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LEGISLATIVE ACTION

Senate

.

House

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Floor: 2/RE/3R

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04/28/2014 08:33 PM

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Senator Abruzzo moved the following:

Senate Amendment (with title amendment)

Delete lines 73 - 238

and insert:

Florida Statutes, are amended, subsections (11) through (17) of that section are redesignated as subsections (13) through (19), respectively, and new subsections (11) and (12) are added to that section, to read:

817.568 Criminal use of personal identification information.—

(6) Any person who willfully and without authorization



271768

12 fraudulently uses personal identification information concerning
13 an individual who is younger ~~less~~ than 18 years of age or 60
14 years of age or older without first obtaining the consent of
15 that individual or of his or her legal guardian commits a felony
16 of the second degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.

18 (7) Any person who is in the relationship of parent or
19 legal guardian, or who otherwise exercises custodial authority
20 over an individual who is younger ~~less~~ than 18 years of age or
21 60 years of age or older, who willfully and fraudulently uses
22 personal identification information of that individual commits a
23 felony of the second degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084.

25 (11) A person who willfully and without authorization
26 fraudulently uses personal identification information concerning
27 an individual who is 60 years of age or older; a disabled adult
28 as defined in s. 825.101; a public servant as defined in s.
29 838.014; a veteran as defined in s. 1.01; a first responder as
30 defined in s. 125.01045; an individual who is employed by the
31 State of Florida; or an individual who is employed by the
32 Federal Government without first obtaining the consent of that
33 individual commits a felony of the second degree, punishable as
34 provided in s. 775.082, s. 775.083, or s. 775.084.

35 (12) In addition to any sanction imposed when a person
36 pleads guilty or nolo contendere to, or is found guilty of,
37 regardless of adjudication, a violation of this section, the
38 court shall impose a surcharge of \$1,001. Payment of the
39 surcharge shall be a condition of probation, community control,
40 or any other court-ordered supervision.



271768

41 (a) The sum of \$500 of the surcharge shall be deposited
42 into the Department of Law Enforcement Operating Trust Fund for
43 the department to provide grants to local law enforcement
44 agencies to investigate offenses related to the criminal use of
45 personal identification information as provided in s. 943.0412.

46 (b) The sum of \$500 of the surcharge shall be deposited
47 into the State Attorneys Revenue Trust Fund for the purpose of
48 funding prosecutions of offenses relating to the criminal use of
49 personal identification information.

50 (c) The clerk of the court shall retain \$1 of each \$1,001
51 surcharge that he or she collects as a service charge of the
52 clerk's office.

53 (d) The surcharge may not be waived by the court. In the
54 event that the person has been ordered to pay restitution in
55 accordance with s. 775.089, the surcharge shall be included in a
56 judgment.

57 Section 3. Subsections (2), (3), and (8) of section
58 825.101, Florida Statutes, are amended to read:

59 825.101 Definitions.—As used in this chapter:

60 (2) "Caregiver" means a person who has been entrusted with
61 or has assumed responsibility for the care or the property of an
62 elderly person or disabled adult. "Caregiver" includes, but is
63 not limited to, relatives, court-appointed or voluntary
64 guardians, adult household members, neighbors, health care
65 providers, and employees and volunteers of facilities as defined
66 in subsection (6) ~~(7)~~.

67 ~~(3) "Deception" means:~~

68 ~~(a) Misrepresenting or concealing a material fact relating~~
69 ~~to:~~



271768

70 ~~1. Services rendered, disposition of property, or use of~~
71 ~~property, when such services or property are intended to benefit~~
72 ~~an elderly person or disabled adult;~~

73 ~~2. Terms of a contract or agreement entered into with an~~
74 ~~elderly person or disabled adult; or~~

75 ~~3. An existing or preexisting condition of any property~~
76 ~~involved in a contract or agreement entered into with an elderly~~
77 ~~person or disabled adult; or~~

78 ~~(b) Using any misrepresentation, false pretense, or false~~
79 ~~promise in order to induce, encourage, or solicit an elderly~~
80 ~~person or disabled adult to enter into a contract or agreement.~~

81 ~~(8) "Intimidation" means the communication by word or act~~
82 ~~to an elderly person or disabled adult that the elderly person~~
83 ~~or disabled adult will be deprived of food, nutrition, clothing,~~
84 ~~shelter, supervision, medicine, medical services, money, or~~
85 ~~financial support or will suffer physical violence.~~

86 Section 4. Section 825.103, Florida Statutes, is amended to
87 read:

88 825.103 Exploitation of an elderly person or disabled
89 adult; penalties.—

90 (1) "Exploitation of an elderly person or disabled adult"
91 means:

92 (a) Knowingly, ~~by deception or intimidation,~~ obtaining or
93 using, or endeavoring to obtain or use, an elderly person's or
94 disabled adult's funds, assets, or property with the intent to
95 temporarily or permanently deprive the elderly person or
96 disabled adult of the use, benefit, or possession of the funds,
97 assets, or property, or to benefit someone other than the
98 elderly person or disabled adult, by a person who:



271768

99 1. Stands in a position of trust and confidence with the
100 elderly person or disabled adult; or
101 2. Has a business relationship with the elderly person or
102 disabled adult;
103 (b) Obtaining or using, endeavoring to obtain or use, or
104 conspiring with another to obtain or use an elderly person's or
105 disabled adult's funds, assets, or property with the intent to
106 temporarily or permanently deprive the elderly person or
107 disabled adult of the use, benefit, or possession of the funds,
108 assets, or property, or to benefit someone other than the
109 elderly person or disabled adult, by a person who knows or
110 reasonably should know that the elderly person or disabled adult
111 lacks the capacity to consent; ~~or~~
112 (c) Breach of a fiduciary duty to an elderly person or
113 disabled adult by the person's guardian, trustee who is an
114 individual, or agent under a power of attorney which results in
115 an unauthorized appropriation, sale, or transfer of property. An
116 unauthorized appropriation under this paragraph occurs when the
117 elderly person or disabled adult does not receive the reasonably
118 equivalent financial value in goods or services, or when the
119 fiduciary violates any of these duties:
120 1. For agents appointed under chapter 709:
121 a. Committing fraud in obtaining their appointments;
122 b. Abusing their powers;
123 c. Wasting, embezzling, or intentionally mismanaging the
124 assets of the principal or beneficiary; or
125 d. Acting contrary to the principal's sole benefit or best
126 interest; or
127 2. For guardians and trustees who are individuals and who



271768

128 are appointed under chapter 736 or chapter 744:
129 a. Committing fraud in obtaining their appointments;
130 b. Abusing their powers; or
131 c. Wasting, embezzling, or intentionally mismanaging the
132 assets of the ward or beneficiary of the trust;
133 (d) Misappropriating, misusing, or transferring without
134 authorization money belonging to an elderly person or disabled
135 adult from an account in which the elderly person or disabled
136 adult placed the funds, owned the funds, and was the sole
137 contributor or payee of the funds before the misappropriation,
138 misuse, or unauthorized transfer. This paragraph only applies to
139 the following types of accounts:
140 1. Personal accounts;
141 2. Joint accounts created with the intent that only the
142 elderly person or disabled adult enjoys all rights, interests,
143 and claims to moneys deposited into such account; or
144 3. Convenience accounts created in accordance with s.
145 655.80; or
146 (e) Intentionally or negligently failing to effectively use
147 an elderly person's or disabled adult's income and assets for
148 the necessities required for that person's support and
149 maintenance, by a caregiver or a person who stands in a position
150 of trust and confidence with the elderly person or disabled
151 adult.
152 (2) Any inter vivos transfer of money or property valued in
153 excess of \$10,000 at the time of the transfer, whether in a
154 single transaction or multiple transactions, by a person age 65
155 or older to a nonrelative whom the transferor knew for fewer
156 than 2 years before the first transfer and for which the



271768

157 transferor did not receive the reasonably equivalent financial
158 value in goods or services creates a permissive presumption that
159 the transfer was the result of exploitation.

160 (a) This subsection applies regardless of whether the
161 transfer or transfers are denoted by the parties as a gift or
162 loan, except that it does not apply to a valid loan evidenced in
163 writing that includes definite repayment dates. However, if
164 repayment of any such loan is in default, in whole or in part,
165 for more than 65 days, the presumption of this subsection
166 applies.

167 (b) This subsection does not apply to:

168 1. Persons who are in the business of making loans.

169 2. Bona fide charitable donations to nonprofit

170 organizations that qualify for tax exempt status under the
171 Internal Revenue Code.

172 (c) In a criminal case to which this subsection applies, if
173 the trial is by jury, jurors shall be instructed that they may,
174 but are not required to, draw an inference of exploitation upon
175 proof beyond a reasonable doubt of the facts listed in this
176 subsection. The presumption of this subsection imposes no burden
177 of proof on the defendant.

178 (3)~~(2)~~(a) If the funds, assets, or property involved in the
179 exploitation of the elderly person or disabled adult is valued
180 at ~~\$100,000~~ \$50,000 or more, the offender commits a felony of
181 the first degree, punishable as provided in s. 775.082, s.
182 775.083, or s. 775.084.

183 (b) If the funds, assets, or property involved in the
184 exploitation of the elderly person or disabled adult is valued
185 at ~~\$20,000~~ \$10,000 or more, but less than ~~\$100,000~~ \$50,000, the



271768

186 offender commits a felony of the second degree, punishable as
187 provided in s. 775.082, s. 775.083, or s. 775.084.

188 (c) If the funds, assets, or property involved in the
189 exploitation of an elderly person or disabled adult is valued at
190 less than \$10,000 ~~\$20,000~~, the offender commits a felony of the
191 third degree, punishable as provided in s. 775.082, s. 775.083,
192 or s. 775.084.

193 (4) If a person is charged with financial exploitation of
194 an elderly person or disabled adult that involves the taking of
195 or loss of property valued at more than \$5,000 and property
196 belonging to a victim is seized from the defendant pursuant to a
197 search warrant, the court shall hold an evidentiary hearing and
198 determine, by a preponderance of the evidence, whether the
199 defendant unlawfully obtained the victim's property. If the
200 court finds that the property was unlawfully obtained, the court
201 may order it returned to the victim for restitution purposes
202 before trial on the charge. This determination is inadmissible
203 in evidence at trial on the charge and does not give rise to any
204 inference that the defendant has committed an offense under this
205 section.

206 Section 5. Section 943.0412, Florida Statutes, is created
207 to read:

208 943.0412 Identity Theft and Fraud Grant Program.—

209 (1) There is created the Identity Theft and Fraud Grant
210 Program within the department to award grants to support local
211 law enforcement agencies in the investigation and enforcement of
212 personal identification information theft and fraud. Grants
213 shall be provided if funds are appropriated for that purpose by
214 law.



271768

215 (2) Funds collected pursuant to s. 817.568(12)(a) and any
216 funds specifically appropriated for the grant program shall be
217 awarded annually by the department to local law enforcement
218 agencies. The total amount of grants awarded may not exceed
219 funding appropriated for the grant program.

220 (3) The department may establish criteria and set specific
221 time periods for the acceptance of applications and for the
222 selection process for awards.

223
224 ===== T I T L E A M E N D M E N T =====

225 And the title is amended as follows:

226 Delete lines 10 - 26

227 and insert:

228 older; providing that it is unlawful for any person to
229 willfully and without authorization fraudulently use
230 personal identification information concerning
231 specified individuals without their consent; providing
232 criminal penalties; providing for a surcharge and
233 allocation thereof; amending s. 825.101, F.S.;

234 revising and deleting definitions; amending s.
235 825.103, F.S.; deleting a requirement that property of
236 an elderly person or disabled adult be obtained by
237 deception or intimidation in order to constitute
238 exploitation of such a person; specifying additional
239 circumstances that constitute a breach of a fiduciary
240 duty and specifying when an unauthorized appropriation
241 occurs; creating a presumption that certain inter
242 vivos transfers are a result of exploitation;

243 providing exceptions; providing for jury instructions



271768

244 concerning the presumption; revising the valuation of
245 funds, assets, or property involved for various
246 degrees of offenses of exploitation of an elderly
247 person or disabled adult; providing for return of
248 property seized from a defendant to the victim before
249 trial in certain circumstances; creating s. 943.0412,
250 F.S.; providing legislative findings; creating the
251 Identity Theft and Fraud Grant Program; amending ss.
252 775.0844 and