

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1126

INTRODUCER: Criminal Justice Committee and Senator Joyner

SUBJECT: Unlawful Possession of the Personal Identification Information of Another Person

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Cantral</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1126 provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, certain personal identification information of another person in any form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The bill has an indeterminate fiscal impact. On March 21, 2013, the Criminal Justice Impact Conference met and determined the bill has an insignificant prison bed impact.

The bill also provides a number of statutory exceptions so that innocuous conduct is not criminalized, such as parents possessing their child's social security number. Additionally, an

affirmative defense is provided in which the person possessing the personal identification information of another did so under the reasonable belief that the possession was authorized by law or by the consent of the other person, or obtained the information from a forum or resource that is open or available to the general public or from a public record.

This bill creates the following section of the Florida Statutes: 817.5685.

## II. Present Situation:

### **Criminal Possession of Another Individual's Personal Identification Information**

Section 817.568(2)(a), F.S., provides that it is a third degree felony<sup>1</sup> for any person to willfully and without authorization fraudulently use or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. This person commits the offense of fraudulent use of personal identification information.

Section 817.568(1)(b), F.S., defines "authorization" as empowerment, permission, or competence to act.

Section 817.568(1)(d), F.S., defines "individual" as a single human being. It does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

Section 817.568(1)(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:

- 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 assistance account number, bank account number, 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;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

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<sup>1</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

### III. Effect of Proposed Changes:

The bill creates s. 817.5685, F.S., which provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, personal identification information of another person in any form including, but not limited to, mail, physical documents, identification cards, or information stored in digital form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

As used in this new section, the term “personal identification information” means a person’s social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records. This definition of “personal identification information” encompasses fewer types of information than the definition of the same term in s. 817.568(1)(f), F.S.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The offense does not apply to any of the following persons:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

It is an affirmative defense to the alleged violation if the person who possesses the personal identification information of another person:

- Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
- Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

This new section does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law, including prosecution for the criminal use of personal identification information that was otherwise lawfully possessed.

The effective date of the bill is October 1, 2013.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

In *Schmitt v. State*,<sup>2</sup> the Florida Supreme Court stated that “a due process violation occurs if a criminal statute’s means is not rationally related to its purposes and, as a result, it criminalizes innocuous conduct.”

The bill addresses this constitutional concern in a number of ways:

- The bill provides that a person must “intentionally or knowingly” possess, without authorization, personal identification information of another person.
- The definition of “personal identification information” relevant to the new offense is far more limited than the definition of that term in s. 817.568, F.S. The information covered by the definition in the bill is information to which relatively few persons would have access, unlike names, addresses, phone numbers, and birth dates.
- The bill creates a number of exceptions in which specified persons would not be subject to this offense, such as parents possessing their child’s social security number.
- The bill provides for an affirmative defense if the person who possesses the personal identification information of another person:
  - Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
  - Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

The bill provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal

<sup>2</sup> 590 So.2d 404, 413 (Fla. 1991), *cert. denied*, 503 U.S. 964 (1992), citing Article I, Section 9, of the Florida Constitution.

identification information did so knowingly and intentionally without authorization. This inference is somewhat similar to stolen property inferences in s. 812.022, F.S. For example, s. 812.022(2), F.S., provides that, with the exception of dealer possession of stolen property (which is covered by a different inference), proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen. The Florida Supreme Court has held that this inference does not violate a defendant's due process rights or force a defendant to testify in violation of his or right against self-incrimination.<sup>3</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates that the original bill will have an insignificant prison bed impact. The committee substitute does not change penalty provisions of the original bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on April 1, 2013:**

Provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

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<sup>3</sup> *Edwards v. State*, 381 So.2d 696 (Fla. 1980).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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