit card number
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation

Unlike section 817.568, F.S. this section will not require proof that the person possessed the information with intent to fraudulently use it – only that the person willfully possessed it without first obtaining permission of the individual.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to identity theft.

Section 2. Creates s. 817.5682, F.S. relating to possession of sensitive personal information.

Section 3. Provides effective date of October 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill makes it a first degree felony for a person to commit identity theft against a person over the age of 65. Currently, the equivalent offense committed on a victim who is not over the age of 65 is a third degree felony. Identity theft against a person under the age of 18 is a second degree felony. The bill does not require proof that the offender knew that the victim was age 65 or older. The first degree felony offense will apply regardless of the amount of benefit to the offender or injury to the victim. The lowest permissible sentence for a first degree felony that is not ranked in the offense severity ranking chart is 21 months in prison.

Further, this bill creates a third degree felony offense for possessing sensitive personal information of another without obtaining that person's permission.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

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<sup>3</sup> The term "individual" is defined to mean "a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity."

2. Expenditures:

This bill creates a new third degree felony offense which could have a local jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would prohibit a person from willfully possessing sensitive personal information concerning an individual without first obtaining that individual's consent. This would prevent businesses from being able to share this sort of information with other businesses without obtaining the permission of the individual.

D. FISCAL COMMENTS:

See above.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Homeland Security and Public Safety Committee adopted an amendment which removed section 2 of the bill that provided that any person who willfully possesses sensitive personal information concerning an individual without first obtaining that individual's consent commits a third degree felony.