

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 Committee on Criminal Justice

BILL: SB 1472

INTRODUCER: Senator Abruzzo

SUBJECT: Identity Theft

DATE: March 28, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1472 punishes fraudulent use of personal identification information of another person or possession with intent to fraudulently use that information when the use or possession is “without a legitimate business or professional purpose.”

Relevant to this offense, the bill also provides that a person who possesses 10 or more pieces of personal identification information is presumed to have an intent to fraudulently use that information. This presumption may be rebutted by demonstrating that the possession was authorized by the individual to whom the information relates or that the person possessing the information has a legitimate business or professional purpose for possessing the information.

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 to 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:

- A second degree felony,⁴ punishable by a 3-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 10 or more individuals, but fewer than 20 individuals, without their consent;⁵
- A first degree felony,⁶ punishable by a 5-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 10-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

¹ Section s. 817.568(1)(f), F.S.

² A third degree felony is punishable by up to 5 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 s. 817.568(2)(a), F.S.

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 s. 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 s. 817.568(2)(c), F.S.

⁸ Section s. 817.568(2)(c), F.S.

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

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 amends s. 817.568(2)(a), F.S., to provide that it is a third degree felony to fraudulently use personal identification information of another person or possess with intent to fraudulently use that information when the use or possession is “without a legitimate business or professional purpose.”¹²

Relevant to this offense, the bill also provides that a person who possesses 10 or more pieces of personal identification information is presumed to have an intent to fraudulently use that information. This presumption may be rebutted by demonstration that the possession was authorized by the individual to whom the information relates or that the person possessing the information has a legitimate business or professional purpose for possessing the information.

The effective date of the bill is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill creates a presumption. “Inferences and presumptions are common evidentiary devices frequently encountered in our adversary system. A presumption permits or requires a fact finder to assume the existence of a presumed or ultimate fact after certain basic or preliminary facts have already been established.”¹³

“Presumptions are usually considered to be either permissive or mandatory.”¹⁴ A mandatory presumption violates due process if it impermissibly shifts to the defendant

¹⁰ Section s. 817.568(6), F.S.

¹¹ Section s. 817.568(7), F.S.

¹² The bill does not define “legitimate business or professional purpose.”

¹³ *Ibarrondo v. State*, 1 So3d 226, 232 (Fla. 5th DCA 2008) (citations omitted), *review denied*, 19 So.3d 985 (Fla. 2009).

¹⁴ *Id.*

the State’s burden of proof on the elements of a crime. However, due process is not violated by a permissive inference (sometimes referred to in jurisprudence as a “permissive presumption” or “permissible presumption”) that allows the trier of fact to reject the inference and does not shift to the defendant the State’s burden of proof on the elements of a crime.¹⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not reviewed the bill. However, the Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have an indeterminate prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.568 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹⁵ See *State v. Rolle*, 560 So.2d 1154 (Fla. 1990), *certiorari denied*, 498 U.S. 867 (1990); *Hamilton v. State*, 329 So.2d 238 (Fla. 1976), *appeal dismissed*, 429 U.S. 909 (1976); *Ibarrondo*, *supra*; and *State v. Rygwelski*, 899 So.2d 498 (Fla. 2d DCA 2005). Further, “all inferences and presumptions must pass the ‘rational connection’ test which requires, at minimum, that it must ‘be said that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.’” *State v. Rygwelski*, 899 So.2d at 501, *quoting Leary v. United States*, 395 U.S. 6, 36 (1969).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
