

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 225 Telephone Caller Identification
SPONSOR(S): Safety & Security Council; Kiar and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>10 Y, 0 N</u>	<u>Padgett</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Padgett/Davis</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u>33 Y, 0 N</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/HB 225 creates the following misdemeanors:

- Entering false information into a caller identification system with the intent to deceive, defraud, or mislead the call recipient.
- Making a telephone call knowing that false information was entered into the caller identification system with the intent to deceive, defraud, or mislead the recipient of the call.

These offenses would not apply to the blocking of caller ID information; to law enforcement agencies; Federal intelligence agencies; or a telecommunications, broadband, or voice-over-internet service provider that is acting solely as an intermediary for the transmission of telephone service between a caller and a recipient.

In addition, the bill provides that if the telephone call using false telephone caller information was placed during the commission of a crime or facilitated a crime, the underlying criminal offense is reclassified to the next higher degree, increasing the maximum penalty exposure accordingly. For the purposes of sentencing, any offense that is reclassified under this section is to be ranked one level above the current ranking specified in the offense severity ranking chart. The offense severity ranking in part determines lowest permissible sentence under the Criminal Punishment Code.

In addition to criminal penalties, CS/HB 225 specifies that a violation of this section is also an unlawful trade practice under Florida's Deceptive and Unfair Trade Practices Act found in Ch. 501, Part II, F.S. Thus, a person who violates this section could also be subject to injunctions, fines, and civil penalties.

On January 17, 2008 the Criminal Justice Impact Conference considered the bill to have an indeterminate impact upon the prison population. Therefore the fiscal impact is unknown. The bill takes effect on October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: The bill provides for criminal penalties if a person enters or causes to be entered false information into a telephone caller identification system with the intent to mislead or defraud the recipient of the call. The bill also provides for enhanced penalties for the underlying criminal offense if the misleading information was used to further a crime.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Spoofting

Caller identification (ID) "spoofing" is the practice of changing the telephone number that appears on the call recipient's caller ID to disguise the identity of the person making the telephone call. There are several spoofing websites that allow a person the ability to change the information that appears on the call recipient's caller ID¹. The sites charge a fee in exchange for the ability to alter the information on a caller ID.

Spoofting technology can be used for legitimate purposes. These include:

- Businesses use spoofing to display an employee's work telephone number when the employee is using another phone, such as a cell phone
- Federal, State, and local law enforcement use spoofing for various investigative purposes
- Domestic violence shelters use spoofing to conceal the location of the shelter
- Bounty hunters and private investigators use spoofing technology to track individuals

Spoofting can be used for fraudulent or undesirable purposes as well. Examples include:

- Bomb threats
- Phone Phishing, which is the practice of acquiring personal information over the telephone by posing as a trusted business or organization
- Wire transfer fraud
- Prank calls

Section 501.059, F.S. addresses the requirements for telephone solicitation calls. Section 501.059(7), F.S. requires all telephone solicitors to allow the correct name and telephone number of the solicitor to appear on the caller ID of the call recipient. Violations of this statute are subject to civil penalties and/or injunctive relief, in an amount not to exceed \$10,000 per violation.

Criminal penalties

The Criminal Punishment Code is the state's sentencing policy for non-capital felony offenses. Under the code all felony offenses are ranked in level of severity from 1 (the least severe) to 10 (the most severe). Points are assigned to each severity level in the distinct areas of primary offense, additional

¹ See www.spooftcard.com, www.telespoof.com, www.phonegangster.com, www.teltechcorp.com

offense and prior record. The code also scores other factors relevant at sentencing such as victim injury and probation violations. The score is computed pursuant to a formula established in statute² and the score derives the lowest permissible sentence in months. The maximum state prison sentence is determined by the felony degree as follows:

3rd degree felony – up to 5 years
2nd degree felony – up to 15 years
1st degree felony – up to 30 years
Life – life

Misdemeanors offenses are eligible to receive county jail sentences. A misdemeanor of the first degree is punishable for up to one year imprisonment and a second degree misdemeanor is punishable to a maximum of sixty days imprisonment.

Proposed Changes

CS/HB 225 provides that a person may not enter³ or cause to be entered false information⁴ into a telephone caller identification system⁵ with the intent to deceive, defraud, or mislead the call recipient. Additionally, the bill provides that the caller⁶ may not make a telephone call⁷ knowing that false information was entered into the caller identification system with the intent to deceive, defraud, or mislead the recipient of the call. The bill does not apply to:

- The blocking of caller identification information
- Any law enforcement agency
- Any Federal intelligence or security agency
- A telecommunications, broadband, or voice-over-internet service provider that is acting solely as an intermediary for the transmission of telephone service between the caller and the recipient.

A person who violates this section commits a first degree misdemeanor⁸.

In addition, CS/HB 225 provides that if the telephone call using false telephone caller information was made during the commission of a crime or assisted in furthering a crime, the underlying offense would be reclassified as follows:

- A second degree misdemeanor would be reclassified to a first degree misdemeanor

² S. 921.0024 Florida Statutes, Criminal Punishment Code; worksheet computations; scoresheets

³ The bill provides the term “‘enter’ means to input data by whatever means into a computer or telephone system.”

⁴ The bill provides the term “‘false information’ means data that misrepresents the identity of the caller to the recipient of the call or to the network itself; however, when a person making an authorized call on behalf of another person inserts the name, telephone number, or name and telephone number of the person on whose behalf the call is being made, such information shall not be deemed false information.”

⁵ The bill provides that “‘telephone caller identification system’ means a listing of a caller’s name, telephone number, or name and telephone number that is shown to a recipient of a call when it is received.”

⁶ The bill provides that “‘caller’ means a person who places a call, whether by telephone, over a telephone line, or on a computer.”

⁷ The bill provides the term “‘call’ means any type of telephone call made using a public switched telephone network, wireless cellular telephone service, or voice-over-Internet protocol (VoIP) service that has the capability of accessing users on the public switched telephone network or a successor network.”

⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082, 775.083, F.S.

- A first degree misdemeanor would be reclassified as a third degree felony
- A third degree felony would be reclassified as a second degree felony
- A second degree felony would be reclassified as a first degree felony
- A first degree felony would be reclassified as a life felony

For purposes of sentencing, a first degree misdemeanor that is reclassified is ranked in level 2 of the offense severity ranking chart. For all felony offenses that are reclassified, the offense level is ranked one level above the level of the underlying offense in the offense severity ranking chart⁹.

The bill also provides that a violation of this section is also a violation of Ch. 501, Part II, F.S., relating to deceptive and unfair trade practices. Ch. 501 provides various remedies the State of Florida can pursue including injunctions, fines¹⁰, and civil actions to recover actual damages. It also allows private citizens to recover damages and seek injunctions against a person who violates Ch. 501, F.S.

C. SECTION DIRECTORY:

Section 1 Cites the bill as the Caller ID Anti-spoofing Act.

Section 2 Creates s. 817.487, F.S. relating to telephone caller identification systems.

Section 3 Provides effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

⁹ See ss. 921.0022, 921.0023, F.S.

¹⁰ The fine may not exceed \$15,000 for each violation in which the victim is 60 years of age or older or \$10,000 for all other violations. ss. 501.2075, 501.2077, F.S.

The Criminal Justice Impact Conference met on January 17, 2008 and determined that the bill will have an indeterminate impact on prison beds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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

On March 5, 2008, the Committee on Homeland Security & Public Safety adopted one strike-all amendment and one amendment to the strike-all amendment. The amendments make the following changes:

- amends the definition of "call" to replace the language, "plain old telephone service (POTS)" to "public switched telephone network."
- amends the definition of "false information" to include data that misrepresents the identity of the caller to the telephone network
- expands criminal liability to include a person who causes false information to be entered into a telephone caller identification system; eliminating the need for a person to directly input information into a caller identification system
- reorders ss. 817.487(5), F.S. and 817.487(6), F.S.
- deletes an obsolete reference to gain-time eligibility as it relates to sentencing
- provides that this section does not apply to a telecommunications, broadband, or voice-over-internet service provider that is acting solely as an intermediary for the transmission of telephone service between a caller and a recipient.

On April 1, 2008, the Safety & Security Council made the bill a council substitute.