

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

**SPONSOR(S):** Criminal Justice Subcommittee; Articles

**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		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 agencies in Palm Beach, Broward, and Miami-Dade Counties 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 in the Eleventh, Fifteenth, and Seventeenth Circuits; 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 Task Force (Task Force) 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 PII in Palm Beach, Broward, and Miami-Dade Counties.

The Criminal Justice Impact Conference met March 25, 2014 and determined the bill will have an insignificant impact on state prison beds. The bill will have a negative fiscal impact on FDLE of \$318,767 to administer the task force. The bill will have an insignificant positive revenue impact on local governments and State Attorneys. See Fiscal Section.

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.<sup>1</sup> The Federal Trade Commission reports that in 2012, south Florida led the country with 645 identity theft complaints per 100,000 people.<sup>2</sup> Tech security expert Alan Crowetz, believes that Florida's large transient and tourist population may be contributing to Florida's identity theft ranking.<sup>3</sup> "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."<sup>4</sup>

##### **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 felony<sup>5</sup> 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,<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup>

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;

<sup>1</sup> *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](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).

<sup>2</sup> *Id.*

<sup>3</sup> *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).

<sup>4</sup> *Id.*

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup>

## **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 in Palm Beach, Broward, and Miami-Dade Counties 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, Fifteenth, and Seventeenth Circuits; and
- The clerk of the court retains \$1 of the surcharge.

### Task Force

The bill creates s. 817.5686, F.S., to establish the Identity Theft and Fraud Task Force (Task Force) 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 information in Palm Beach, Broward, and Miami-Dade Counties.<sup>10</sup>

The Task Force must consist of the following members or their designees:

- The Special Agent in Charge of FDLE's Miami Regional Operation Center, who serves as chair;
- The Sheriffs of Palm Beach and Broward Counties;
- The Police Chief from the Miami-Dade Police Department;
- The State Attorneys of the Eleventh, Fifteenth, and Seventeenth Circuits; and
- Six members appointed by the chair, consisting of two chiefs of police from Palm Beach County, two chiefs of police from Broward County, and two representatives from the Miami-Dade Police Department.<sup>11</sup>

<sup>9</sup> Section 817.568(1)(f), F.S.

<sup>10</sup> The bill provides the following legislative intent language: The Legislature finds that there is a need to develop and implement a strategy to address the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade Counties.

<sup>11</sup> The bill specifies that Legislature finds that the task force serves a legitimate state, county, and municipal purpose and that service on the task force is consistent with a member's principal service in public office or employment. Therefore, membership on the task force does not disqualify a member from holding any other public office or from being employed by a public entity.

Members of the Task Force must serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. FDLE must provide administrative and support services for the Task Force. The bill requires FDLE to adopt rules pursuant to implement the Task Force.

The Task Force must organize by December 31, 2014, and must meet at least four times per year thereafter. Additional meetings may be held if the chair determines that extraordinary circumstances require such meetings.<sup>12</sup> A majority of the members of the Task Force constitutes a quorum. The chair of the Task Force may appoint subcommittees and subcommittee chairs as necessary in order to address issues related to the Task Force.<sup>13</sup>

The Task Force must coordinate efforts in Palm Beach, Broward, and Miami-Dade Counties to:

- Develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information; and
- Incorporate other objectives reasonably related to the goals of enhancing the investigation and prosecution of the criminal use of personal identification information and a citizen's ability to prevent and detect identity theft and fraud.

By December 1, 2017, the Task Force must submit a report on its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include any recommendations on how to better investigate and prosecute the criminal use of personal identification information. The Task Force dissolves on December 31, 2017.

#### 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 Task Force.

Section 3. Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill requires \$75 of the \$151 surcharge to be 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, Fifteenth, and Seventeenth Circuits. 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 (\$22,669 for local law enforcement grants and \$22,669 for deposit in the State Attorneys Revenue Trust Fund).

##### 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 bill also establishes the Task Force within FDLE. FDLE must provide administrative and support services for the Task Force, which will have a negative workload impact on FDLE.

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<sup>12</sup> Members may appear at meetings by electronic means.

<sup>13</sup> A subcommittee chair serves at the pleasure of the chair.

According to FDLE, administering the task force would require the addition of four FTE at a total cost of \$318,767 for salary, benefits, and expenses.

Position	Position Detail	Salary and Benefits	Equipment and Expenses	Total
Government Analyst I	Coordinate meetings, minutes, analyze funding requests and make funding recommendations, and to prepare quarterly and annual task force reports	\$53,142	\$10,378	\$63,520
Operations Review Specialist	Monitor and report each grant's performance	\$58,296	\$10,378	\$68,674
Accountant II	Track grant awards, expenditures, requests for reimbursements, and prepare financial reports required by the Department of Financial Services	\$41,722	\$10,378	\$52,100
Special Agent	Trained and equipped for identity theft investigations and investigative forensics	\$75,832	\$58,641	\$134,473
<b>Total</b>		<b>\$228,992</b>	<b>\$89,775</b>	<b>\$318,767</b>

#### 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 in Palm Beach, Broward, and Miami-Dade Counties 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 (\$22,669 for local law enforcement grants and \$22,669 for deposit in the State Attorneys Revenue Trust Fund).

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.