

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 691 Personal Identification Theft

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee; Ahern; Grant and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	18 Y, 0 N, As CS	Jones	Havlicak

SUMMARY ANALYSIS

Florida law currently makes it a crime to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information (PII) concerning an individual without first obtaining that individual's consent.

The bill creates a similar statute, but one that does not require a person to possess PII with fraudulent intent. Specifically, the bill creates s. 817.5685, F.S., to make it unlawful to intentionally or knowingly possess, without authorization, PII of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. A violation of the statute is punishable as:

- A first degree misdemeanor if the person possesses the PII of four fewer individuals; and
- A third degree felony if the person possesses the PII of five or more individuals.

The bill defines "personal identification information" as 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.

The bill provides exemptions for:

- A person who is the parent or legal guardian of a child and who possesses the PII of that child;
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the PII of that other person and make decisions regarding access to that PII;
- An employee of a governmental agency who possesses the PII of another person in the ordinary course of business;
- A person who is engaged in a lawful business and possesses the PII of another person in the ordinary course of business; and
- A person who finds a card or document issued by a governmental agency which contains the PII 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.

The bill provides that if a person used or was in possession of the PII of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the PII did so knowingly and intentionally without authorization.

The Criminal Justice Impact Conference met on February 27, 2013, and determined that this bill may have an insignificant negative impact on state prison beds. The bill may also have an insignificant negative impact on local jail beds.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 817.568, F.S., relates to the criminal use of personal identification information. The statute makes it a third degree felony for a 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. A person who fraudulently uses personal identification information as proscribed above:

- Commits a second degree felony,¹ punishable by a three-year minimum mandatory sentence,² if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent;
- Commits a first degree felony,³ punishable by a five-year minimum mandatory sentence,⁴ if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals; or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence,⁵ if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.⁶

"Personal identification information" is defined 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.⁷

Effect of the Bill

The bill creates s. 817.5685, F.S., which makes it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. This statute is similar to s. 817.568, F.S., but does not require a person to possess personal identification information *with fraudulent intent*. The bill also provides a more limited definition of "personal identification information" than s. 817.568, F.S., by defining the term as 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,

¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

² Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.

³ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.

⁵ *Id.*

⁶ Section 817.568(2), F.S.

⁷ Section 817.568(1)(f), F.S.

Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

A violation is a first degree misdemeanor⁸ if the person possesses the personal identification information of four or fewer individuals, and is a third degree felony⁹ if the person possesses the personal identification information of five or more individuals.

The bill provides that if 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 affords exemptions for:

- 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; and
- 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.

The bill specifies that the newly created statute, s. 817.5685, F.S., does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.5685, F.S., relating to unlawful possession of the personal identification information of another person.

Section 2. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on February 27, 2013, and determined that this bill may have an insignificant negative impact on state prison beds. The bill creates a new offense, which is punishable as third degree felony, but it is likely a low volume offense.

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

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact on local governments because it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed because it creates s. 817.5685, F.S., which makes it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form.

On April 9, 2013 the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that if 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 analysis is drafted to the committee substitute as filed by the Judiciary Subcommittee.