

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/CS/SB 1472

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee and Senator Abruzzo

SUBJECT: Personal Identification Information Theft

DATE: April 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1472 amends s. 817.568, F.S. (criminal use of personal identification information), 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 that individual's consent, who is:

- 60 years of age or older;
- A disabled adult;
- A public servant;
- A veteran;
- A first responder; or
- A state or federal employee.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S., and specifies how that surcharge is allocated.

The bill also creates s. 817.5686, F.S., which establishes the Identity Theft and Fraud Grant Program within the Florida Department of Law Enforcement (FDLE). The purpose of this grant program is to use funds collected from \$75 of the \$151 surcharge created by the bill, along with any funds that are specifically appropriated for the grant program, to make grants to local law enforcement agencies to combat identity theft and fraud.

The Criminal Justice Impact Conference found that similar House Bill 1029 would have an insignificant impact on the need for prison beds. Adjusting the FDLE's analysis of CS/SB 1472 to account for removal of language creating an identity theft task force, it appears that FDLE would need two additional full-time equivalent (FTE) positions at a total cost of \$120,774 for salary, benefits, expenses, and equipment to implement this bill. The surcharge that must be imposed on persons who are convicted of fraudulent use of personal identification information is expected to produce a total of approximately \$180,000 annually.

II. Present Situation:

Section 817.568, F.S., punishes criminal use of personal identification information (often referred to as "identity theft" or "identity fraud"). For purposes of this statute, "personal identification information" is any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any of the following:

- 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.
- 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.
- Other number or information that can be used to access a person's financial resources.¹

It is a third degree felony² 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.³ However, it is:

¹ Section 817.568(1)(f), F.S.

² A third degree felony is punishable by up to five years in state prison, a fine of up to \$5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082, F.S.

³ Section 817.568(2)(a), F.S.

- A second degree felony,⁴ punishable by a three-year minimum mandatory sentence, if the person commits the prohibited act and 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 ten or more individuals, but fewer than 20 individuals, without their consent;⁵
- A first degree felony,⁶ punishable by a five-year minimum mandatory sentence, if the person commits the prohibited act and 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;⁷ or
- A first degree felony, punishable by a ten-year minimum mandatory sentence, if the person commits the prohibited act and 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.^{8,9}

The statute also provides that it is a second degree felony for any person to willfully and without authorization fraudulently use 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.¹⁰ It is a second degree felony for a person who is in the relationship of parent or legal guardian, or otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification of that individual.¹¹

III. Effect of Proposed Changes:

The bill creates an identity theft offense, imposes a surcharge on persons convicted of identity theft, and establishes a program to provide grants to local law enforcement agencies to address identity theft. The effective date of the bill is July 1, 2014.

Creates an Identity Theft Offense

The bill amends s. 817.568, F.S. (criminal use of personal identification information), 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 that individual's consent, who is:

- 60 years of age or older;

⁴ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

⁵ Section 817.568(2)(b), F.S.

⁶ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

⁷ Section 817.568(2)(c), F.S.

⁸ Section 817.568(2)(c), F.S.

⁹ Section 817.568(8), F.S., imposes punishments similar to s. 817.568(2)(a)-(c), F.S., when the personal identification information involves a deceased individual.

¹⁰ Section 817.568(6), F.S.

¹¹ Section 817.568(7), F.S.

- A disabled adult as defined in s. 825.101, F.S.;¹²
- A public servant as defined in s. 838.014, F.S.;¹³
- A veteran as defined in s. 1.01, F.S.;¹⁴
- A first responder as defined in s. 125.01045, F.S.;¹⁵
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

Identity Theft Surcharge

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 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 FDLE Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach County, Broward County, and Miami-Dade County 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 in the Eleventh Judicial Circuit, Fifteenth Judicial Circuit, and Seventeenth Judicial Circuit; and
- The clerk of the court retains \$1 of the surcharge.

Establishes the Identity Theft and Fraud Grant Program

The bill creates s. 817.5686, F.S., which establishes the Identity Theft and Fraud Grant Program within the FDLE. The FDLE must use funds collected from \$75 of the \$151 surcharge created by the bill, along with any additional funds that are specifically appropriated for the grant program, to annually make grants to local law enforcement agencies for investigation of identity theft and fraud cases and enforcement of identity theft and fraud laws. The bill authorizes the FDLE to establish criteria and time periods for the submission of applications and the selection of grantees.

¹² The statute defines a “disabled adult” as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

¹³ The statute defines a “public servant” to mean:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function;
- A candidate for election or appointment to any of the positions listed in this subsection, or
- An individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

¹⁴ The statute defines a “veteran” as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

¹⁵ The statute defines a “first responder” as a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is employed by the state or a local government

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Prison Bed Impact

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not reviewed CS/CS/SB 1472. However, the CJIC has reviewed CS/HB 1029, which is substantively identical to CS/SB 1472, and estimated the bill will have an insignificant prison bed impact. The changes in CS/CS/SB 1472 would not affect this finding.¹⁶

FDLE Impact

The FDLE analyzed CS/SB 1472 and determined that it would have an impact on the department.¹⁷ However, it has not yet analyzed CS/CS/SB 1472, which does not include the language creating an Identity Theft and Fraud Task Force.

¹⁶ The identity theft offense created by the bill is a second degree felony. Since this second degree felony is not specifically ranked in the offense severity ranking chart of the Criminal Punishment Code, it defaults to a Level 4 ranking pursuant to s. 921.0023, F.S.

¹⁷ 2014 FDLE Legislative Analysis (CS/SB 1472) (March 31, 2014). All information in the “Government Sector Impact” section of this analysis relevant to FDLE impact and court impact is from the FDLE analysis.

Revenue:

The FDLE states:

\$151 will be imposed for any sanction applied by the Court for criminal use of personal identification violations. State Attorneys will receive \$75 to assist with prosecution, but the \$75 deposited with FDLE is for establishment of a grant program for specific local law enforcement agencies to assist with their investigation of criminal use of personal identification, rather than to fund identity theft investigations statewide.

The Office of Economic and Demographic Research indicates that approximately 1,200 offenders were sentenced for fraudulent use of personal identification information in Fiscal Year 2012-2013. Based upon 1,200 convictions each year, the total surcharge collected annually is likely to be approximately \$180,000, with \$90,000 going to FDLE for grants, \$90,000 going to state attorneys to assist with prosecutions, and \$1,200 retained by the clerks of court as a service charge.

Expenditures:

In its analysis of CS/SB 1472, the FDLE stated that implementing the bill, including the task force, would require, at a minimum, four additional FTEs at a total cost of \$318,767 for salary, benefits, expenses, and equipment.

Because CS/CS/SB 1472 does not include the task force, it appears that the fiscal impact to the FDLE is \$120,774 (\$100,018 for salary & benefits and \$20,756 for expenses and equipment for 2 FTEs).

Court Impact

An analysis of CS/CS/SB 1472 by the Office of the State Courts Administrator was not available. The FDLE states the bill “[c]ould impact costs incurred by Clerks of the Courts for collection and transmitting of fines, although the Clerks are authorized to retain \$1 of the imposed fine which could offset these costs.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.568 of the Florida Statutes.

This bill creates section 817.5686 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on April 9, 2014:

The Committee Substitute:

- Removes a requirement that the surcharge created by the bill be made a condition of community supervision.
- Removes a restriction requiring that proceeds of the surcharge be used to combat theft and fraud in specified counties and judicial circuits.
- Removes language creating the Identity Theft and Fraud Task Force.
- Creates the Identity Theft and Fraud Grant Program within the FDLE.

CS by Criminal Justice on March 31, 2014:

- Creates a second degree felony for criminal use of personal ID of a person 60 years of age or older, a public servant, a veteran, a first responder, or a state or federal employee;
- Requires a court-imposed \$151 surcharge for an ID theft violation and specifies surcharge disbursement;
- Creates a temporary task force (dissolves December 31, 2017) in the FDLE to develop strategies/techniques to assist ID theft investigations/prosecutions in Palm Beach, Broward, and Miami-Dade Counties; and
- Changes the effective date of the bill to July 1, 2014.

- B. **Amendments:**

None.