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LEGISLATIVE ACTION

Senate	.	House
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	.	
Floor: 2/AD/3R	.	Floor: SEN1/C
04/28/2014 08:33 PM	.	05/01/2014 02:40 PM
	.	

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



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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.

39 (a) The sum of \$500 of the surcharge shall be deposited
40 into the Department of Law Enforcement Operating Trust Fund for



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41 the department to provide grants to local law enforcement
42 agencies to investigate offenses related to the criminal use of
43 personal identification information as provided in s. 943.0412.

44 (b) The sum of \$250 of the surcharge shall be deposited
45 into the State Attorneys Revenue Trust Fund for the purpose of
46 funding prosecutions of offenses relating to the criminal use of
47 personal identification information. The sum of \$250 of the
48 surcharge shall be deposited into the Public Defenders Revenue
49 Trust Fund for the purposes of indigent criminal defense related
50 to the criminal use of personal identification information.

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

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

58 Section 3. Subsections (2), (3), and (8) of section
59 825.101, Florida Statutes, are amended to read:

60 825.101 Definitions.—As used in this chapter:

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

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

69 ~~(a) Misrepresenting or concealing a material fact relating~~



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70 to:

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

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

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

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

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

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

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

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

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



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99 elderly person or disabled adult, by a person who:

100 1. Stands in a position of trust and confidence with the
101 elderly person or disabled adult; or

102 2. Has a business relationship with the elderly person or
103 disabled adult;

104 (b) Obtaining or using, endeavoring to obtain or use, or
105 conspiring with another to obtain or use an elderly person's or
106 disabled adult's funds, assets, or property with the intent to
107 temporarily or permanently deprive the elderly person or
108 disabled adult of the use, benefit, or possession of the funds,
109 assets, or property, or to benefit someone other than the
110 elderly person or disabled adult, by a person who knows or
111 reasonably should know that the elderly person or disabled adult
112 lacks the capacity to consent; ~~or~~

113 (c) Breach of a fiduciary duty to an elderly person or
114 disabled adult by the person's guardian, trustee who is an
115 individual, or agent under a power of attorney which results in
116 an unauthorized appropriation, sale, or transfer of property. An
117 unauthorized appropriation under this paragraph occurs when the
118 elderly person or disabled adult does not receive the reasonably
119 equivalent financial value in goods or services, or when the
120 fiduciary violates any of these duties:

121 1. For agents appointed under chapter 709:

122 a. Committing fraud in obtaining their appointments;

123 b. Abusing their powers;

124 c. Wasting, embezzling, or intentionally mismanaging the
125 assets of the principal or beneficiary; or

126 d. Acting contrary to the principal's sole benefit or best
127 interest; or



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128 2. For guardians and trustees who are individuals and who
129 are appointed under chapter 736 or chapter 744:

130 a. Committing fraud in obtaining their appointments;

131 b. Abusing their powers; or

132 c. Wasting, embezzling, or intentionally mismanaging the
133 assets of the ward or beneficiary of the trust;

134 (d) Misappropriating, misusing, or transferring without
135 authorization money belonging to an elderly person or disabled
136 adult from an account in which the elderly person or disabled
137 adult placed the funds, owned the funds, and was the sole
138 contributor or payee of the funds before the misappropriation,
139 misuse, or unauthorized transfer. This paragraph only applies to
140 the following types of accounts:

141 1. Personal accounts;

142 2. Joint accounts created with the intent that only the
143 elderly person or disabled adult enjoys all rights, interests,
144 and claims to moneys deposited into such account; or

145 3. Convenience accounts created in accordance with s.
146 655.80; or

147 (e) Intentionally or negligently failing to effectively use
148 an elderly person's or disabled adult's income and assets for
149 the necessities required for that person's support and
150 maintenance, by a caregiver or a person who stands in a position
151 of trust and confidence with the elderly person or disabled
152 adult.

153 (2) Any inter vivos transfer of money or property valued in
154 excess of \$10,000 at the time of the transfer, whether in a
155 single transaction or multiple transactions, by a person age 65
156 or older to a nonrelative whom the transferor knew for fewer



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157 than 2 years before the first transfer and for which the
158 transferor did not receive the reasonably equivalent financial
159 value in goods or services creates a permissive presumption that
160 the transfer was the result of exploitation.

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

168 (b) This subsection does not apply to:

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

170 2. Bona fide charitable donations to nonprofit
171 organizations that qualify for tax exempt status under the
172 Internal Revenue Code.

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

179 (3)~~(2)~~(a) If the funds, assets, or property involved in the
180 exploitation of the elderly person or disabled adult is valued
181 at \$50,000 ~~\$100,000~~ or more, the offender commits a felony of
182 the first degree, punishable as provided in s. 775.082, s.
183 775.083, or s. 775.084.

184 (b) If the funds, assets, or property involved in the
185 exploitation of the elderly person or disabled adult is valued



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186 at \$10,000 ~~\$20,000~~ or more, but less than \$50,000 ~~\$100,000~~, the
187 offender commits a felony of the second degree, punishable as
188 provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

209 943.0412 Identity Theft and Fraud Grant Program.—

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



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

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

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

226 And the title is amended as follows:

227 Delete lines 10 - 26

228 and insert:

229 older; providing that it is unlawful for any person to
230 willfully and without authorization fraudulently use
231 personal identification information concerning
232 specified individuals without their consent; providing
233 criminal penalties; providing for a surcharge and
234 allocation thereof; amending s. 825.101, F.S.;
235 revising and deleting definitions; amending s.
236 825.103, F.S.; deleting a requirement that property of
237 an elderly person or disabled adult be obtained by
238 deception or intimidation in order to constitute
239 exploitation of such a person; specifying additional
240 circumstances that constitute a breach of a fiduciary
241 duty and specifying when an unauthorized appropriation
242 occurs; creating a presumption that certain inter
243 vivos transfers are a result of exploitation;



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244 providing exceptions; providing for jury instructions
245 concerning the presumption; revising the valuation of
246 funds, assets, or property involved for various
247 degrees of offenses of exploitation of an elderly
248 person or disabled adult; providing for return of
249 property seized from a defendant to the victim before
250 trial in certain circumstances; creating s. 943.0412,
251 F.S.; providing legislative findings; creating the
252 Identity Theft and Fraud Grant Program; amending ss.
253 775.0844 and