

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1029 Personal Identification Information Theft

SPONSOR(S): Criminal Justice Subcommittee; Artiles

TIED BILLS: **IDEN./SIM. BILLS:** SB 1472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, it is third degree felony for a person 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 penalty may be enhanced based on the pecuniary value of the PII involved in the offense or based on the number of individuals whose PII was fraudulently used.

The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the PII of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
- A disabled adult as defined in s. 825.101, F.S.;
- A public servant as defined in s. 838.014, F.S.;
- A veteran as defined in s. 1.01, F.S.;
- A first responder as defined in s. 125.01045, F.S.;
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Florida Department of Law Enforcement (FDLE) Operating Trust Fund for the department to provide grants to local law enforcement to investigate the criminal use of PII;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of PII; and
- The clerk of the court retains \$1 of each surcharge.

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Grant Program within FDLE. The purpose of the Grant Program is to award grants to support local law enforcement agencies in the investigation and enforcement of personal identification information theft and fraud. In addition to the surcharge revenues, the bill provides a recurring fund of \$72,000 for grants to be awarded by FDLE. The FDLE requires one FTE to administer the grant program at a cost of \$42,000. The bill provides an appropriation of \$42,000 and associated salary rate from general revenue funds for that purpose.

The bill also provides an appropriation of \$186,000 to the State Attorneys Revenue Trust Fund to be distributed equally to the State Attorneys of the Eleventh, Fifteenth and Seventeenth Circuit for salaries and benefits for one assistant state attorney for each circuit to prosecute personal identity theft and fraud offenses.

The Criminal Justice Impact Conference met March 25, 2014 and determined the bill will have an insignificant impact on state prison beds.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft

Florida has the nation's highest rate of identity theft in the country.¹ The Federal Trade Commission reports that in 2012, south Florida led the country with 645 identity theft complaints per 100,000 people.² Tech security expert Alan Crowetz, believes that Florida's large transient and tourist population may be contributing to Florida's identify theft ranking.³ "You come here, you are on public Wi-Fi and unknown hotels," he said. "If someone rips you off, the next day you may not even be in the same city anymore, ID thieves act fast and often prey on older, less tech-savvy people."⁴

Criminal Use of Personal Identification Information

Section 817.568, F.S., attempts to address the identity theft issue by imposing penalties for the criminal use of personal identification information. The statute makes it a third degree felony⁵ 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,⁶ punishable by a three-year minimum mandatory sentence, 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,⁷ punishable by a five-year minimum mandatory sentence, 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, 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.⁸

The penalty is enhanced for crimes when the victim is a minor. Section 817.568(6), F.S., makes it a second degree felony for any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.

"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;

¹ *Theft a 'huge problem' in South Florida*, Linda Trischitta, SunSentinel, February 17, 2014, http://articles.sun-sentinel.com/2014-02-17/news/fl-fbi-miami-chief-priorities-20140217_1_id-theft-tax-returns-fighting-id (last accessed March 20, 2014).

² *Id.*

³ *South Florida #1 in U.S. for identity theft: Why?*, February 28, 2014, <http://www.firstcoastnews.com/story/news/local/florida/2014/02/28/south-florida-1-in-us-for-identity-theft-why/5892223/> (last accessed March 20, 2014).

⁴ *Id.*

⁵ 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.

⁶ 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.

⁷ 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.

⁸ Section 817.568(2), F.S.

- 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.⁹

Effect of the Bill

Section 817.568, F.S.

The bill enhances the penalties for personal identification information crimes against specified victims. The bill amends s. 817.568, F.S., to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining their consent, who is:

- 60 years of age or older;
- A disabled adult as defined in s. 825.101, F.S.;
- A public servant as defined in s. 838.014, F.S.;
- A veteran as defined in s. 1.01, F.S.;
- A first responder as defined in s. 125.01045, F.S.;
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. Payment of the surcharge must be a condition of probation, community control, or any other court-ordered supervision and may not be waived by the court. If a defendant has been ordered to pay restitution in accordance with s. 775.089, F.S., the \$151 surcharge must be included in a judgment. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the Florida Department of Law Enforcement's (FDLE) Operating Trust Fund for FDLE to provide grants to local law enforcement agencies to investigate the criminal use of personal identification information;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information; and
- The clerk of the court retains \$1 of the surcharge.

Grant Program

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Grant Program within FDLE. The purpose of the Task Force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification.

The bill provides that funds collected from the surcharge and any funds specifically appropriated for the grant program will be awarded annually by the Department of Law Enforcement to local law enforcement agencies. The total amount of grants awarded may not exceed funding appropriated for the grant program. The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awards. The bill provides a recurring fund of \$72,000 for grants to be awarded by FDLE through the grant program.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 2. Creates s. 817.5686, F.S., relating to Identity Theft and Fraud Grant Program.

Section 3. Provides and appropriation

Section 4. Provides an effective date of July 1, 2014.

⁹ Section 817.568(1)(f), F.S.
STORAGE NAME: h1029b.JUAS
DATE: 4/2/2014

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides an appropriation of \$186,000 to the State Attorneys Revenue Trust Fund to be distributed equally to the State Attorneys of the Eleventh, Fifteenth and Seventeenth Circuit for salaries and benefits for one assistant state attorney for each circuit to prosecute personal identity theft and fraud offenses.

2. Expenditures:

The Criminal Justice Impact Conference met March 25, 2014 and determined the bill will have an insignificant impact on state prison beds.

The FDLE requires one FTE to administer the grant program at a cost of \$42,000. The bill provides an appropriation of \$42,000 and associated salary rate from general revenue funds for that purpose.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires \$75 of the \$151 surcharge to be deposited into FDLE's Operating Trust Fund for FDLE to provide grants to local law enforcement agencies to investigate the criminal use of personal identification information. In Fiscal Year 2012-13 there were 1,209 sentenced for fraudulent use of personal identification information. If one quarter of those victims fell within those delineated in the bill it would generate \$45,337. In addition to the surcharge revenues, the bill provides a recurring appropriation of \$72,000 for grants to be awarded by FDLE.

The Clerks of the Court will receive \$1 from the surcharge.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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:

- Portions of the bill are criminal law; and
- The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides FDLE with rule-making authority to implement the Task Force.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The proposed committee substitute enhances the penalties for personal identification information crimes against specified victims and creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) within FDLE.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On April 2, 2014, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment creates the Identity Theft and Fraud Grant Program within FDLE and provides appropriations for the grant program, for State Attorneys and FDLE.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.