



Judiciary Committee

**Wednesday, March 11, 2015
1:00 PM – 3:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Charles McBurney
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Wednesday, March 11, 2015 01:00 pm
End Date and Time: Wednesday, March 11, 2015 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 71 Service Animals by Smith
CS/CS/HB 157 Fraud by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Passidomo
CS/CS/HB 175 Electronic Commerce by Economic Development & Tourism Subcommittee, Civil Justice Subcommittee, Spano
HB 193 Crime Stoppers Trust Fund by Broxson
HB 283 Transfers to Minors by Berman
CS/HB 493 Carrying a Concealed Weapon or a Concealed Firearm by Criminal Justice Subcommittee, Fitzenhagen
HB 7001 Intercepting and Recording Oral Communications by Criminal Justice Subcommittee, Trujillo, Moskowitz
HB 7059 Offenses Concerning Racketeering and Illegal Debts by Civil Justice Subcommittee, Passidomo
HB 7061 Pub. Rec./Florida RICO Act by Civil Justice Subcommittee, Passidomo

NOTICE FINALIZED on 03/09/2015 16:03 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 71 Service Animals
SPONSOR(S): Smith and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N	Toliver	Williamson
2) Judiciary Committee		Weber <i>W</i>	Havlicak <i>RH</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law provides that an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, public employment, and housing accommodations. The individual may be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy. Any person who denies or interferes with the right of a person with a disability or a service animal trainer to access a place of public accommodation commits a second degree misdemeanor.

The bill revises the definition of the term "individual with a disability" to add an individual with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined, in part, as a physiological disorder or condition that affects at least one bodily function or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders. The term "major life activity" is defined as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The bill expands the definition of the term "public accommodation" to include a timeshare that is a transient public lodging establishment. In addition, the bill clarifies that the term "service animal" as applied to an air carrier covered by the federal Air Carrier Access Act of 1986 has the same meaning as provided in that act and rules promulgated to implement it.

The bill requires a public accommodation to modify its policies to permit the use of a service animal by an individual with a disability. The bill further specifies that a public accommodation may not ask about the nature or extent of an individual's disability in order to determine if an animal is a service animal or pet. However, a public accommodation may ask if the animal is a service animal required because of a disability and what work the animal has been trained to perform. Additionally, the bill requires a service animal to be kept under the control of its handler. The bill authorizes a public accommodation to remove the animal if the animal is not under the handler's control, is not housebroken, or poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or service animal trainer to use a place of public accommodation is modified to include the requirement that a person also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court.

Finally, the bill provides that knowingly and willfully misrepresenting oneself as being qualified to use a service animal or being a trainer of a service animal is a second degree misdemeanor. It also requires the person to perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity, at the discretion of the court.

The bill may have an insignificant, fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Americans with Disabilities Act¹

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities² in employment,³ the provision of public services,⁴ and in public accommodations.⁵ This prohibition requires entities covered by the law to provide reasonable accommodations to disabled persons. One such accommodation provides that a disabled person is entitled to be accompanied by a service animal⁶ in all areas of a public accommodation or a public entity that is otherwise open to the public.⁷ A public accommodation or a public entity may not ask about the nature of a person's disability, but may ask if an animal is required because of a disability, and may ask what tasks the animal has been trained to perform.⁸ A public accommodation or a public entity may remove a service animal if it is out of control and the animal's handler does not take effective action to remove it, or if the animal is not housebroken.⁹

Air Carrier Access Act of 1986¹⁰

The federal Air Carrier Access Act of 1986 provides that no air carrier may discriminate in providing air transportation against an otherwise qualified individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or who is regarded as having such an impairment.¹¹ Federal law further provides that generally a state may not enact or enforce a law related to a price, route, or service of an air carrier covered under applicable law.¹²

Federal regulations promulgated by the United States Department of Transportation provide for the use of service and emotional support animals on air carriers, and allow the use of service animals for those with psychiatric disabilities on air carriers.¹³

Federal Fair Housing Act¹⁴

The federal Fair Housing Act (FHA) prohibits any person from discriminating in the sale or rental of a dwelling based on a handicap.^{15, 16} Failure to provide a reasonable accommodation, including permitting

¹ 42 U.S.C. s. 12101, *et seq.*

² Under the ADA, the term "disability" means a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).

³ 42 U.S.C. s. 12112.

⁴ 42 U.S.C. s. 12132.

⁵ 42 U.S.C. s. 12182.

⁶ The term "service animal" is defined in part as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[...]The work or tasks performed by a service animal must be directly related to the individual's disability...[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." 28 C.F.R. s. 35.104.

⁷ 28 C.F.R. ss. 35.136(g) and 36.302(c)(7).

⁸ 28 C.F.R. s. 35.136(f).

⁹ 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

¹⁰ 49 U.S.C. s. 41705.

¹¹ *Id.*

¹² 49 U.S.C. s. 41713.

¹³ 14 C.F.R. s. 382.117

¹⁴ 42 U.S.C. s. 3601, *et seq.*

¹⁵ Under the FHA, the definition of the term "handicap" mirrors the definition of the term "disability" under the ADA. *See* 42 U.S.C. s. 3602(h) and 3604(f). *See supra*, fn 2. Nevertheless, the United States Department of Justice and the United States Department of Housing and Urban Development, who jointly administer the FHA under 42 U.S.C. ss. 3614(a) and 3612(a), contend that ADA's definition of "service animals" should not inform the FHA's broader definition of assistance animals. *See Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236, 2010 WL 3561890, (Sept 15, 2010); *Pet Ownership for the Elderly and Persons with Disabilities*, 73 Fed. Reg. 63834, 2008 WL 4690497 (Oct. 27, 2008).

the use of an assistance animal, to a disabled person may constitute a violation of the prohibition on discrimination based on a handicap.¹⁷ Accommodation of untrained emotional support animals also may be required under the FHA if such accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.¹⁸

Florida Service Animal Law

Florida law provides that an individual with a disability¹⁹ is entitled to equal privileges of access in public accommodations,²⁰ public employment,²¹ and housing accommodations.²² An individual with a disability has the right to be accompanied by a trained service animal²³ in all areas of public accommodations that the public is normally allowed to occupy.²⁴ A trainer of a service animal, while engaged in the training of the animal, has the same rights of access and obligations of liability for damage as an individual with a disability who is accompanied by a service animal.²⁵ Public accommodations are not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.²⁶

Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal.²⁷ A public accommodation may ask an individual with a service animal if the animal is a service animal and what tasks the animal has been trained to perform.²⁸ A public accommodation may remove a service animal if the animal poses a direct threat to the health and safety of others. Allergies and fear of animals are not sufficient for removal.²⁹ While no deposit may be required of a disabled individual as a precondition of allowing that person to be accompanied by a service animal, the individual is responsible for the care of the animal and for damage caused by the animal.³⁰ If a service animal is removed by the public accommodation, it must provide the disabled individual the option of continuing access to the public accommodation without having the service animal on the premises.³¹

¹⁶ 42 U.S.C. s. 3604(f).

¹⁷ See 24 C.F.R. ss. 5.303 and 960.705.

¹⁸ *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because “plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation...”); *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (the court held that “the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability.”)

¹⁹ The term “individual with a disability” means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled. Section 413.08(1)(b), F.S.

²⁰ Section 413.08(2), F.S. The term “public accommodation” means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited. Section 413.08(1)(c), F.S.

²¹ Section 413.08(5), F.S.

²² Section 413.08(6), F.S. The term “housing accommodation” means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein. Section 413.08(1)(a), F.S.

²³ The term “service animal” means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet. Section 413.08(1)(d), F.S.

²⁴ Section 413.08(3), F.S.

²⁵ Section 413.08(8), F.S.

²⁶ Section 413.08(2), F.S.

²⁷ Section 413.08(3)(a), F.S.

²⁸ *Id.*

²⁹ Section 413.08(3)(e), F.S.

³⁰ Section 413.08(3)(b) and (c), F.S.

³¹ Section 413.08(3) (e), F.S.

Any person who denies or interferes with the rights of access to public accommodations, or otherwise interferes with the rights, of a person with a disability or a trainer of a service animal while engaged in the training of such an animal, commits a second degree misdemeanor,³² punishable by imprisonment of up to 60 days or a fine not to exceed \$500.³³

It is the policy of the state that individuals with a disability be employed by the state or its subdivisions, or in other employment funded in whole or in part by public funds. An individual with a disability may not be refused employment on the basis of disability alone, unless it is shown that the particular disability prevents the performance of the work involved.³⁴ A covered employer who discriminates in employment against a person with a disability commits a second degree misdemeanor, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.³⁵

An individual with a disability is entitled to rent, lease, or purchase any housing accommodations subject to the same conditions that are applicable to all persons.³⁶ An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for such animal. The individual is liable for any harm to the premises or another person on the premises caused by the animal.³⁷

Effect of the Bill

The bill revises the definition of the term "individual with a disability" to add a person with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined, in part, as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The bill also defines the term "major life activity" as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The bill specifically includes within the definition of "public accommodation" a timeshare that is a transient public lodging establishment as defined in s. 509.013, F.S.³⁸

The bill expands the definition of "service animal" to add animals trained to work or perform tasks to assist with physical, sensory, psychiatric, intellectual, or other mental disabilities. The work or tasks performed for the purpose of the definition must be directly related to the disability,³⁹ and do not include any crime-deterrent effect due to an animal's presence or the provision of emotional support, well-being, comfort, or companionship. The bill specifies that for subsections (2), (3), and (4) of s. 413.08, F.S., a service animal is limited to a dog or miniature horse. However, the bill clarifies that the term

³² Section 413.08(4), F.S.

³³ Sections 775.082 and 775.083, F.S.

³⁴ Section 413.08(5), F.S.

³⁵ Section 413.08(7), F.S.

³⁶ Section 413.08(6), F.S.

³⁷ Section 413.08(6)(b), F.S.

³⁸ The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. Section 509.013(4)(a)1., F.S.

³⁹ The bill provides that the work or tasks a service animal may perform include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks.

“service animal” as applied to an air carrier covered by the federal Air Carrier Access Act of 1986 has the same meaning as provided in that act and rules promulgated to implement it.⁴⁰

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler. Specifically, the service animal must have a harness, leash, or other tether. The service animal must be under the handler's control by means of voice control, signals, or other effective means if the handler is unable to use a harness, leash, or other tether, because of a disability or because the use of such would interfere with the service animal's safe, effective performance of work or tasks.

A public accommodation may remove the animal if it is not under the handler's control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill modifies current criminal penalty provisions applicable to any person who interferes with the admittance to or enjoyment of a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of an animal. It requires the person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court, to be completed in not more than six months.

The bill clarifies that s. 413.08, F.S., which provides that an individual with a disability is entitled to access to housing accommodations on the same conditions applicable to all persons, does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

Finally, the bill provides that it is a second degree misdemeanor for a person to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal, punishable by imprisonment of up to 60 days or a fine not to exceed \$500.⁴¹ In addition, such person must perform 30 hours of community service for an organization that serves individuals with disabilities or another entity, at the discretion of the court, to be completed in not more than six months.

B. SECTION DIRECTORY:

Section 1 amends s. 413.08, F.S., relating to service animals and the rights and responsibilities of an individual with a disability.

Section 2 provides an effective date of July 1, 2015.

⁴⁰ Federal regulations provide that identification cards, written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal may all demonstrate that an animal is a service animal. 14 C.F.R. s. 382.117(d).

⁴¹ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill provides that knowingly and willfully misrepresenting oneself to be qualified to use a service animal or to be a trainer of a service animal is a second degree misdemeanor. The fiscal impact associated with the new penalty is likely to be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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1 A bill to be entitled
 2 An act relating to service animals; amending s.
 3 413.08, F.S.; providing and revising definitions;
 4 requiring a public accommodation to permit use of a
 5 service animal by an individual with a disability
 6 under certain circumstances; providing conditions for
 7 a public accommodation to exclude or remove a service
 8 animal; revising penalties for certain persons or
 9 entities who interfere with use of a service animal in
 10 specified circumstances; providing a penalty for
 11 knowing and willful misrepresentation with respect to
 12 use or training of a service animal; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 413.08, Florida Statutes, is amended to
 18 read:

19 413.08 Rights and responsibilities of an individual with a
 20 disability; use of a service animal; prohibited discrimination
 21 in public employment, public accommodations, and ~~or~~ housing
 22 accommodations; penalties.—

23 (1) As used in this section and s. 413.081, the term:

24 (a) "Housing accommodation" means any real property or
 25 portion thereof which is used or occupied, or intended,
 26 arranged, or designed to be used or occupied, as the home,

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27 residence, or sleeping place of one or more persons, but does
 28 not include any single-family residence, the occupants of which
 29 rent, lease, or furnish for compensation not more than one room
 30 therein.

31 (b) "Individual with a disability" means a person who has
 32 a physical or mental impairment that substantially limits one or
 33 more major life activities of the individual ~~is deaf, hard of~~
 34 ~~hearing, blind, visually impaired, or otherwise physically~~
 35 ~~disabled~~. As used in this paragraph, the term:

36 1. "Major life activity" means a function such as caring
 37 for one's self, performing manual tasks, walking, seeing,
 38 hearing, speaking, breathing, learning, and working ~~"Hard of~~
 39 ~~hearing" means an individual who has suffered a permanent~~
 40 ~~hearing impairment that is severe enough to necessitate the use~~
 41 ~~of amplification devices to discriminate speech sounds in verbal~~
 42 ~~communication.~~

43 2. "Physical or mental impairment" means:

44 a. A physiological disorder or condition, disfigurement,
 45 or anatomical loss that affects one or more bodily functions; or

46 b. A mental or psychological disorder that meets one of
 47 the diagnostic categories specified in the most recent edition
 48 of the Diagnostic and Statistical Manual of Mental Disorders
 49 published by the American Psychiatric Association, such as an
 50 intellectual or developmental disability, organic brain
 51 syndrome, traumatic brain injury, posttraumatic stress disorder,
 52 or an emotional or mental illness ~~"Physically disabled" means~~

53 ~~any person who has a physical impairment that substantially~~
 54 ~~limits one or more major life activities.~~

55 (c) "Public accommodation" means a common carrier,
 56 airplane, motor vehicle, railroad train, motor bus, streetcar,
 57 boat, or other public conveyance or mode of transportation;
 58 hotel; a timeshare that is a transient public lodging
 59 establishment as defined in s. 509.013; lodging place; place of
 60 public accommodation, amusement, or resort; and other places to
 61 which the general public is invited, subject only to the
 62 conditions and limitations established by law and applicable
 63 alike to all persons.

64 (d) "Service animal" means an animal that is trained to do
 65 work or perform tasks for an individual with a disability,
 66 including a physical, sensory, psychiatric, intellectual, or
 67 other mental disability. The work done or tasks performed must
 68 be directly related to the individual's disability and may
 69 include, but are not limited to, guiding an individual ~~a person~~
 70 who is visually impaired or blind, alerting an individual ~~a~~
 71 ~~person~~ who is deaf or hard of hearing, pulling a wheelchair,
 72 assisting with mobility or balance, alerting and protecting an
 73 individual ~~a person~~ who is having a seizure, retrieving objects,
 74 alerting an individual to the presence of allergens, providing
 75 physical support and assistance with balance and stability to an
 76 individual with a mobility disability, helping an individual
 77 with a psychiatric or neurological disability by preventing or
 78 interrupting impulsive or destructive behaviors, reminding an

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79 individual with mental illness to take prescribed medications,
80 calming an individual with posttraumatic stress disorder during
81 an anxiety attack, or doing other specific work or performing
82 other special tasks. A service animal is not a pet. For purposes
83 of subsections (2), (3), and (4), the term "service animal" is
84 limited to a dog or miniature horse, except that the term, as
85 applied to an air carrier covered by the Air Carrier Access Act
86 of 1986, 49 U.S.C. s. 41705, shall be as provided in the act and
87 by regulations adopted by the United States Department of
88 Transportation that implement the act. The crime-deterrent
89 effect of an animal's presence and the provision of emotional
90 support, well-being, comfort, or companionship do not constitute
91 work or tasks for purposes of this definition.

92 (2) An individual with a disability is entitled to full
93 and equal accommodations, advantages, facilities, and privileges
94 in all public accommodations. A public accommodation must modify
95 its policies, practices, and procedures to permit use of a
96 service animal by an individual with a disability. This section
97 does not require any person, firm, business, or corporation, or
98 any agent thereof, to modify or provide any vehicle, premises,
99 facility, or service to a higher degree of accommodation than is
100 required for a person not so disabled.

101 (3) An individual with a disability has the right to be
102 accompanied by a service animal in all areas of a public
103 accommodation that the public or customers are normally
104 permitted to occupy.

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105 (a) The service animal must be under the control of its
 106 handler and must have a harness, leash, or other tether, unless
 107 either the handler is unable because of a disability to use a
 108 harness, leash, or other tether, or the use of a harness, leash,
 109 or other tether would interfere with the service animal's safe,
 110 effective performance of work or tasks, in which case the
 111 service animal must be otherwise under the handler's control by
 112 means of voice control, signals, or other effective means.

113 (b) ~~(a)~~ Documentation that the service animal is trained is
 114 not a precondition for providing service to an individual
 115 accompanied by a service animal. A public accommodation may not
 116 ask about the nature or extent of an individual's disability. To
 117 determine the difference between a service animal and a pet, a
 118 public accommodation may ask if an animal is a service animal
 119 required because of a disability and what work or ~~what~~ tasks the
 120 animal has been trained to perform ~~in order to determine the~~
 121 ~~difference between a service animal and a pet.~~

122 (c) ~~(b)~~ A public accommodation may not impose a deposit or
 123 surcharge on an individual with a disability as a precondition
 124 to permitting a service animal to accompany the individual with
 125 a disability, even if a deposit is routinely required for pets.

126 (d) ~~(e)~~ An individual with a disability is liable for
 127 damage caused by a service animal if it is the regular policy
 128 and practice of the public accommodation to charge nondisabled
 129 persons for damages caused by their pets.

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130 ~~(e)~~ (d) The care or supervision of a service animal is the
 131 responsibility of the individual owner. A public accommodation
 132 is not required to provide care or food or a special location
 133 for the service animal or assistance with removing animal
 134 excrement.

135 ~~(f)~~ (e) A public accommodation may exclude or remove any
 136 animal from the premises, including a service animal, if the
 137 animal is out of control and the animal's handler does not take
 138 effective action to control it, the animal is not housebroken,
 139 or the animal's behavior poses a direct threat to the health and
 140 safety of others. Allergies and fear of animals are not valid
 141 reasons for denying access or refusing service to an individual
 142 with a service animal. If a service animal is excluded or
 143 removed for being a direct threat to others, the public
 144 accommodation must provide the individual with a disability the
 145 option of continuing access to the public accommodation without
 146 having the service animal on the premises.

147 (4) Any person, firm, or corporation, or the agent of any
 148 person, firm, or corporation, who denies or interferes with
 149 admittance to, or enjoyment of, a public accommodation or, with
 150 regard to a public accommodation, otherwise interferes with the
 151 rights of an individual with a disability or the trainer of a
 152 service animal while engaged in the training of such an animal
 153 pursuant to subsection (8), commits a misdemeanor of the second
 154 degree, punishable as provided in s. 775.082 or s. 775.083 and
 155 must perform 30 hours of community service for an organization

156 that serves individuals with disabilities, or for another entity
 157 or organization at the discretion of the court, to be completed
 158 in not more than 6 months.

159 (5) It is the policy of this state that an individual with
 160 a disability be employed in the service of the state or
 161 political subdivisions of the state, in the public schools, and
 162 in all other employment supported in whole or in part by public
 163 funds, and an employer may not refuse employment to such a
 164 person on the basis of the disability alone, unless it is shown
 165 that the particular disability prevents the satisfactory
 166 performance of the work involved.

167 (6) An individual with a disability is entitled to rent,
 168 lease, or purchase, as other members of the general public, any
 169 housing accommodations offered for rent, lease, or other
 170 compensation in this state, subject to the conditions and
 171 limitations established by law and applicable alike to all
 172 persons.

173 (a) This section does not require any person renting,
 174 leasing, or otherwise providing real property for compensation
 175 to modify her or his property in any way or provide a higher
 176 degree of care for an individual with a disability than for a
 177 person who is not disabled.

178 (b) An individual with a disability who has a service
 179 animal or who obtains a service animal is entitled to full and
 180 equal access to all housing accommodations provided for in this
 181 section, and such a person may not be required to pay extra

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182 compensation for such ~~the service~~ animal. However, such a person
 183 is liable for any damage done to the premises or to another
 184 person on the premises by the ~~such an~~ animal. A housing
 185 accommodation may request proof of compliance with vaccination
 186 requirements.

187 (c) This subsection does not limit the rights or remedies
 188 of a housing accommodation or an individual with a disability
 189 that are granted by federal law or another law of this state
 190 with regard to other assistance animals.

191 (7) An employer covered under subsection (5) who
 192 discriminates against an individual with a disability in
 193 employment, unless it is shown that the particular disability
 194 prevents the satisfactory performance of the work involved, or
 195 any person, firm, or corporation, or the agent of any person,
 196 firm, or corporation, providing housing accommodations as
 197 provided in subsection (6) who discriminates against an
 198 individual with a disability, commits a misdemeanor of the
 199 second degree, punishable as provided in s. 775.082 or s.
 200 775.083.

201 (8) Any trainer of a service animal, while engaged in the
 202 training of such an animal, has the same rights and privileges
 203 with respect to access to public facilities and the same
 204 liability for damage as is provided for those persons described
 205 in subsection (3) accompanied by service animals.

206 (9) A person who knowingly and willfully misrepresents
 207 herself or himself, through conduct or verbal or written notice,

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208 | as using a service animal and being qualified to use a service
209 | animal or as a trainer of a service animal commits a misdemeanor
210 | of the second degree, punishable as provided in s. 775.082 or s.
211 | 775.083 and must perform 30 hours of community service for an
212 | organization that serves individuals with disabilities, or for
213 | another entity or organization at the discretion of the court,
214 | to be completed in not more than 6 months.

215 | Section 2. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Smith offered the following:

Amendment

5 Remove lines 63-88 and insert:

6 alike to all persons. The term does not include air carriers
 7 covered by the Air Carrier Access Act of 1986, 49 U.S.C. s.
 8 41705, and by regulations that implement such act that are
 9 adopted by the United States Department of Transportation.

10 (d) "Service animal" means an animal that is trained to do
 11 work or perform tasks for an individual with a disability,
 12 including a physical, sensory, psychiatric, intellectual, or
 13 other mental disability. The work done or tasks performed must
 14 be directly related to the individual's disability and may
 15 include, but are not limited to, guiding an individual a person
 16 who is visually impaired or blind, alerting an individual a
 17 person who is deaf or hard of hearing, pulling a wheelchair,



Amendment No. 1

18 assisting with mobility or balance, alerting and protecting an
19 individual ~~a person~~ who is having a seizure, retrieving objects,
20 alerting an individual to the presence of allergens, providing
21 physical support and assistance with balance and stability to an
22 individual with a mobility disability, helping an individual
23 with a psychiatric or neurological disability by preventing or
24 interrupting impulsive or destructive behaviors, reminding an
25 individual with mental illness to take prescribed medications,
26 calming an individual with posttraumatic stress disorder during
27 an anxiety attack, or doing other specific work or performing
28 other special tasks. A service animal is not a pet. For purposes
29 of subsections (2), (3), and (4), the term "service animal" is
30 limited to a dog or miniature horse. The crime-deterrent

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 157 Fraud

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Passidomo and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Cox <i>Mac</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. Specifically, the bill:

- Makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use;
- Requires a business entity to release documents related to an identity theft incident to a victim after specified requirements are satisfied and provides protections to such business entities who release such information in good faith;
- Expands the application of criminal use of personal identification to include those who unlawfully use the personal identification information of a business entity (rather than an individual) or a dissolved business entity;
- Defines "business entity" and replaces the terms "corporation" and "firm," with the term "business entity," to ensure that all entities legally conducting business in Florida receive the protections of ch. 817, F.S.;
- Adds advertisements published electronically to the definition of misleading advertisements;
- Prohibits a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured;
- Prohibits specified persons from fraudulently issuing, transferring, or fraudulently signing an indicia of membership interest with a limited liability company with the intent that the interest be issued or transferred by himself, herself, or another person;
- Prohibits a person from knowingly providing false information that becomes part of a public record; and
- Increases the criminal penalty of fraudulently obtaining goods or services from a health care provider from a second degree misdemeanor to a third degree felony.

The Criminal Justice Impact Conference met February 27, 2015, and determined this bill will have an indeterminate impact on state prison beds. This bill expands the application of certain offenses to include business entities, and the number of new potential victims cannot be determined. Additionally, to the extent that more defendants will be required to pay the \$1,001 surcharge imposed by s. 817.568, F.S., the bill will likely result in an indeterminate positive fiscal impact on the Florida Department of Law Enforcement, State Attorneys, and Public Defenders. The bill expands the application of several misdemeanor offenses found in ch. 817, F.S. To the extent that this increases the number of defendants subject to misdemeanor penalties, the bill will likely result in an indeterminate negative fiscal impact on county jails.

The bill is effective on October 1, 2015.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/9/2015

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft Against Individual Consumers

Identity theft is the criminal act of taking a victim's identity for the purpose of obtaining credit, credit cards, money from a victim's accounts, loans, automobiles and residences, and even obtaining employment.¹ A person needs very little information to commit identity theft, such as a victim's social security number, birth date, address, and phone number.²

The Consumer Sentinel Network (CSN) is a secure online database of millions of consumer complaints available only to law enforcement. In addition to storing complaints received by the Federal Trade Commission, CSN also includes complaints filed with state law enforcement organizations.³ During the 2013 calendar year, CSN received over one million fraud-related complaints.⁴ Florida is cited as the state with the highest per capita rate of both fraud (157,383) and identity theft (37,720) complaints.⁵

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. A detailed description of these changes follows.

Obtaining Property by False Personation

Section 817.02, F.S., makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use.⁶

Effect of the Bill

The bill amends s. 817.02, F.S., to make it unlawful for a person to falsely personate or represent another person if, while doing so, he or she damages the credit history or rating of, or otherwise causes harm to, the person whose identity has been assumed through the taking of property.⁷

Additionally, the bill amends s. 817.02, F.S., to:

- Authorize the court to issue any orders necessary to correct a public record that contains false information given in violation of s. 817.02, F.S.;
- Authorize the court to order restitution for:
 - The victim's out-of-pocket expenses, including attorney fees and fees associated with services provided by certified public accountants licensed under ch. 473, F.S., incurred by the victim in clearing the victim's credit history or credit rating; or
 - Costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.⁸

¹ *About Identity Theft Crimes*, Attorney General Pam Bondi website, <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited January 27, 2015).

² *Id.*

³ CSN Data book for January – December 2013, <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> (last visited January 27, 2015).

⁴ *Id.* at 3.

⁵ *Id.* at 15.

⁶ Persons who violate s. 817.02, F.S., are punished as if they had been convicted of larceny. Prohibited acts previously referred to as larceny are currently prosecuted under the general theft statute, s. 812.014, F.S., which provides punishments primarily based upon the dollar value of the stolen property.

⁷ This provision is limited to instances that are not subject to s. 817.568, F.S., which establishes a variety of crimes related to the fraudulent use of personal identification information.

- Create a civil cause of action, as provided in s. 772.11, F.S.,⁹ for victims¹⁰ of persons who violate s. 817.02, F.S.

Information Available to Identity Theft Victims

Florida law does not currently require business entities to provide identity theft victims or law enforcement agencies with documents associated with the fraudulent use of a person's identity. The lack of such requirements can make the process of restoring one's identity more difficult for a victim.

Effect of the Bill

The bill creates s. 817.032, F.S., which establishes a process in which identity theft victims¹¹ can make a formal request to a business entity¹² for documents related to the identity theft incident when the business entity has provided credit to; provided for consideration products, goods, or services to; accepted payment from; or otherwise entered into a commercial transaction for consideration with, a person who has allegedly used the identity of the victim unlawfully.

This process starts when a victim makes a request. The request must:

- Be in writing;
- Be mailed or delivered to an address specified by the business entity, if any; and
- If asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft, including, if known by the victim or readily obtainable by the victim:
 - The date of the application or transaction; or
 - Any other identifying information such as an account number or transaction number.

Before providing any records, the business entity must verify the identity of the victim and the veracity of the identity theft claim.¹³ As proof of positive identification, the business entity may request from the victim a:

- A government-issued identification card;
- Personal identifying information of the same type as provided to the business entity by the unauthorized person; or
- Personal identifying information that the business entity typically requests from new applicants or for new transactions.

As proof of a claim of identity theft, the business entity may request from the victim a:

- Copy of a police report evidencing the claim of the victim of identity theft; or
- Properly completed affidavit of fact that is acceptable to the business entity.

Within 30 days of receiving a request (and subject to verification), the business entity must provide, free of charge, a copy of the application and business transaction records in the control of the business entity¹⁴ evidencing any transaction alleged to be a result of identity theft to:

- The victim;

⁸ This may be ordered in addition to any restitution that may be ordered pursuant to s. 775.089, F.S., which requires a judge to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode.

⁹ Section 772.11, F.S., creates a civil remedy for any person who is the victim of theft or exploitation.

¹⁰ For purposes of this provision, "victim" includes a person whose identity was falsely personated or who suffers a loss of property as a result of the false personation.

¹¹ The bill defines "victim" for purposes of s. 817.032, F.S., as "a person whose means of identification or financial information is used or transferred or is alleged to be used or transferred without the authority of that person with the intent to commit or to aid or abet an identity theft or a similar crime."

¹² The bill defines "business entity" for purposes of all of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

¹³ Unless the business entity has a high degree of confidence that it knows the identity of the victim.

¹⁴ Whether maintained by the business entity or by another person on behalf of the business entity.

- A federal, state, or local government law enforcement agency or officer specified by the victim in the request; or
- A law enforcement agency investigating the identity theft and authorized by the victim to take receipt of the records.

This does not apply to a third-party providing a service to effect, administer, facilitate, process, or enforce a financial transaction initiated by an individual.

A business entity may decline to provide the above-listed information if, in the exercise of good faith, the business entity determines:

- Disclosure is not required under s. 817.032, F.S.;
- After reviewing the identifying information provided pursuant to subsection (3), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;
- The request for the information is based on a misrepresentation of fact by the individual requesting the information;
- The information requested is Internet navigational data or similar information about a person's visit to a website or online service; or
- The disclosure is otherwise prohibited by state or federal law.

The bill provides that a business entity cannot be held civilly liable for disclosure made in good faith pursuant to s. 817.032, F.S., or for a decision to decline to provide information, and that an obligation is not created on the part of a business entity to maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

The bill creates an affirmative defense for any civil action brought to enforce s. 817.032, F.S., providing that a business entity may file an affidavit or answer stating that the business entity has made a reasonable diligent search of its available business records and the records requested under this section do not exist or are not reasonably available. The affirmative defense must be established by a preponderance of the evidence.

Identity Theft Against Businesses

Business identity theft is essentially the same as personal identity theft, except the identity stolen is that of a company or other business entity, and the damage is usually much more severe.¹⁵ All information necessary to take a business' identity, such as the company name or Federal Employee Identification Number, is readily available on the website for the Florida Department of State, Division of Corporations.¹⁶ The Florida Department of State estimates that 60% of businesses that fall victim to business identity theft will fail within one year of the incident.¹⁷ The National Association of Secretaries of State (NASS) has authored a white paper on the increasing trend of business identity theft and the role that Secretaries of States are playing in thieves obtaining the information needed to complete the fraud.¹⁸ NASS reports identity theft thieves also target businesses that are no longer in operation, often referred to as "dormant" or "dissolved entities." These entities are vulnerable because their owners are less likely to be monitoring state-held business registration information.¹⁹

¹⁵ Kellian, Mark, *Business Identity Theft is on the Rise*, The Florida Bar News (January 15, 2013)[hereinafter cited as Florida Bar News].

¹⁶ www.sunbiz.org

¹⁷ Florida Bar News.

¹⁸ *Developing State Solutions to Business Identity Theft, Assistance, Prevention, and Detection Efforts by Secretary of State Offices*, National Association of Secretaries of State, <http://www.nass.org/nass-initiatives/business-id-theft/> (last visited January 27, 2015)[hereinafter cited as NASS Report].

¹⁹ Florida Bar News and NASS Report.

Criminal Use of Personal Identification Information

Section 817.568, F.S., relates to the criminal use of personal identification information (PII).

“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 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;
- 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.²⁰

Section 817.568(2), F.S., makes it a third degree felony²¹ for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, PII concerning an individual without first obtaining that individual’s consent. A person who fraudulently uses PII:

- Commits a second degree felony,²² 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 PII of 10 or more individuals, but fewer than 20 individuals, without their consent;²³
- Commits a first degree felony,²⁴ 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 PII of 20 or more but fewer than 30 individuals;²⁵ 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 PII of 30 or more individuals.²⁶

Section 817.568(4), F.S., makes it a first degree misdemeanor²⁷ for any person to willfully and without authorization possess, use, or attempt to use the PII of an individual without first obtaining that individual’s consent, provided such use is done for the purpose of harassing such individual.

Section 817.568(9), F.S., makes it a third degree felony for any person to willfully and fraudulently create or use, or possess with intent to fraudulently use, counterfeit or fictitious PII concerning a fictitious individual, or concerning a real individual without first obtaining that real individual’s consent, with intent to use such counterfeit or fictitious PII for the purpose of committing or facilitating the commission of a fraud on another person.

Section 817.568(8), F.S., makes it a second degree felony for a person to fraudulently use, or possess with the intent to fraudulently use, the PII of a deceased individual. A person who fraudulently uses PII:

²⁰ Section 817.568(1)(f), F.S.

²¹ 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.

²² 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.

²³ Section 817.568(2)(b), F.S.

²⁴ 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.

²⁵ Section 817.568(2)(c), F.S.

²⁶ Section 817.568(2)(c), F.S.

²⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

- Commits a second degree felony, 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 PII of 10 or more individuals, but fewer than 20 deceased individuals;²⁸
- Commits a first degree felony, 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 PII of 20 or more but fewer than 30 deceased individuals;²⁹ 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 PII of 30 or more deceased individuals.³⁰

Section 817.568(8), F.S., does not address the fraudulent use of PII of a dissolved business entity.

Effect of the Bill

As noted above, subsections (2), (4), and (9), of s. 817.568, F.S., currently use the term “individual.” An “individual” is defined as “a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.”³¹ Thus, if a person uses the PII of a business entity, such person will not be subject to the criminal penalties found in any of these provisions.

The bill amends subsections (2), (4), and (9) of s. 817.568, F.S., to exchange the term “individual” with “person.” Section 817.568(1)(e), F.S., defines “person” to “include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”³² This change expands the application of these offenses to include those who unlawfully use the PII of a business entity.

The bill also amends s. 817.568(8), F.S., to include “dissolved business entities.” This subjects a person to the criminal penalties of this provision if they fraudulently use, or possess with the intent to fraudulently use, the PII of both deceased individuals and dissolved business entities.

Fraud Protections for Corporations

Section 817.15, F.S., makes it a third degree felony for any:

- Officer, agent, clerk, or servant of a corporation to make a false entry in the corporation’s books with the intent to defraud; or
- Person who has the duty to record in the corporation’s books the transfer of stock, issuing and cancelling of certificates, or the amount of stock issued by the corporation to omit such entry with the intent to defraud.

Section 817.39, F.S., makes it a second degree misdemeanor³³ for any person, firm, or corporation to print, for the purpose of sale, distribution, or use in Florida, or to circulate, publish, use, or offer for sale, documents that:

- Simulate a form of court or legal process, such as a letter, paper, document, or notice of intent to bring suit or demand; or
- Simulate the seal of the state, or the stationary of a state agency or fictitious state agency.

²⁸ Section 817.568(8)(b), F.S.

²⁹ Section 817.568(8)(c), F.S.

³⁰ *Id.*

³¹ Section 817.568(1)(d), F.S.

³² Section 1.01(3), F.S.

³³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

Section 817.411, F.S., prohibits a person, firm, or corporation from knowingly publishing, disseminating, circulating, or placing (publish) before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement (advertisement) containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

The above-described statutes address businesses, rather than individuals. The term currently used in these sections is "corporation," which is defined as "a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the Florida Business Corporation Act, or ch. 607, F.S."³⁴ Businesses operating in Florida often set up as entities such as limited-liability companies, partnerships, etc., which are not captured by the term "corporation." As a result, these other entities legally conducting business in Florida are not afforded the protections of ch. 817, F.S.

Effect of the Bill

The bill creates s. 817.011, F.S., defining "business entity" for purposes of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

The bill amends ss. 817.15, 817.39, and 817.411, F.S., to replace the terms "corporation" and "firm" with the term "business entity." This will ensure that all business entities legally conducting business in Florida will be protected under ch. 817, F.S.

Dissemination of Misleading Information in Advertisements

Several sections within ch. 817, F.S., provide protections to consumers against the dissemination of false, deceptive, or misleading advertisements. Currently, s. 817.40(5), F.S., defines "misleading advertising" to include:

Any statements made, or disseminated, in oral, written, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services.

The definition of misleading advertising does not currently address advertisements that are published electronically.

As noted above, 817.411, F.S., prohibits a person, firm, etc., from knowingly publishing before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

Section 817.412, F.S., makes it a first degree misdemeanor for a seller involved in a transaction involving goods with a purchase price of more than \$100 to misrepresent orally, in writing, or by omission that the goods are new or original when the goods are:

- Used;
- Repossessed; or
- Have been used for sales demonstrations.

³⁴ Section 607.01401(5), F.S.
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Effect of the Bill

The bill amends the definition of "misleading advertising" in s. 817.40, F.S., so that advertisements which are published through electronic means now meet the definition of misleading advertisements, provided all other components apply.

The bill amends s. 817.411, F.S., to prohibit a business entity from knowingly publishing a false advertisement by electronic means. Similarly, the bill amends s. 817.412, F.S., to prohibit a seller from misrepresenting the used status of goods by electronic means.

The bill also creates s. 817.414, F. S., to prohibit the sale of counterfeit security signs and decals. The bill provides that a person who willfully and knowingly sells or attempts to sell a counterfeit sign or decal with the name or logo of a security company without express written consent of the company commits a misdemeanor of the second degree. A second or subsequent offense is punishable as a first degree misdemeanor.

Prohibiting the Use of City Name or Markings

Section 817.17, F.S., prohibits a person engaged in manufacturing in this state from printing, stamping, marking, engraving, or branding, upon any of the articles manufactured by them, or on any of the boxes, packages, or bands containing such manufactured articles, the name of any city in the state, other than for the city in which said articles are manufactured.³⁵ Currently, there is not a criminal penalty associated with violating this provision.

Section 817.18, F.S., makes it a second degree misdemeanor for a person to knowingly sell or offer for sale, within the state, any manufactured articles which have printed, stamped, marked, engraved, or branded upon them, or upon the boxes, packages, or bands containing said manufactured articles, the name of any city in the state, other than the city in which such articles were manufactured.³⁶

Neither ss. 817.17 or 817.18, F.S., address instances in which a person knowingly prints, stamps, etc., the wrong county or political subdivision on manufactured articles.

Effect of the Bill

The bill amends ss. 817.17 and 817.18, F.S., to include the terms "county" and "other political subdivision." This expands the application of these statutes by prohibiting a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured.

Additionally, the bill makes a violation of s. 817.17, F.S., a second degree misdemeanor.

Fraudulent Use of Certificate or Stock of Corporation

Section 817.19, F.S., makes it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person, to fraudulently:

- Issue or transfer a certificate of stock of a corporation to any person not entitled thereto; or
- Sign such certificate, in blank or otherwise, with the intent that it be issued or transferred by himself or herself or any other person.

³⁵ This section does not prohibit any person from offering for sale any goods having marked thereon the name of any city in Florida other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city the name of which is used.

³⁶ This section does not prohibit any person from offering for sale any goods, having marked thereon the name of any city in Florida, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city the name of which is used.

Effect of the Bill

The bill amends s. 817.19, F.S., to also make it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person to fraudulently issue or transfer, or fraudulently sign an *indicia of membership interest with a limited liability company* with the intent that the interest be issued or transferred by himself or herself or another person.

Fraudulently Obtaining Goods or Services from a Health Care Provider

Section 817.50, F.S., makes it a second degree misdemeanor for any person to willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider³⁷ in this state. It is prima facie evidence of the intent to defraud a health care provider if a person:

- Provides the provider with a false or fictitious name;
- Provides the provider with a false or fictitious address; or
- Assigns to the provider the proceeds of any health maintenance contract or insurance contract knowing that such contract is not currently valid for any reason.³⁸

Effect of the Bill

The bill amends s. 817.50, F.S., to reclassify the offense from a second degree misdemeanor to a third degree felony.

Criminal Use of a Public Record or Public Records Information

Section 817.569, F.S., makes it a first degree misdemeanor for a person to knowingly use any public record³⁹ or information obtainable only through such public record to facilitate or further the commission of a first degree misdemeanor. If a person uses the public record to facilitate or further the commission of a felony, the offense is reclassified as a third degree felony.

Effect of the Bill

The bill amends s. 817.569, F.S., to also prohibit a person from knowingly providing false information that becomes part of a public record. If the false information that becomes part of the public record is provided with the purpose of facilitating or furthering the commission of a first degree misdemeanor, the offense is a first degree misdemeanor. The offense is a third degree felony if it is committed to further or facilitate the commission of a felony.

The bill amends s. 921.0022, F.S., the Criminal Punishment Code,⁴⁰ offenses severity ranking chart, to reflect the title changes made by the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.011, F.S., relating to definitions.

Section 2. Amends s. 817.02, F.S., relating to obtaining property by false personation.

Section 3. Creates s. 817.032, F.S., relating to information available to identity theft victims.

³⁷ Section 641.19(14), F.S., defines "provider" to mean "any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in the state."

³⁸ Section 817.50, F.S., provides an exception that it does not apply to investigative actions taken by law enforcement officers for law enforcement purposes.

³⁹ Section 119.011, F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

⁴⁰ Section 921.002, F.S., provides that the Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. A defendant's sentence is calculated based on points assigned for factors (e.g., the offense for which the defendant is being sentenced and injury to the victim). The points are added in order to determine the "lowest permissible sentence" for the offense.

Section 4. Amends s. 817.11, F.S., relating to obtaining property by fraudulent promise to furnish inside information; and transfers and renumbers ss. 817.12 and 817.13, F.S., as subsections (2) and (3) of s. 817.11, F.S.

Section 5. Amends s. 817.14, F.S., relating to procuring assignments of produce upon false representations.

Section 6. Amends s. 817.15, F.S., relating to making false entries, etc., on books of corporation.

Section 7. Amends s. 817.17, F.S., relating to wrongful use of city name.

Section 8. Amends s. 817.18, F.S., relating to wrongful stamping, marking, etc.; penalty.

Section 9. Amends s. 817.19, F.S., relating to fraudulent issue of certificate of stock of corporation.

Section 10. Amends s. 817.39, F.S., relating to simulated forms of court or legal process, or official seal or stationery; publication, sale or circulation unlawful; penalty.

Section 11. Amends s. 817.40, F.S., relating to false, misleading and deceptive advertising and sales; definitions.

Section 12. Amends s. 817.411, F.S., relating to false information; advertising.

Section 13. Amends s. 817.412, F.S., relating to sale of used goods as new; penalty.

Section 14. Creates s. 817.414, F.S., relating to sale of counterfeit security signs and decals.

Section 15. Amends s. 817.481, F.S., relating to credit cards; obtaining goods by use of false, expired, etc.; penalty.

Section 16. Amends s. 817.50, F.S., relating to fraudulently obtaining goods, services, etc., from a health care provider.

Section 17. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 18. Amends s. 817.569, F.S., relating to criminal use of a public record or public records information; penalties.

Section 19. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 20. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expands the language of s. 817.568, F.S., from "individual" to "person," and thus may increase the number of defendants subject to the criminal penalties and \$1,001 surcharge required

by s. 817.568, F.S.⁴¹ This will likely result in an indeterminate positive fiscal impact on the parties that receive deposits from this surcharge, specifically the Florida Department of Law Enforcement, State Attorneys, and Public Defenders.⁴²

2. Expenditures:

The Criminal Justice Impact Conference met February 27, 2015, and determined this bill will have an indeterminate impact on state prison beds. This bill expands the application of certain offenses to include business entities, and the number of new potential victims cannot be determined.

In Fiscal Year 2013-14, 307 offenders were sentenced to prison for fraudulently using personal identification information (s. 817.568) and three offenders were sentenced to prison for fraudulent usage of a certificate or stock (817.19). There were no prison sentences for criminal use of public records information (817.569) or making a false entry into a corporation's books with the intent to defraud (817.15).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the application of the misdemeanor offenses found in ss. 817.17, 817.18, 817.39, and 817.412, 817.414 F.S. This will likely have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses throughout Florida will now be afforded broader protection against all types of fraud and business identity theft. Additionally, individuals will be able to more easily identify when identity theft has occurred and restore their identity and credit after a case of identity theft.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

⁴¹ In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 817.568, F.S., the court must impose a surcharge of \$1,001, to be deposited as follows:

- \$500 into the Department of Law Enforcement Operating Trust Fund for FDLE to provide grants to local law enforcement agencies to investigate offenses related to the criminal use of PII as provided in s. 943.0412, F.S.;
- \$250 into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of PII; and
- \$250 into the Public Defenders Revenue Trust Fund for the purposes of indigent criminal defense related to the criminal use of PII.
- \$1 retained by the clerk of the court.

⁴² Florida Department of Law Enforcement, Agency Bill Analysis (on file with the Criminal Justice Subcommittee).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allows a victim of identity theft to recover fees paid to certified public accountants licensed by ch. 473, F.S., expended in the process of clearing the victim's credit history;
- Clarifies that both individuals and businesses may request documents evidencing identity theft from business entities; and
- Removes duplicative, non-substantive language.

On March 3, 2015, the Justice Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Exempt a third-party providing a service to effect, administer, facilitate, process, or enforce a financial transaction initiated by an individual from the bill's requirement for business entities to provide identity theft victims or law enforcement agencies with documents associated with the fraudulent use of a person's identity.
- Provide that a business entity is not required to provide information if that disclosure is already prohibited by state or federal law.
- Provide a business entity may not be held civilly liable for declining to provide identity theft information if it declines such request in accordance with the bill.
- Prohibit the sale of counterfeit security signs and decals. A person who willfully and knowingly sells or attempts to sell a counterfeit sign or decal with the name or logo of a security company without express written consent of the company commits a misdemeanor of the second degree. A second or subsequent offense is punishable as a first degree misdemeanor.

The analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

27 F.S.; making editorial changes; amending s. 817.15,
28 F.S.; substituting the term "business entity" for the
29 term "corporation"; amending ss. 817.17 and 817.18,
30 F.S.; including counties and other political
31 subdivisions in provisions prohibiting the false
32 marking of goods or packaging with a location of
33 origin; reorganizing penalty provisions; amending s.
34 817.19, F.S.; prohibiting fraudulent issuance of
35 indicia of membership interest in a limited liability
36 company; amending s. 817.39, F.S.; substituting the
37 term "business entity" for the term "corporation";
38 amending s. 817.40, F.S.; specifying that the term
39 "misleading advertising" includes electronic forms of
40 dissemination; amending s. 817.411, F.S.; substituting
41 the term "business entity" for the term "corporation";
42 specifying that certain false statements made through
43 electronic means are prohibited; amending s. 817.412,
44 F.S.; specifying that electronic statements are
45 included in provisions prohibiting false
46 representations of used goods as new; creating s.
47 817.414, F.S.; prohibiting the sale of counterfeit
48 security company signs or decals; providing criminal
49 penalties; amending s. 817.481, F.S.; revising a
50 catchline; making technical changes; amending s.
51 817.50, F.S.; revising criminal penalties for
52 fraudulently obtaining goods or services from a health

53 care provider; amending s. 817.568, F.S.; expanding
 54 specified identity theft offenses to include all
 55 persons rather than being limited to natural persons;
 56 including dissolved business entities within certain
 57 offenses involving fraudulent use of personal
 58 identification information of deceased persons;
 59 amending s. 817.569, F.S.; prohibiting a person from
 60 knowingly providing false information that becomes
 61 part of a public record to facilitate or further the
 62 commission of certain offenses; providing criminal
 63 penalties; amending s. 921.0022, F.S.; conforming
 64 provisions to changes made by the act; providing an
 65 effective date.

66
 67 Be It Enacted by the Legislature of the State of Florida:

68
 69 Section 1. Section 817.011, Florida Statutes, is created
 70 to read:

71 817.011 Definition.—As used in this chapter, the term
 72 "business entity" means any corporation, partnership, limited
 73 partnership, company, limited liability company, proprietorship,
 74 firm, enterprise, franchise, association, self-employed
 75 individual, or trust, whether fictitiously named or not, doing
 76 business in this state.

77 Section 2. Section 817.02, Florida Statutes, is amended to
 78 read:

79 817.02 Obtaining property by false personation.—

80 (1) Whoever falsely personates or represents another
 81 person, and in such assumed character:

82 (a) Receives any property intended to be delivered to that
 83 person ~~the party so personated,~~ with intent to convert the same
 84 to his or her own use; or

85 (b) To the extent not subject to s. 817.568, damages the
 86 credit history or rating of, or otherwise causes harm to, the
 87 person whose identity has been assumed through the taking of
 88 property from any person,

89
 90 shall be punished as if he or she had been convicted of larceny.

91 (2)(a) In sentencing a defendant convicted of a violation
 92 of this section, in addition to restitution to the victim under
 93 s. 775.089, the court may order restitution for the victim's
 94 out-of-pocket costs, including attorney fees and fees associated
 95 with services provided by certified public accountants licensed
 96 under chapter 473, incurred by the victim in clearing the
 97 victim's credit history or credit rating, or costs incurred in
 98 connection with a civil or administrative proceeding to satisfy
 99 a debt, lien, or other obligation of the victim arising as a
 100 result of the actions of the defendant.

101 (b) The sentencing court may issue such orders as are
 102 necessary to correct a public record that contains false
 103 information given in violation of this section.

104 (3)(a) A victim of the conduct subject to this section

105 shall have a civil cause of action against a person who has
 106 engaged in the conduct prohibited by this section as provided in
 107 s. 772.11.

108 (b) For purposes of this subsection, the term "victim"
 109 includes, to the extent not already included within s. 817.568,
 110 a person whose identity was falsely personated or who suffers a
 111 loss of property as a result of the false personation.

112 Section 3. Section 817.032, Florida Statutes, is created
 113 to read:

114 817.032 Information available to identity theft victims.-

115 (1) DEFINITION.-As used in this section, the term "victim"
 116 means a person whose means of identification or financial
 117 information is used or transferred or is alleged to be used or
 118 transferred without the authority of that person with the intent
 119 to commit or to aid or abet an identity theft or a similar
 120 crime.

121 (2) GENERALLY.-

122 (a) For the purpose of documenting fraudulent transactions
 123 resulting from identity theft, within 30 days after the date of
 124 receipt of a request from a victim in accordance with subsection
 125 (4), and subject to verification of the identity of the victim
 126 and the claim of identity theft in accordance with subsection
 127 (3), a business entity that has provided credit to; provided for
 128 consideration products, goods, or services to; accepted payment
 129 from; or otherwise entered into a commercial transaction for
 130 consideration with, a person who has allegedly made unauthorized

131 use of the means of identification of the victim, shall provide
 132 a copy of the application and business transaction records in
 133 the control of the business entity, whether maintained by the
 134 business entity or by another person on behalf of the business
 135 entity, evidencing any transaction alleged to be a result of
 136 identity theft to:

- 137 1. The victim;
- 138 2. A federal, state, or local government law enforcement
 139 agency, or officer specified by the victim in such a request; or
- 140 3. A law enforcement agency investigating the identity
 141 theft and authorized by the victim to take receipt of records
 142 provided under this section.

143 (b) This subsection does not apply to a third-party
 144 providing a service to effect, administer, facilitate, process,
 145 or enforce a financial transaction initiated by an individual.

146 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
 147 entity provides any information under subsection (2), unless the
 148 business entity, at its discretion, otherwise has a high degree
 149 of confidence that it knows the identity of the victim making a
 150 request under subsection (2), the victim shall provide to the
 151 business entity:

152 (a) As proof of positive identification of the victim, at
 153 the election of the business entity:

- 154 1. The presentation of a government-issued identification
 155 card;
- 156 2. Personal identifying information of the same type as

157 provided to the business entity by the unauthorized person; or

158 3. Personal identifying information that the business
 159 entity typically requests from new applicants or for new
 160 transactions, at the time of the victim's request for
 161 information, including any documentation described in
 162 subparagraphs 1. and 2.

163 (b) As proof of a claim of identity theft, at the election
 164 of the business entity:

165 1. A copy of a police report evidencing the claim of the
 166 victim of identity theft; or

167 2. A properly completed affidavit of fact that is
 168 acceptable to the business entity for that purpose.

169 (4) PROCEDURES.—The request of a victim under subsection
 170 (2) shall:

171 (a) Be in writing;

172 (b) Be mailed or delivered to an address specified by the
 173 business entity, if any.

174 (c) If asked by the business entity, include relevant
 175 information about any transaction alleged to be a result of
 176 identity theft to facilitate compliance with this section,
 177 including:

178 1. If known by the victim or readily obtainable by the
 179 victim, the date of the application or transaction.

180 2. If known by the victim or readily obtainable by the
 181 victim, any other identifying information such as an account
 182 number or transaction number.

183 (5) NO CHARGE TO VICTIM.—Information required to be
 184 provided under subsection (2) shall be provided without charge.

185 (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A
 186 business entity may decline to provide information under
 187 subsection (2) if, in the exercise of good faith, the business
 188 entity determines that:

189 (a) This section does not require disclosure of the
 190 information;

191 (b) After reviewing the information provided pursuant to
 192 subsection (3), the business entity does not have a high degree
 193 of confidence in knowing the true identity of the individual
 194 requesting the information;

195 (c) The request for the information is based on a
 196 misrepresentation of fact by the individual requesting the
 197 information;

198 (d) The information requested is Internet navigational
 199 data or similar information about a person's visit to a website
 200 or online service; or

201 (e) The disclosure is otherwise prohibited by state or
 202 federal law.

203 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
 204 not be held civilly liable in this state for a disclosure made
 205 in good faith pursuant to this section or a decision to decline
 206 to provide information as provided in subsection (6).

207 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not
 208 create an obligation on the part of a business entity to obtain,

209 retain, or maintain information or records that are not
 210 otherwise required to be obtained, retained, or maintained in
 211 the ordinary course of its business or under other applicable
 212 law.

213 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to
 214 enforce this section, it is an affirmative defense, which the
 215 defendant must establish by a preponderance of the evidence, for
 216 a business entity to file an affidavit or answer stating that:

217 (a) The business entity has made a reasonably diligent
 218 search of its available business records.

219 (b) The records requested under this section do not exist
 220 or are not reasonably available.

221 Section 4. Section 817.11, Florida Statutes, is amended,
 222 and sections 817.12 and 817.13, Florida Statutes, are
 223 transferred, renumbered as subsections (2) and (3),
 224 respectively, of section 817.11, Florida Statutes, and amended,
 225 to read:

226 817.11 Obtaining property by fraudulent promise to furnish
 227 inside information.—

228 (1) A ~~No~~ person may not ~~shall~~ defraud or attempt to
 229 defraud any individual out of anything ~~any thing~~ of value by
 230 assuming to have or be able to obtain any secret, advance or
 231 inside information regarding any person, transaction, act or
 232 thing, whether such person, transaction, act or thing exists or
 233 not.

234 (2) ~~817.12~~ A person who violates this section commits

235 | ~~Penalty for violation of s. 817.11. Any person guilty of~~
 236 | ~~violating the provisions of s. 817.11 shall be deemed guilty of~~
 237 | a felony of the third degree, punishable as provided in s.
 238 | 775.082, s. 775.083, or s. 775.084.

239 | ~~(3) 817.13 Paraphernalia as evidence of violation of s.~~
 240 | ~~817.11.~~ All paraphernalia of whatsoever kind in possession of
 241 | any person and used in defrauding or attempting to defraud as
 242 | specified in this section ~~s. 817.11~~ shall be held and accepted
 243 | by any court of competent jurisdiction in this state as prima
 244 | facie evidence of guilt.

245 | Section 5. Section 817.14, Florida Statutes, is amended to
 246 | read:

247 | 817.14 Procuring assignments of produce upon false
 248 | representations.—A ~~Any~~ person acting for himself or herself or
 249 | another person, who shall procure any consignment of produce
 250 | grown in this state, to himself or herself or such other, for
 251 | sale on commission or for other compensation by any knowingly
 252 | false representation as to the prevailing market price at such
 253 | time for such produce at the point to which it is consigned, or
 254 | as to the price which such person for whom he or she is acting
 255 | is at said time paying to other consignors for like produce at
 256 | said place, or as to the condition of the market for such
 257 | produce at such time and place, and any such person acting for
 258 | another who shall procure any consignment for sale as aforesaid
 259 | by false representation of authority to him or her by such other
 260 | to make a guaranteed price to the consignor, commits ~~shall be~~

261 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 262 provided in s. 775.082 or s. 775.083.

263 Section 6. Section 817.15, Florida Statutes, is amended to
 264 read:

265 817.15 ~~Making~~ False entries ~~in, etc., on~~ books of business
 266 entity corporation.—Any officer, agent, clerk or servant of a
 267 business entity corporation who makes a false entry in the books
 268 thereof, with intent to defraud, and any person whose duty it is
 269 to make in such books a record or entry of the transfer of
 270 stock, or of the issuing and canceling of certificates thereof,
 271 or of the amount of stock issued by such business entity
 272 ~~corporation~~, who omits to make a true record or entry thereof,
 273 with intent to defraud, commits ~~shall be guilty of~~ a felony of
 274 the third degree, punishable as provided in s. 775.082, s.
 275 775.083, or s. 775.084.

276 Section 7. Section 817.17, Florida Statutes, is amended to
 277 read:

278 817.17 Wrongful use of city, county, or other political
 279 subdivision name.—

280 (1) A ~~No~~ person or persons engaged in manufacturing in
 281 this state, may not ~~shall~~ cause to be printed, stamped, marked,
 282 engraved or branded, upon any of the articles manufactured by
 283 them, or on any of the boxes, packages, or bands containing such
 284 manufactured articles, the name of any city, county, or other
 285 political subdivision of ~~in~~ the state, other than that in which
 286 said articles are manufactured; provided, that ~~nothing in~~ this

287 | section does not ~~shall~~ prohibit any person from offering for
 288 | sale any goods having marked thereon the name of any city,
 289 | county, or other political subdivision of the state ~~in Florida~~
 290 | other than that in which said goods were manufactured, if there
 291 | be no manufactory of similar goods in the city, county, or other
 292 | political subdivision the name of which is used.

293 | (2) A person violating this section commits a misdemeanor
 294 | of the second degree, punishable as provided in s. 775.083.

295 | Section 8. Section 817.18, Florida Statutes, is amended to
 296 | read:

297 | 817.18 Wrongful marking with a city, county, or other
 298 | political subdivision name ~~stamping, marking, etc.; penalty.-~~

299 | (1) A ~~No~~ person may not ~~shall~~ knowingly sell or offer for
 300 | sale, within the state, any manufactured articles which shall
 301 | have printed, stamped, marked, engraved, or branded upon them,
 302 | or upon the boxes, packages, or bands containing said
 303 | manufactured articles, the name of any city, county, or other
 304 | political subdivision of ~~in~~ the state, other than that in which
 305 | such articles were manufactured; provided, that ~~nothing in~~ this
 306 | section does not ~~shall~~ prohibit any person from offering for
 307 | sale any goods, having marked thereon the name of any city,
 308 | county, or other political subdivision of the state ~~in Florida,~~
 309 | other than that in which said goods are manufactured, if there
 310 | be no manufactory of similar goods in the city, county, or other
 311 | political subdivision the name of which is used.

312 | (2) A ~~Any~~ person violating ~~the provisions of this or the~~

313 ~~preceding~~ section commits ~~shall be guilty of~~ a misdemeanor of
 314 the second degree, punishable as provided in s. 775.083.

315 Section 9. Section 817.19, Florida Statutes, is amended to
 316 read:

317 817.19 Fraudulent issue of stock certificate or indicia of
 318 membership interest ~~of stock of corporation.~~ Any officer, agent,
 319 clerk or servant of a corporation, or any other person, who
 320 fraudulently issues or transfers a certificate of stock of a
 321 corporation or indicia of a membership interest in a limited
 322 liability company to any person not entitled thereto, or
 323 fraudulently signs such certificate or other indicia of
 324 membership interest, in blank or otherwise, with the intent that
 325 it shall be so issued or transferred by himself or herself or
 326 any other person, ~~commits shall be guilty of~~ a felony of the
 327 third degree, punishable as provided in s. 775.082, s. 775.083,
 328 or s. 775.084.

329 Section 10. Subsections (1) and (3) of section 817.39,
 330 Florida Statutes, are amended to read:

331 817.39 Simulated forms of court or legal process, or
 332 official seal or stationery; publication, sale or circulation
 333 unlawful; penalty.-

334 (1) Any person, ~~firm,~~ or business entity ~~corporation~~ who
 335 prints shall print, for the purpose of sale or distribution and
 336 for use in the state, or who circulates, publishes, or offers
 337 ~~shall circulate, publish, or offer~~ for sale any letter, paper,
 338 document, notice of intent to bring suit, or other notice or

339 demand, which simulates a form of court or legal process, or any
 340 person who without authority of the state prints ~~shall print~~,
 341 for the purpose of sale or distribution for use in the state, or
 342 who without authority of the state circulates, publishes, or
 343 offers ~~shall circulate, publish, use, or offer~~ for sale any
 344 letters, papers, or documents which simulate the seal of the
 345 state, or the stationery of a state agency or fictitious state
 346 agency commits ~~is guilty of~~ a misdemeanor of the second degree,
 347 punishable as provided in s. 775.082 or s. 775.083.

348 (3) ~~Nothing in~~ This section does not ~~shall~~ prevent the
 349 printing, publication, sale, or distribution of genuine legal
 350 forms for the use of attorneys or clerks of courts.

351 Section 11. Subsection (5) of section 817.40, Florida
 352 Statutes, is amended to read:

353 817.40 False, misleading and deceptive advertising and
 354 sales; definitions.—When construing ss. 817.40, 817.41, 817.43–
 355 817.47, and each and every word, phrase or part thereof, where
 356 the context will permit:

357 (5) The phrase "misleading advertising" includes any
 358 statements made, or disseminated, in oral, written, electronic,
 359 or printed form or otherwise, to or before the public, or any
 360 portion thereof, which are known, or through the exercise of
 361 reasonable care or investigation could or might have been
 362 ascertained, to be untrue or misleading, and which are or were
 363 so made or disseminated with the intent or purpose, either
 364 directly or indirectly, of selling or disposing of real or

365 personal property, services of any nature whatever, professional
 366 or otherwise, or to induce the public to enter into any
 367 obligation relating to such property or services.

368 Section 12. Section 817.411, Florida Statutes, is amended
 369 to read:

370 817.411 False information; advertising.—A ~~No person, firm~~
 371 or business entity may not ~~corporation shall~~ knowingly publish,
 372 disseminate, circulate, or place before the public, or cause
 373 directly or indirectly, to be made, published, disseminated,
 374 circulated, or placed before the public, in a newspaper,
 375 magazine or other publication, or in the form of a notice,
 376 circular, pamphlet, letter or poster, or over any radio or
 377 television station, electronically, or in any other way, any
 378 advertisement, announcement, or statement containing any
 379 assertion, representation, or statement that commodities,
 380 mortgages, promissory notes, securities, or other things of
 381 value offered for sale are covered by insurance guaranties where
 382 such insurance is nonexistent or does not in fact insure against
 383 the risks covered.

384 Section 13. Section 817.412, Florida Statutes, is amended
 385 to read:

386 817.412 Sale of used goods as new; penalty.—

387 (1) It is unlawful for a seller in a transaction where the
 388 purchase price of goods exceeds \$100 to misrepresent orally, in
 389 writing, electronically, or by failure to speak that the goods
 390 are new or original when they are used or repossessed or where

391 they have been used for sales demonstration.

392 (2) A person who violates ~~the provisions of~~ this section
 393 commits a misdemeanor of the first degree, punishable as
 394 provided in s. 775.082 or s. 775.083.

395 Section 14. Section 817.414, Florida Statutes, is created
 396 to read:

397 817.414 Sale of counterfeit security signs and decals.—A
 398 person who willfully and knowingly sells or attempts to sell a
 399 counterfeit sign or decal in this state with the name or logo of
 400 a security company without the express written consent of the
 401 company commits:

402 (1) For the first offense, a misdemeanor of the second
 403 degree, punishable as provided in s. 775.082 or s. 775.083.

404 (2) For a second or subsequent offense, a misdemeanor of
 405 the first degree, punishable as provided in s. 775.082 or s.
 406 775.083.

407 Section 15. Subsection (1) of section 817.481, Florida
 408 Statutes, is amended to read:

409 817.481 Credit or purchases cards; obtaining illicitly
 410 goods by use of false, expired, etc.; penalty.—

411 (1) It shall be unlawful for any person knowingly to
 412 obtain or attempt to obtain credit, or to purchase or attempt to
 413 purchase any goods, property, or service, by the use of any
 414 false, fictitious, counterfeit, or expired credit card,
 415 telephone number, credit number, or other credit device, or by
 416 the use of any credit card, telephone number, credit number, or

417 other credit device of another person without the authority of
 418 the person to whom such card, number or device was issued, or by
 419 the use of any credit card, telephone number, credit number, or
 420 other credit device in any case where such card, number or
 421 device has been revoked and notice of revocation has been given
 422 to the person to whom issued.

423 Section 16. Section 817.50, Florida Statutes, is amended
 424 to read:

425 817.50 Fraudulently obtaining goods or services, ~~etc.~~,
 426 from a health care provider.-

427 (1) Whoever shall, willfully and with intent to defraud,
 428 obtain or attempt to obtain goods, products, merchandise, or
 429 services from any health care provider in this state, as defined
 430 in s. 641.19(14), commits a felony ~~misdemeanor~~ of the third
 431 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
 432 775.083, or s. 775.084.

433 (2) If any person gives to any health care provider in
 434 this state a false or fictitious name or a false or fictitious
 435 address or assigns to any health care provider the proceeds of
 436 any health maintenance contract or insurance contract, then
 437 knowing that such contract is no longer in force, is invalid, or
 438 is void for any reason, such action shall be prima facie
 439 evidence of the intent of such person to defraud the health care
 440 provider. However, this subsection does not apply to
 441 investigative actions taken by law enforcement officers for law
 442 enforcement purposes in the course of their official duties.

443 Section 17. Paragraph (f) of subsection (1) and
 444 subsections (2), (4), (8), and (9) of section 817.568, Florida
 445 Statutes, are amended to read:

446 817.568 Criminal use of personal identification
 447 information.—

448 (1) As used in this section, the term:

449 (f) "Personal identification information" means any name
 450 or number that may be used, alone or in conjunction with any
 451 other information, to identify a specific person ~~individual~~,
 452 including any:

453 1. Name, postal or electronic mail address, telephone
 454 number, social security number, date of birth, mother's maiden
 455 name, official state-issued or United States-issued driver
 456 license or identification number, alien registration number,
 457 government passport number, employer or taxpayer identification
 458 number, Medicaid or food assistance account number, bank account
 459 number, credit or debit card number, or personal identification
 460 number or code assigned to the holder of a debit card by the
 461 issuer to permit authorized electronic use of such card;

462 2. Unique biometric data, such as fingerprint, voice
 463 print, retina or iris image, or other unique physical
 464 representation;

465 3. Unique electronic identification number, address, or
 466 routing code;

467 4. Medical records;

468 5. Telecommunication identifying information or access

469 device; or

470 6. Other number or information that can be used to access
471 a person's financial resources.

472 (2)(a) Any person who willfully and without authorization
473 fraudulently uses, or possesses with intent to fraudulently use,
474 personal identification information concerning another person ~~an~~
475 ~~individual~~ without first obtaining that person's ~~individual's~~
476 consent, commits the offense of fraudulent use of personal
477 identification information, which is a felony of the third
478 degree, punishable as provided in s. 775.082, s. 775.083, or s.
479 775.084.

480 (b) Any person who willfully and without authorization
481 fraudulently uses personal identification information concerning
482 a person ~~an individual~~ without first obtaining that person's
483 ~~individual's~~ consent commits a felony of the second degree,
484 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
485 if the pecuniary benefit, the value of the services received,
486 the payment sought to be avoided, or the amount of the injury or
487 fraud perpetrated is \$5,000 or more or if the person
488 fraudulently uses the personal identification information of 10
489 or more persons ~~individuals~~, but fewer than 20 persons
490 ~~individuals~~, without their consent. Notwithstanding any other
491 provision of law, the court shall sentence any person convicted
492 of committing the offense described in this paragraph to a
493 mandatory minimum sentence of 3 years' imprisonment.

494 (c) Any person who willfully and without authorization

495 fraudulently uses personal identification information concerning
 496 a person ~~an individual~~ without first obtaining that person's
 497 ~~individual's~~ consent commits a felony of the first degree,
 498 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 499 if the pecuniary benefit, the value of the services received,
 500 the payment sought to be avoided, or the amount of the injury or
 501 fraud perpetrated is \$50,000 or more or if the person
 502 fraudulently uses the personal identification information of 20
 503 or more persons ~~individuals~~, but fewer than 30 persons
 504 ~~individuals~~, without their consent. Notwithstanding any other
 505 provision of law, the court shall sentence any person convicted
 506 of committing the offense described in this paragraph to a
 507 mandatory minimum sentence of 5 years' imprisonment. If the
 508 pecuniary benefit, the value of the services received, the
 509 payment sought to be avoided, or the amount of the injury or
 510 fraud perpetrated is \$100,000 or more, or if the person
 511 fraudulently uses the personal identification information of 30
 512 or more persons ~~individuals~~ without their consent,
 513 notwithstanding any other provision of law, the court shall
 514 sentence any person convicted of committing the offense
 515 described in this paragraph to a mandatory minimum sentence of
 516 10 years' imprisonment.

517 (4) Any person who willfully and without authorization
 518 possesses, uses, or attempts to use personal identification
 519 information concerning a person ~~an individual~~ without first
 520 obtaining that person's ~~individual's~~ consent, and who does so

521 | for the purpose of harassing that person ~~individual~~, commits the
 522 | offense of harassment by use of personal identification
 523 | information, which is a misdemeanor of the first degree,
 524 | punishable as provided in s. 775.082 or s. 775.083.

525 | (8)(a) Any person who willfully and fraudulently uses, or
 526 | possesses with intent to fraudulently use, personal
 527 | identification information concerning a deceased individual or
 528 | dissolved business entity commits the offense of fraudulent use
 529 | or possession with intent to use personal identification
 530 | information of a deceased individual or dissolved business
 531 | entity, a felony of the third degree, punishable as provided in
 532 | s. 775.082, s. 775.083, or s. 775.084.

533 | (b) Any person who willfully and fraudulently uses
 534 | personal identification information concerning a deceased
 535 | individual or dissolved business entity commits a felony of the
 536 | second degree, punishable as provided in s. 775.082, s. 775.083,
 537 | or s. 775.084, if the pecuniary benefit, the value of the
 538 | services received, the payment sought to be avoided, or the
 539 | amount of injury or fraud perpetrated is \$5,000 or more, or if
 540 | the person fraudulently uses the personal identification
 541 | information of 10 or more but fewer than 20 deceased individuals
 542 | or dissolved business entities. Notwithstanding any other
 543 | provision of law, the court shall sentence any person convicted
 544 | of committing the offense described in this paragraph to a
 545 | mandatory minimum sentence of 3 years' imprisonment.

546 | (c) Any person who willfully and fraudulently uses

547 | personal identification information concerning a deceased
548 | individual or dissolved business entity commits the offense of
549 | aggravated fraudulent use of the personal identification
550 | information of multiple deceased individuals or dissolved
551 | business entities, a felony of the first degree, punishable as
552 | provided in s. 775.082, s. 775.083, or s. 775.084, if the
553 | pecuniary benefit, the value of the services received, the
554 | payment sought to be avoided, or the amount of injury or fraud
555 | perpetrated is \$50,000 or more, or if the person fraudulently
556 | uses the personal identification information of 20 or more but
557 | fewer than 30 deceased individuals or dissolved business
558 | entities. Notwithstanding any other provision of law, the court
559 | shall sentence any person convicted of the offense described in
560 | this paragraph to a minimum mandatory sentence of 5 years'
561 | imprisonment. If the pecuniary benefit, the value of the
562 | services received, the payment sought to be avoided, or the
563 | amount of the injury or fraud perpetrated is \$100,000 or more,
564 | or if the person fraudulently uses the personal identification
565 | information of 30 or more deceased individuals or dissolved
566 | business entities, notwithstanding any other provision of law,
567 | the court shall sentence any person convicted of an offense
568 | described in this paragraph to a mandatory minimum sentence of
569 | 10 years' imprisonment.

570 | (9) Any person who willfully and fraudulently creates or
571 | uses, or possesses with intent to fraudulently use, counterfeit
572 | or fictitious personal identification information concerning a

573 fictitious person ~~individual~~, or concerning a real person
 574 ~~individual~~ without first obtaining that real person's
 575 ~~individual's~~ consent, with intent to use such counterfeit or
 576 fictitious personal identification information for the purpose
 577 of committing or facilitating the commission of a fraud on
 578 another person, commits the offense of fraudulent creation or
 579 use, or possession with intent to fraudulently use, counterfeit
 580 or fictitious personal identification information, a felony of
 581 the third degree, punishable as provided in s. 775.082, s.
 582 775.083, or s. 775.084.

583 Section 18. Section 817.569, Florida Statutes, is amended
 584 to read:

585 817.569 Criminal use of a public record or public records
 586 information; providing false information; penalties.—A person
 587 who knowingly uses any public record, as defined in s. 119.011,
 588 ~~or~~ who knowingly uses information obtainable only through such
 589 public record, or who knowingly provides false information that
 590 becomes part of a public record to facilitate or further the
 591 commission of:

592 (1) A misdemeanor of the first degree, commits a
 593 misdemeanor of the first degree, punishable as provided in s.
 594 775.082 or s. 775.083.

595 (2) A felony, commits a felony of the third degree,
 596 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

597 Section 19. Paragraphs (a) and (e) of subsection (3) of
 598 section 921.0022, Florida Statutes, are amended to read:

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599 921.0022 Criminal Punishment Code; offense severity
600 ranking chart.—

601 (3) OFFENSE SEVERITY RANKING CHART

602 (a) LEVEL 1

603

Florida Statute	Felony Degree	Description
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604

24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
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605

212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
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606

212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
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607

316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
-------------	-----	--

608

319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
-----------	-----	--

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610	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
611	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
612	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
613	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
614	322.212 (5) (a)	3rd	False application for driver license or identification card.
615	414.39 (2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
	414.39 (3) (a)	3rd	Fraudulent misappropriation of

			public assistance funds by employee/official, value more than \$200.
616	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
617	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
618	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
619	562.27(1)	3rd	Possess still or still apparatus.
620	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
621	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not

			specified in subsection (2).
622	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
623	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
624	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
625	817.569(2)	3rd	Use of public record or public records information <u>or</u> <u>providing false information</u> to facilitate commission of a felony.
626	826.01	3rd	Bigamy.
627	828.122(3)	3rd	Fighting or baiting animals.
628	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed

			in s. 92.28.
629	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
630	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
631	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
632	838.15(2)	3rd	Commercial bribe receiving.
633	838.16	3rd	Commercial bribery.
634	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
635	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).

636	849.01	3rd	Keeping gambling house.
637	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
638	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
639	849.25(2)	3rd	Engaging in bookmaking.
640	860.08	3rd	Interfere with a railroad signal.
641	860.13(1)(a)	3rd	Operate aircraft while under the influence.
642	893.13(2)(a)2.	3rd	Purchase of cannabis.
643	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
644			

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645	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
646	(e) LEVEL 5		
647			
	Florida	Felony	
	Statute	Degree	Description
648			
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
649			
	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
650			
	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
651			
	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
652			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny

			lobster trap, line, or buoy.
653	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
654	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
655	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
656	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
657	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
658	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority;

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			premium collected \$20,000 or more but less than \$100,000.
659	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
660	790.01(2)	3rd	Carrying a concealed firearm.
661	790.162	2nd	Threat to throw or discharge destructive device.
662	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
663	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
664	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
665	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
666	800.04(6)(c)	3rd	Lewd or lascivious conduct;

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			offender less than 18 years of age.
667	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
668	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
669	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
670	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
671	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
672	812.131 (2) (b)	3rd	Robbery by sudden snatching.
673	812.16 (2)	3rd	Owning, operating, or

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674	817.034 (4) (a) 2.	2nd	conducting a chop shop. Communications fraud, value \$20,000 to \$50,000.
675	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
676	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
677	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more <u>persons</u> individuals .

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679	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
680	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
681	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
682	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
683	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

684	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
685	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
686	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
687	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
688	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
689	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s.

690	893.13(1)(c)2.	2nd	<p>893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p> <p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
691	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
692	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug</p>

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			prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
693	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
694	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
695	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

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696

697

Section 20. This act shall take effect October 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Passidomo offered the following:

Amendment

Remove lines 163-166 and insert:

(b) As proof of a claim of identity theft:

7 1. A copy of a police report evidencing the claim of the
 8 victim of identity theft; and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 175 Electronic Commerce
SPONSOR(S): Economic Development & Tourism Subcommittee; Civil Justice Subcommittee; Spano
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Robinson	Bond
2) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	Lukis	Duncan
3) Judiciary Committee		<i>TR</i> Robinson	Havlicak <i>RH</i>

SUMMARY ANALYSIS

"Hacking" is the unauthorized access of a computer or its related technologies, usually with intent to cause harm. Currently, hackers are subject to criminal and limited civil penalties under the Florida Computer Crimes Act ("CCA") and the federal Computer Fraud and Abuse Act ("CFAA"). The CCA authorizes civil actions against persons criminally convicted under the CCA, but specifically exempts employees acting within the scope of their employment from criminal sanction. Civil actions brought under the CFAA must have damages of \$5,000 or more, or must be based on other specific harm. There is also split among appellate circuit courts regarding the applicability of the CFAA to employee or insider hackers.

Due to the narrow statutory remedies available, and the challenges to prosecution of hacking by insiders or employees, businesses have found it increasingly difficult to bring and sustain civil claims against hackers under the CCA and CFAA.

The bill creates the "Computer Abuse and Data Recovery Act" ("CADRA") which establishes an additional civil cause of action for the hacking of business computers. The bill provides civil remedies including the recovery of actual damages, lost profits, and economic damages, as well as injunctive or other equitable relief to victims of hacking. CADRA does not exempt employee or insider hackers or impose any conditions precedent to bringing a claim for relief.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

“Hacking” is the unauthorized access of a computer or its related technologies, usually with intent to cause harm.¹ Hacking includes offenses such as the misappropriation of passwords; viewing restricted electronically-stored information owned by others; copying/adulterating/stealing data, software, or program files owned by others; URL redirection; adulterating web sites; or any other behavior that involves accessing a computing system without appropriate authorization.²

Currently, hackers are subject to criminal and limited civil penalties under the Florida Computer Crimes Act (“CCA”)³ and the federal Computer Fraud and Abuse Act (“CFAA”).⁴ The CCA authorizes civil actions against persons criminally convicted⁵ under the CCA, but specifically exempts employees acting within the scope of their employment from criminal sanction.⁶ Civil actions brought under the CFAA must have damages of \$5,000 or more, or must be based on other specific harm.⁷ There is also a split among appellate circuit courts regarding the applicability of the CFAA to employee or insider hackers.⁸

Due to the narrow statutory remedies available, and the challenges to prosecution of hacking by insiders or employees, businesses have found it increasingly difficult to bring and sustain civil claims against hackers under the CCA and CFAA.

Florida Computer Crimes Act

Chapter 815, F.S., entitled the “Florida Computer Crimes Act,” was created in 1978 in recognition of growing computer-related crime. The Act criminalizes certain offenses against intellectual property and offenses against users of computers, computer systems, computer networks, and electronic devices.

Offenses Against Intellectual Property

A person commits an offense against intellectual property⁹ when he or she willfully, knowingly, and without authorization:

- Introduces a contaminant into a computer, computer system, computer network or electronic device;
- Modifies, renders unavailable, or destroys data, programs, or supporting documentation in a computer, computer system, computer network, or electronic device; or
- Discloses or takes data, programs, or supporting documentation which is a trade secret or is confidential that is in a computer, computer system, computer network, or electronic device.

¹ Eric J. Sinrod, William P. Reilly, *Cyber-Crimes: A Practical Approach to the Application of Federal Computer Crime Laws*, 16 Santa Clara Computer & High Tech. L.J. 177 (2000).

² Peter T. Leeson and Christopher J. Coyne. *The Economics of Computer Hacking*. www.peterleeson.com/hackers.pdf. (last accessed February 4, 2015)

³ Chapter 815, F.S.

⁴ 18 U.S.C. § 1030.

⁵ Section 815.06(4), F.S.

⁶ Section 815.06(6), F.S.

⁷ 18 U.S.C. § 1030(g).

⁸ See, e.g., *Int'l Airport Ctrs., LLC v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006); *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1133-34 (9th Cir. 2009); *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012)(en banc); *WEC Carolina Energy Solutions LLC v. Miller*, 687 F.3d 199 (4th Cir. 2012); *United States v. Rodriguez*, 628 F.3d 1258 (11th Cir. 2010); and *United States v. John*, 597 F.3d 263 (5th Cir. 2010).

⁹ Section 815.04, F.S.

Offenses Against Computer Users

A person commits an offense against computer users¹⁰ when he or she willfully, knowingly, and without authorization:

- Accesses, destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Disrupts the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device;
- Destroys, takes, injures, modifies, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information thereof that is stored by a third party.

The CCA provides that the owner or lessee of a computer, computer system, computer network, computer program, computer equipment, computer supplies, or computer data may bring a civil action¹¹ for compensatory damages against a person *convicted* of an offense against computer users under s. 815.06, F.S. Accordingly, a criminal conviction must precede the civil action.

Due to the higher burden of proof required for criminal convictions, a prosecutor may decline to pursue criminal charges for hacking or an offender may be acquitted. Although the available evidence may satisfy the burden of proof in a civil action, civil recovery is barred under the CCA in the absence of the criminal conviction. There is also the risk that the hacker may exhaust his or her monetary resources in the criminal action making satisfaction of any subsequent civil judgment difficult.

The limited right of recovery under s. 815.06, F.S., is further narrowed by the immunity given to a person who accesses his or her employer's computer system, computer network, computer program, or computer data when acting within the scope of his or her lawful employment.¹² Courts have consistently found that employees do not access a computer, computer system, or computer network "without authorization" if such employees were ever given access by the employer even when exceeding the implicit scope of such authorization and acting against the employer's interest.¹³ One concurring opinion indicates that courts interpret s. 815.06, F.S., to apply to hackers who attack a computer system from the outside, not "insiders."¹⁴

Federal Computer Fraud and Abuse Act

Due to the limitations of the civil action under the CCA, many Florida businesses rely on the federal "Computer Fraud and Abuse Act"¹⁵ to recover damages from hackers. The CFAA is primarily a criminal statute intended to deter computer hackers, though it provides for civil actions by private parties damaged as a result of a violation.

¹⁰ Section 815.06, F.S.

¹¹ Section 815.06(4), F.S.

¹² Section 815.06(6), F.S.

¹³ See *Gallagher v. Florida*, 618 So.2d 757, 758 (Fla. 4th DCA 1993) (finding that an employee's exceeding authorized access, while technically wrong, did not warrant criminal sanctions because administrative sanctions were more appropriate); See *Willoughby v. Florida*, 84 So.3d 1210, 1212 (Fla 3d DCA 2012).

¹⁴ *Rodriguez v. Florida*, 956 So.2d 1226, 1232 (Fla. 4th DCA 2007)(Gross, J., concurring).

¹⁵ 18 U.S.C. § 1030.

The CFAA prohibits:

- Accessing a computer without authorization¹⁶ or exceeding authorized access¹⁷ to commit espionage,¹⁸ obtain credit and financial information,¹⁹ obtain information from any department or agency of the United States, obtain information from any protected computer,²⁰ or to further a fraud and obtain anything of value;²¹
- Damaging a government computer, a bank computer, or a computer used in, or affecting, interstate or foreign commerce through various forms of a cyber attack, cyber crime, or cyber terrorism without authorization;²²
- Trafficking in any password or similar information through which a computer may be accessed without authorization;²³ and
- Threatening to damage a government computer, a bank computer, or a computer used in, or affecting, interstate or foreign commerce.²⁴

Any person who suffers damage or loss by reason of a violation of the CFAA may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief if damages total \$5,000 or more, the provision of medical care is hampered, a person is physically harmed, or national security, public safety or health is threatened.²⁵

Although the CFAA does not explicitly exempt employees, problems similar to the CCA have arisen in the enforcement of the CFAA regarding whether a person, an "insider", with some authorization to access a computer can ever act "without authorization" with respect to that computer. Several courts have held that defendants lose their authorization to access computers when they breach a duty of loyalty to the authorizing parties.²⁶ However, such line of cases have recently been criticized by other courts adopting the view that under the CFAA, an authorized user of a computer cannot access the computer "without authorization" unless and until the authorization is revoked.²⁷ Based on this recent case law, courts appear increasingly likely to reject the idea that a defendant accessed a computer "without authorization" in insider cases.

Circuit courts are also split on when an "insider" hacker "exceeds authorized access" under the CFAA.²⁸ The split among the circuit courts make civil actions against "insiders" under the CFAA increasingly difficult.

¹⁶ This term is not defined in the CFAA.

¹⁷ The term "exceeds authorized access" means "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter." 18 U.S.C. § 1030(e)(6).

¹⁸ 18 U.S.C. § 1030(a)(1).

¹⁹ 18 U.S.C. § 1030(a)(2).

²⁰ The term "protected computer" is defined in 18 U.S.C. § 1030(e)(2), but courts have held that any internet connected computer is a protected computer. See, e.g., *United States v. Drew*, 259 F.R.D. 449, 457 (C.D. Cal. 2009).

²¹ 18 U.S.C. § 1030(a)(4).

²² 18 U.S.C. § 1030(a)(5).

²³ 18 U.S.C. § 1030(a)(6).

²⁴ 18 U.S.C. § 1030(a)(7).

²⁵ 18 U.S.C. § 1030(g).

²⁶ See, e.g., *Int'l Airport Ctrs., LLC v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006); *Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp. 2d 1121, 1125 (W.D. Wash. 2000).

²⁷ See *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1133-34 (9th Cir. 2009); *Shamrock Foods Co. v. Gast*, 535 F. Supp. 2d 962, 964-967 (D. Ariz. 2008); *Lockheed Martin Corp. v. Speed*, 2006 WL 2683058, at *4 (M.D. Fla. 2006).

²⁸ See *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012)(en banc); *WEC Carolina Energy Solutions LLC v. Miller*, 687 F.3d 199 (4th Cir. 2012); *United States v. Rodriguez*, 628 F.3d 1258 (11th Cir. 2010); *United States v. John*, 597 F.3d 263 (5th Cir. 2010).

Effect of Proposed Changes

The bill creates the "Computer Abuse and Data Recovery Act" ("CADRA"), to provide businesses with an additional civil remedy for computer-related abuses.

Section 668.803, F.S., provides that an owner, operator, or lessee of a business computer secured with a technological access barrier, or the owner of information stored in such computer, may bring a civil action against any person who without authorization and intent to cause harm or loss:

- Obtains information from such computers;
- Causes the transmission of programs, codes, or commands from such computers; or
- Traffics in technological access barriers through which such computers may be accessed without authorization.

Unlike the CCA and CFAA, CADRA does not require the satisfaction of a condition precedent (i.e. a criminal conviction, damage threshold, exigent circumstance, etc.) to bring a claim for relief under the provisions of the Act. However, if a CADRA defendant is also pursued criminally under the CCA, s. 668.804(4), F.S., provides that a final judgment or decree in a criminal proceeding under the CCA will estop the defendant as to the same matters in a civil action under CADRA.

A claimant may obtain:

- Actual damages, including lost profits and economic damages;
- Profits earned by the defendant as a result of the unauthorized hacking;
- Injunctive or other equitable relief; and
- Recovery of information, programs, or codes misappropriated during the unlawful intrusion.

The prevailing party in any action brought pursuant to the Act is also entitled to recover reasonable attorney fees under s. 668.804(2), F.S.

Section 668.804(5), F.S., provides that an action pursuant to CADRA must be brought within 3 years after a violation occurred, was discovered, or should have been discovered with due diligence. The statute of limitations under CADRA is shorter than the default statute of limitations provided by s. 95.11(3)(f), F.S., which requires that actions founded on a statutory liability be brought within four years.

Section 668.801, F.S., explains the purpose of CADRA and directs that it be liberally construed. Terms used in the Act are defined in s. 668.802, F.S.

CADRA does not prohibit lawfully authorized investigative, protective, or intelligence activities. Thus, law enforcement or regulatory agencies of any political subdivision of the state, any other state, the United States, or any foreign country acting in furtherance of such activities are not liable under the Act.

B. SECTION DIRECTORY:

Section 1 provides a direction to the Division of Law Revision and Information.

Section 2 creates s. 668.801, F.S., regarding the purpose of CADRA.

Section 3 creates s. 668.802, F.S., regarding definitions applicable to CADRA.

Section 4 creates s. 668.803, F.S., regarding prohibited acts under CADRA.

Section 5 creates s. 668.804, F.S., regarding remedies provided by CADRA.

Section 6 creates s. 668.805, F.S., regarding exclusions under CADRA.

Section 7 provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides for the recovery of misappropriated programs or codes as an additional remedy of a claimant under CADRA.

On March 3, 2015, the Economic Development & Tourism Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added the definition of “authorized user” to the bill and amended the definition of “without authorization” in the bill. The bill defines each phrase as follows:

‘Without authorization’ means access to a protected computer by any of the following: (a) a person who is not an authorized user; (b) a person who has stolen a technological access barrier of an authorized user; or (c) a person circumventing a technological access barrier on a protected computer without the express or implied permission of the owner, operator, or lessee of the protected computer or the express or implied permission of the owner of information stored in the protected computer. For purposes of this paragraph, the term does not include circumventing a technological measure that does not effectively control access to the protected computer or the information stored in the protected computer.

‘Authorized user’ means, with respect to a protected computer: (a) a director, officer or employee of the owner, operator or lessee of such computer or the owner of information stored in such computer; or (b) such owner’s third-party agent, contractor, or consultant, or any respective employee of such third-party agent, contractor or consultant, provided that such person has been granted access to the protected computer by the owner, operator, or lessee of such computer or the owner of information stored in such computer in the form of a technological access barrier. An employer provides explicit permission to an employee by providing the employee with a technological access barrier within the scope of the employee’s employment. Such permission is deemed terminated upon cessation of the employee’s employment.

This analysis is drafted to the committee substitute as passed by the Economic Development & Tourism Subcommittee.

1 A bill to be entitled

2 An act relating to electronic commerce; providing a
 3 directive to the Division of Law Revision and
 4 Information; creating the "Computer Abuse and Data
 5 Recovery Act"; creating s. 668.801, F.S.; providing a
 6 statement of purpose; creating s. 668.802, F.S.;

7 defining terms; creating s. 668.803, F.S.; prohibiting
 8 a person from intentionally committing specified acts
 9 without authorization with respect to a protected
 10 computer; providing penalties for a violation;
 11 creating s. 668.804, F.S.; specifying remedies for
 12 civil actions brought by persons affected by a
 13 violation; providing that specified criminal judgments
 14 or decrees against a defendant act as estoppel as to
 15 certain matters in specified civil actions; providing
 16 that specified civil actions must be filed within
 17 certain periods of time; creating s. 668.805, F.S.;

18 providing that the act does not prohibit specified
 19 activity by certain state, federal, and foreign law
 20 enforcement agencies, regulatory agencies, and
 21 political subdivisions; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. The Division of Law Revision and Information is
 26 directed to create part V of chapter 668, Florida Statutes,

27 consisting of ss. 668.801-668.805, Florida Statutes, to be
 28 entitled the "Computer Abuse and Data Recovery Act."

29 Section 2. Section 668.801, Florida Statutes, is created
 30 to read:

31 668.801 Purpose.—This part shall be construed liberally
 32 to:

33 (1) Safeguard an owner, operator, or lessee of a protected
 34 computer used in the operation of a business from harm or loss
 35 caused by unauthorized access to such computer.

36 (2) Safeguard an owner of information stored in a
 37 protected computer used in the operation of a business from harm
 38 or loss caused by unauthorized access to such computer.

39 Section 3. Section 668.802, Florida Statutes, is created
 40 to read:

41 668.802 Definitions.—As used in this part, the term:

42 (1) "Authorized user" means, with respect to a protected
 43 computer:

44 (a) A director, officer, or employee of the owner,
 45 operator, or lessee of such computer or the owner of information
 46 stored in such computer; or

47 (b) Such owner's third-party agent, contractor, or
 48 consultant, or any respective employee of such third-party
 49 agent, contractor, or consultant,

50
 51 provided that such person has been granted access to the
 52 protected computer by the owner, operator, or lessee of such

53 computer or the owner of information stored in such computer in
 54 the form of a technological access barrier. An employer provides
 55 explicit permission to an employee by providing the employee
 56 with a technological access barrier within the scope of the
 57 employee's employment. Such permission is deemed terminated upon
 58 cessation of the employee's employment.

59 (2) "Business" means any trade or business regardless of
 60 its for-profit or not-for-profit status.

61 (3) "Computer" means an electronic, magnetic, optical,
 62 electrochemical, or other high-speed data processing device that
 63 performs logical, arithmetic, or storage functions and includes
 64 any data storage facility, data storage device, or
 65 communications facility directly related to or which operates in
 66 conjunction with the device.

67 (4) "Harm" means any impairment to the integrity, access,
 68 or availability of data, programs, systems, or information.

69 (5) "Loss" means any of the following:

70 (a) Any reasonable cost incurred by the owner, operator,
 71 or lessee of a protected computer or the owner of stored
 72 information, including the reasonable cost of conducting a
 73 damage assessment for harm associated with the violation and the
 74 reasonable cost for remediation efforts, such as restoring the
 75 data, programs, systems, or information to the condition it was
 76 in before the violation.

77 (b) Economic damages.

78 (c) Lost profits.

79 (d) Consequential damages including the interruption of
 80 service.

81 (e) Profits earned by a violator as a result of the
 82 violation.

83 (6) "Protected computer" means a computer that is used in
 84 connection with the operation of a business and stores
 85 information, programs, or code in connection with the operation
 86 of the business in which the stored information, programs, or
 87 code can only be accessed by employing a technological access
 88 barrier.

89 (7) "Technological access barrier" means a password,
 90 security code, token, key fob, access device, or similar
 91 measure.

92 (8) "Traffic" means to sell, purchase, or deliver.

93 (9) "Without authorization" means access to a protected
 94 computer by any of the following:

95 (a) A person who is not an authorized user;

96 (b) A person who has stolen a technological access barrier
 97 of an authorized user; or

98 (c) A person circumventing a technological access barrier
 99 on a protected computer without the express or implied
 100 permission of the owner, operator, or lessee of the protected
 101 computer or the express or implied permission of the owner of
 102 information stored in the protected computer. For purposes of
 103 this paragraph, the term does not include circumventing a
 104 technological measure that does not effectively control access

105 to the protected computer or the information stored in the
 106 protected computer.

107 Section 4. Section 668.803, Florida Statutes, is created
 108 to read:

109 668.803 Prohibited acts.—A person who knowingly and with
 110 intent to cause harm or loss:

111 (1) Obtains information from a protected computer without
 112 authorization and, as a result, causes harm or loss;

113 (2) Causes the transmission of a program, code, or command
 114 from a protected computer without authorization and, as a result
 115 of the transmission, causes harm or loss; or

116 (3) Traffics in any technological access barrier through
 117 which access to a protected computer may be obtained without
 118 authorization,

119
 120 is liable to the extent provided in s. 668.804 in a civil action
 121 to the owner, operator, or lessee of the protected computer, or
 122 the owner of information stored in the protected computer who
 123 uses the information in connection with the operation of a
 124 business.

125 Section 5. Section 668.804, Florida Statutes, is created
 126 to read:

127 668.804 Remedies.—

128 (1) A person who brings a civil action for a violation
 129 under s. 668.803 may:

130 (a) Recover actual damages, including the person's lost

131 profits and economic damages.

132 (b) Recover the violator's profits that are not included
 133 in the computation of actual damages under paragraph (a).

134 (c) Obtain injunctive or other equitable relief from the
 135 court to prevent a future violation of s. 668.803.

136 (d) Recover the misappropriated information, program, or
 137 code, and all copies thereof, that are subject to the violation.

138 (2) A court shall award reasonable attorney fees to the
 139 prevailing party in any action arising under this part.

140 (3) The remedies available for a violation of s. 668.803
 141 are in addition to remedies otherwise available for the same
 142 conduct under federal or state law.

143 (4) A final judgment or decree in favor of the state in
 144 any criminal proceeding under chapter 815 shall estop the
 145 defendant in any subsequent action brought pursuant to s.
 146 668.803 as to all matters as to which the judgment or decree
 147 would be an estoppel as if the plaintiff had been a party in the
 148 previous criminal action.

149 (5) A civil action filed under s. 668.803 must be
 150 commenced within 3 years after the violation occurred or within
 151 3 years after the violation was discovered or should have been
 152 discovered with due diligence.

153 Section 6. Section 668.805, Florida Statutes, is created
 154 to read:

155 668.805 Exclusions.—This part does not prohibit any
 156 lawfully authorized investigative, protective, or intelligence

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2015

157 | activity of any law enforcement agency, regulatory agency, or
158 | political subdivision of this state, any other state, the United
159 | States, or any foreign country.

160 | Section 7. This act shall take effect October 1, 2015.



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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Spano offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. The Division of Law Revision and Information is
 7 directed to create part V of chapter 668, Florida Statutes,
 8 consisting of ss. 668.801-668.806, Florida Statutes, to be
 9 entitled the "Computer Abuse and Data Recovery Act."

10 Section 2. Section 668.801, Florida Statutes, is created
 11 to read:

12 668.801 Short title.—This part may be cited as the
 13 "Computer Abuse and Data Recovery Act."

14 Section 3. Section 668.802, Florida Statutes, is created
 15 to read:

16 668.802 Purpose.—This part shall be liberally construed to
 17 safeguard an owner, operator, or lessee of a protected computer,



Amendment No. 1

18 or an owner of information stored in a protected computer, from
19 harm or loss caused by unauthorized access to such computer.

20 Section 4. Section 668.803, Florida Statutes, is created
21 to read:

22 668.803 Definitions.—As used in this part, the term:

23 (1) (a) "Authorized user" means, with respect to a
24 protected computer:

25 1. A director, officer, or employee of the owner,
26 operator, or lessee of the computer or the owner of information
27 stored in the computer.

28 2. A third-party agent, contractor, consultant, or
29 employee of the owner, operator, or lessee of the computer or
30 the owner of information stored in the protected computer if the
31 third-party agent, contractor, consultant, or employee is
32 granted access to the protected computer by the owner, operator,
33 or lessee of the protected computer or by the owner of
34 information stored in such protected computer in the form of a
35 technological access barrier.

36 (b) If the owner, operator, or lessee of the computer or
37 the owner of information stored in the protected computer
38 provides a third-party agent, contractor, consultant, or
39 employee with a technological access barrier within the scope of
40 his or her employment, the owner, operator, or lessee of the
41 computer or the owner of information stored in the protected
42 computer gives express permission to the third-party agent,
43 contractor, consultant, or employee to use the technological

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44 access barrier and establishes the third-party agent,
45 contractor, consultant, or employee as an authorized user. Such
46 permission, however, is terminated upon cessation of his or her
47 employment.

48 (2) "Business" means any trade or business regardless of
49 its for-profit or not-for-profit status.

50 (3) "Computer" means an electronic, magnetic, optical,
51 electrochemical, or other high-speed data processing device that
52 performs logical, arithmetic, or storage functions and includes
53 any data storage facility, data storage device, or
54 communications facility directly related to or which operates in
55 conjunction with the device.

56 (4) "Harm" means any impairment to the integrity, access,
57 or availability of data, programs, systems, or information.

58 (5) "Loss" means any of the following:

59 (a) Any reasonable cost incurred by the owner, operator,
60 or lessee of a protected computer or the owner of stored
61 information, including the reasonable cost of conducting a
62 damage assessment for harm associated with the violation and the
63 reasonable cost for remediation efforts, such as restoring the
64 data, programs, systems, or information to the condition it was
65 in before the violation.

66 (b) Economic damages.

67 (c) Lost profits.

68 (d) Consequential damages including the interruption of
69 service.

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70 (e) Profits earned by a violator as a result of the
71 violation.

72 (6) "Protected computer" means a computer that is used in
73 connection with the operation of a business and stores
74 information, programs, or code in connection with the operation
75 of the business in which the stored information, programs, or
76 code can only be accessed by employing a technological access
77 barrier.

78 (7) "Technological access barrier" means a password,
79 security code, token, key fob, access device, or similar
80 measure.

81 (8) "Traffic" means to sell, purchase, or deliver.

82 (9) "Without authorization" means access to a protected
83 computer by:

84 (a) A person who is not an authorized user;

85 (b) A person who has stolen a technological access barrier
86 of an authorized user; or

87 (c) A person circumventing a technological access barrier
88 on a protected computer without the express or implied
89 permission of the owner, operator, or lessee of the protected
90 computer or the express or implied permission of the owner of
91 information stored in the protected computer. The term does not
92 include circumventing a technological access barrier that does
93 not effectively control access to the protected computer or the
94 information stored in the protected computer.

95 Section 5. Section 668.804, Florida Statutes, is created



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96 to read:

97 668.804 Prohibited acts.—A person who knowingly and with
98 intent to cause harm or loss:

99 (1) Obtains information from a protected computer without
100 authorization and, as a result, causes harm or loss;

101 (2) Causes the transmission of a program, code, or command
102 to a protected computer without authorization and, as a result
103 of the transmission, causes harm or loss; or

104 (3) Traffics in any technological access barrier through
105 which access to a protected computer may be obtained without
106 authorization,

107
108 is liable to the extent provided in s. 668.805 in a civil action
109 to the owner, operator, or lessee of the protected computer, or
110 the owner of information stored in the protected computer who
111 uses the information in connection with the operation of a
112 business.

113 Section 6. Section 668.805, Florida Statutes, is created
114 to read:

115 668.805 Remedies.—

116 (1) A person who brings a civil action for a violation
117 under s. 668.804 may:

118 (a) Recover actual damages, including the person's lost
119 profits and economic damages.

120 (b) Recover the violator's profits that are not included
121 in the computation of actual damages under paragraph (a).

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Amendment No. 1

122 (c) Obtain injunctive or other equitable relief from the
123 court to prevent a future violation of s. 668.804.

124 (d) Recover the misappropriated information, program, or
125 code, and all copies thereof, that are subject to the violation.

126 (2) A court shall award reasonable attorney fees to the
127 prevailing party in any action arising under this part.

128 (3) The remedies available for a violation of s. 668.804
129 are in addition to remedies otherwise available for the same
130 conduct under federal or state law.

131 (4) A final judgment or decree in favor of the state in
132 any criminal proceeding under chapter 815 shall estop the
133 defendant in any subsequent action brought pursuant to s.
134 668.804 as to all matters as to which the judgment or decree
135 would be an estoppel as if the plaintiff had been a party in the
136 previous criminal action.

137 (5) A civil action filed under s. 668.804 must be
138 commenced within 3 years after the violation occurred or within
139 3 years after the violation was discovered or should have been
140 discovered with due diligence.

141 Section 7. Section 668.806, Florida Statutes, is created
142 to read:

143 668.806 Exclusions.-

144 (1) This part does not prohibit any lawfully authorized
145 investigative, protective, or intelligence activity of any law
146 enforcement agency, regulatory agency, or political subdivision
147 of this state, any other state, the United States, or any



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148 foreign country.

149 (2) This part may not be construed to impose liability on
150 any provider of an interactive computer service as defined in 47
151 U.S.C. 230(f), of an information service as defined in 47 U.S.C.
152 153, or of a communications service as defined in s. 202.11, if
153 the provider provides the transmission, storage, or caching of
154 electronic communications or messages of a person other than the
155 provider, related telecommunications or commercial mobile radio
156 services, or content provided by a person other than the
157 provider.

158 Section 8. This act shall take effect October 1, 2015.

159

160 -----

161 **T I T L E A M E N D M E N T**

162 Remove everything before the enacting clause and insert:
163 An act relating to electronic commerce; providing a directive to
164 the Division of Law Revision and Information; creating the
165 "Computer Abuse and Data Recovery Act"; creating s. 668.801,
166 F.S.; providing a short title; creating s. 668.802, F.S.;
167 providing a statement of purpose; creating s. 668.803, F.S.;
168 defining terms; creating s. 668.804, F.S.; prohibiting a person
169 from intentionally committing specified acts without
170 authorization with respect to a protected computer; providing
171 penalties for a violation; creating s. 668.805, F.S.; specifying
172 remedies for civil actions brought by persons affected by a
173 violation; providing that specified criminal judgments or

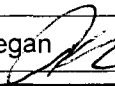



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174 decrees against a defendant act as estoppel as to certain
175 matters in specified civil actions; providing that specified
176 civil actions must be filed within certain periods of time;
177 creating s. 668.806, F.S.; providing that the act does not
178 prohibit specified activity by certain governmental agencies or
179 impose liability on certain technology service providers;
180 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 193 Crime Stoppers Trust Fund
SPONSOR(S): Broxson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Keegan	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Keegan 	Havlicak 

SUMMARY ANALYSIS

Crime Stoppers programs are citizen-run not-for-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime." Crime Stoppers programs allow citizens to anonymously provide information to law enforcement about crimes. Typically, a cash reward is given if the information leads to an arrest.

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs to establish a Crime Stoppers Trust Fund. At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.

In 1998, the Legislature added a funding source by imposing a \$20 court cost on persons convicted of any criminal offense. The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected. Counties may apply to the Department for a grant from the funds collected by their judicial circuit. However, grants may only be awarded to counties that are served by an official member of the Florida Association of Crime Stoppers, Inc. and used only to support Crime Stoppers and their crime fighting programs.

The bill permits a county which is awarded funds under s. 16.555, F.S., to use the funds to purchase and distribute promotional items to increase public awareness and educate the public about Crime Stoppers.

The bill does not appear to have any impact on state or local government revenues or expenditures.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Crime Stoppers

Crime Stoppers programs are citizen run not-for-profit corporations that operate on the principle that "someone other than the criminal has information that can solve a crime."¹ Crime Stoppers allow citizens to anonymously provide information to law enforcement about crimes.² Typically, a cash reward is given if the information leads to an arrest.³

The Crime Stoppers concept originated in Albuquerque, New Mexico, in 1976 when a detective asked local media to broadcast a reenactment of an unsolved murder he was investigating.⁴ Local media publicized the reenactment as the "Crime of the Week" and provided a phone number to call if anyone had information.⁵ The broadcast promised anonymity for anyone who called with information and a cash reward if the information led to persons involved in the crime.⁶

The first Crime Stoppers program in Florida was established in 1977.⁷ The Florida Association of Crime Stoppers, Inc. (hereinafter "Association") was established in 1983 as a not-for-profit corporation formed to facilitate the flow of information and spread the Crime Stoppers program throughout the state.⁸ The Association is currently composed of 32 programs and provides training for Crime Stoppers programs throughout Florida.⁹

Crime Stoppers Funding

In 1991, the Legislature created s. 16.555, F.S., which required the Department of Legal Affairs (hereinafter "Department") to establish a Crime Stoppers Trust Fund.¹⁰ At the time, the Crime Stoppers Trust Fund was solely funded through federal, state, and private grants awarded to the Department.¹¹

In 1998, the Legislature added a funding source in s. 938.06, F.S., by imposing a \$20 court cost on persons convicted of any criminal offense.¹² The proceeds from the \$20 court cost are deposited in a separate account within the Crime Stoppers Trust Fund and designated according to the judicial circuit from which they were collected.¹³ Counties may apply to the Department for a grant from the funds collected by their judicial circuit.¹⁴ However, grants may only be awarded to counties that are served by

¹ BIG BEND CRIME STOPPERS, *About Us*, <http://www.bbcsi.org/about-2> (last visited on Jan. 20, 2015).

² *Id.*

³ *Id.*

⁴ FLORIDA ASSOCIATION OF CRIME STOPPERS, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited on Jan. 20, 2015).

⁵ CRIME STOPPERS USA, *CSUSA Profile*, <http://www.crimestoppersusa.com/profile.htm> (last visited on Jan. 21, 2015).

⁶ FLORIDA ASSOCIATION OF CRIME STOPPERS, *Where It All Started*, <http://www.floridacrimestoppers.com/pages/where> (last visited on Jan. 20, 2015).

⁷ FLORIDA ASSOCIATION OF CRIME STOPPERS, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited on Jan. 20, 2015).

⁸ When the Association was originally established, it was named the Florida Association of Crimelines Anonymous, Inc., and the name was officially changed to the Florida Association of Crime Stoppers, Inc., in 1991; see FLORIDA ASSOCIATION OF CRIME STOPPERS, *Who We Are*, <http://www.floridacrimestoppers.com/pages/who> (last visited on Jan. 20, 2015).

⁹ *Id.*

¹⁰ Chapter 91-205, Laws of Fla.

¹¹ *Id.*

¹² Chapter 98-319, Laws of Fla.

¹³ Section 938.06, F.S.; s. 16.555, F.S.

¹⁴ Section 16.555, F.S.

a Crime Stoppers program that is an official member of the Association, and the grants may only be used to support Crime Stoppers and their crime fighting programs.¹⁵

Effect of the Bill

The bill amends s. 16.555, F.S., to allow a county which is awarded a grant to use the funds to purchase and distribute promotional items. The bill specifies that the promotional items must be for the purpose of increasing public awareness of, and educating the public about, Crime Stoppers.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.555, F.S., relating to Crime Stoppers Trust Fund; rulemaking.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

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 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.

¹⁵ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 16.555(6), F.S., requires the Department to adopt and enforce rules to implement the provisions of s. 16.555, F.S., and specifies what such rules must include (e.g., criteria for local governments to apply for funding from the "Crime Stoppers Trust Fund" in order to aid in local law enforcement). The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to the Crime Stoppers Trust Fund;
 3 amending s. 16.555, F.S.; authorizing a county that is
 4 awarded a grant from the trust fund to use such funds
 5 for the purchase and distribution of promotional
 6 items; making technical changes; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (5) of section 16.555, Florida
 12 Statutes, is amended to read:

13 16.555 Crime Stoppers Trust Fund; rulemaking.—

14 (5)(a) The department shall be the disbursing authority
 15 for the distribution of funding to units of local government
 16 which apply, ~~upon their application~~ to the department for
 17 funding assistance.

18 (b) Funds deposited in the trust fund pursuant to
 19 paragraph (4)(b) shall be disbursed as provided in this
 20 paragraph. A ~~Any~~ county may apply to the department under s.
 21 938.06 for a grant from the funds collected in the judicial
 22 circuit in which the county is located ~~under s. 938.06~~. A grant
 23 may be awarded only to counties that ~~which~~ are served by an
 24 official member of the Florida Association of Crime Stoppers and
 25 may ~~only~~ be used only to support Crime Stoppers and its ~~their~~
 26 crime fighting programs. Only one such official member is ~~shall~~

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27 | ~~be~~ eligible for support within any county. ~~In order~~ To aid the
28 | department in determining eligibility, the secretary of the
29 | Florida Association of Crime Stoppers shall furnish the
30 | department with a schedule of authorized crime stoppers programs
31 | and shall update the schedule as necessary. The department shall
32 | award grants to eligible counties from available funds and shall
33 | distribute funds as equitably as possible, based on amounts
34 | collected within each county, if ~~when~~ more than one county is
35 | eligible within a judicial circuit.

36 | (c) A county that is awarded a grant under this section
37 | may use such funds to purchase and distribute promotional items
38 | to increase public awareness of, and to educate the public
39 | about, Crime Stoppers.

40 | Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Transfers to Minors
SPONSOR(S): Berman
TIED BILLS: None IDEN./SIM. BILLS: SB 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Bond	Bond
2) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
3) Judiciary Committee		Bond MB	Havlicak RH

SUMMARY ANALYSIS

The Uniform Gifts to Minors Act creates a simple legal custodianship, in an adult or appropriate institution, of property that would otherwise transfer directly to the minor. The purpose is to avoid the expense and complexity required by a formal trust or a legal guardianship. The Act requires full distribution of the total gifts to a minor upon reaching the age of 21.

This bill amends the Uniform Gifts to Minors Act to provide a mechanism to extend control over the gift to age 25, provided that the minor is given a brief opportunity at age 21 to opt out of such control.

This bill does not appear to have a fiscal impact on state or local governments. The bill may have a minimal indeterminate positive fiscal impact on the private sector to the extent that it can benefit individuals in their exercise of lawful federal tax avoidance.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Uniform Gifts to Minors Act

Transfers of property to minors create significant problems. To begin with, most transferors do not wish to place valuable property under the control of inexperienced children. The probability of mismanagement, or no management whatsoever, remains a significant specter to those who make such transfers. Somehow, control of the property must be retained in competent hands. Further, third parties often will not deal with minors, even if they are technically competent to manage their own affairs. Minors can disaffirm contracts, and third parties do business with them only with some risk. Yet, certain transfers to minors are very advantageous, particularly for the purposes of estate planning.¹

A trust, in which control and management reside with a trustee, for the designated beneficiaries, offers one solution. But trusts are complex and expensive to create and manage. For smaller property transfers, they are not a satisfactory alternative. The Uniform Gifts to Minors Act creates a custodianship, in an adult or appropriate institution, of property that would otherwise transfer directly to the minor. The custodianship remains until the minor becomes 21 (or, in some instances, age 18). The custodial relationship is created by executing a rather simple document, the form of which is provided in the Act itself. The minor does not obtain control of the property. The custodian has certain statutory authority to deal with it on the minor's behalf, third parties have no occasion to be uncertain about dealing with the custodian, and the transfer is a complete and irrevocable transfer to the minor satisfying the requirements of tax law.²

In 1985, Florida codified the Uniform Gifts to Minors Act at ch. 710, F.S.

Background - Federal Estate & Gift Taxes

The federal estate tax is a tax on the value of one's estate after application of certain exclusions. The gift tax is a portion of the estate tax that imposes an estate-tax equivalent tax on donors who make certain lifetime gifts. Without the gift tax, the estate tax would in many cases be easily avoided through use of gifts to heirs.

A significant exclusion to the gift tax is the minimum dollar threshold. A gift that falls under the value of the exclusion is not subject to the gift tax. The current gift tax exemption amount is \$14,000 per annum.³ Thus, a common, simple and legal form of estate tax avoidance is the use of lifetime gifts to heirs where those gifts fall below the exemption amount.

The gift tax exclusion is only available if the gift is of a present interest. The federal tax code provides that no part of a gift to a minor (defined as an individual under age 21) is a gift of a future interest if certain conditions are met.⁴ Tax regulations interpreting the section provide that a gift will still be a present interest if the "donee, upon reaching age 21, has the right to extend the term of the trust".⁵ A 1974 Revenue Ruling supports the creation of an "opt-out" window at age 21 which, if not exercised by the donee, allows for an automatic extension of the restrictions on the gift to age 25.⁶

¹ Transfers to Minors Act Summary, at [http://www.uniformlaws.org/ActSummary.aspx?title=Transfers to Minors Act](http://www.uniformlaws.org/ActSummary.aspx?title=Transfers%20to%20Minors%20Act) (last accessed February 2, 2015).

² *Id.*

³ IRS Publication 559 (2013), p. 25.

⁴ 26 U.S.C. § 2503(c)

⁵ Regulation 25.2503-4(b)(2)

⁶ Rev.Rul. 74-43, found that: "a gift to a minor in trust, with the provision that the beneficiary has, upon reaching age 21, either (1) a continuing right to compel immediate distribution of the trust corpus by giving written notice to the trustee, or to

Effect of the Bill

The Uniform Gifts to Minors Act requires full distribution of most gifts to a minor upon reaching the age of 21.⁷ This bill amends the Uniform Gifts to Minors Act to provide a mechanism to extend control over such gifts to age 25 provided that the minor is given a brief opportunity at age 21 to opt out of such control.

This bill amends s. 710.123, F.S., to create the terms by which control over a gift may be extended to age 25. The terms of the custodianship must provide that it ends when the minor reaches age 25. The extension beyond the 21st birthday may only be accomplished if the custodian of the gift delivers a written notice within a 60 day period (between 30 days before the birthday and 30 days after) around the minor's 21st birthday. The notice must inform the minor that the minor may elect to terminate the custodianship and thereby receive full, immediate distribution of the gift. The minor must request termination of the custodianship no later than 30 days after receipt of the notice or 30 days after the 21st birthday, whichever is later. If the minor does not act, the custodianship will continue until age 25.

The bill also amends s. 710.105, F.S., to provide that a transfer by irrevocable gift from a revocable trust is treated as a transfer made directly by the grantor of the trust. The effect of this language is to provide that a revocable trust will be able to make a gift to a minor that can be restricted up to age 25 under s. 710.123(1), F.S. Without the language, it is arguable that such a gift would be considered one by a fiduciary (governed by s. 710.107, F.S.) that would have to be distributed at age 18 pursuant to s. 710.123(2), F.S.

The bill also provides that a financial institution acting as custodian under the Uniform Gifts to Minors Act is not liable should the institution distribute the gift at age 21.

B. SECTION DIRECTORY:

Section 1 amends s. 710.102, F.S., regarding definitions applicable to the Florida Uniform Transfers to Minors Act.

Section 2 amends s. 710.105, F.S., regarding transfer by gift or exercise of power of appointment.

Section 3 amends s. 710.123, F.S., regarding termination of custodianship.

Section 4 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

permit the trust to continue by its own terms, or (2) a right during a limited period to compel immediate distribution of the trust corpus by given written notice to the trustee which if not exercised will permit the trust to continue by its own terms, will not be considered to be the gift of a future interest as the gift satisfies the requirements of section 2503(c) of the Code."

⁷ A gift from certain fiduciaries, s. 710.107, F.S., or from an obligor of the minor, s. 710.108, F.S., must be distributed at age 18 pursuant to s. 710.123(2), F.S. This bill does not affect such gifts or the duty to distribute them upon attaining age 18.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

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:

The bill appears to have a minimal indeterminate positive fiscal impact on the private sector to the extent that it can benefit individuals in their exercise of lawful federal tax avoidance.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to transfers to minors; amending s. 710.102, F.S.; defining the term "general power of appointment"; amending s. 710.105, F.S.; specifying that certain transfers from a trust are considered as having been made directly by the grantor of the trust; amending s. 710.123, F.S.; authorizing custodianships established by irrevocable gift and by irrevocable exercise of power of appointment to terminate when a minor attains the age of 25, subject to the minor's right in such custodianships to compel distribution of the property upon attaining the age of 21; limiting liability of financial institutions for certain distributions of custodial property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (9) through (18) of section 710.102, Florida Statutes, are renumbered as subsections (10) through (19), respectively, and a new subsection (9) is added to that section to read:

710.102 Definitions.—As used in this act, the term:
(9) "General power of appointment" means a power of appointment as defined in s. 732.2025(3).

Section 2. Section 710.105, Florida Statutes, is amended

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27 to read:

28 710.105 Transfer by gift or exercise of power of
 29 appointment.—A person may make a transfer by irrevocable gift
 30 to, or the irrevocable exercise of a power of appointment in
 31 favor of, a custodian for the benefit of a minor pursuant to s.
 32 710.111. Notwithstanding s. 710.106, a transfer by irrevocable
 33 gift from a trust over which the grantor has at the time of
 34 transfer a right of revocation, as defined in s. 733.707(3)(e),
 35 shall be treated for all purposes under this act as a transfer
 36 made directly by the grantor of the trust.

37 Section 3. Section 710.123, Florida Statutes, is amended
 38 to read:

39 710.123 Termination of custodianship.—

40 (1) The custodian shall transfer in an appropriate manner
 41 the custodial property to the minor or to the minor's estate
 42 upon the earlier of:

43 (a)+1 The minor's attainment of 21 years of age with
 44 respect to custodial property transferred under s. 710.105 or s.
 45 710.106. However, a transferor can, with respect to such
 46 custodial property, create the custodianship so that it
 47 terminates when the minor attains 25 years of age;

48 (b)+2 The minor's attainment of ~~age~~ 18 years of age with
 49 respect to custodial property transferred under s. 710.107 or s.
 50 710.108; or

51 (c)+3 The minor's death.

52 (2) If the transferor of a custodianship under paragraph

53 (1) (a) creates the custodianship to terminate when the minor
54 attains 25 years of age, in the case of a custodianship created
55 by irrevocable gift or by irrevocable inter vivos exercise of a
56 general power of appointment, the minor nevertheless has the
57 absolute right to compel immediate distribution of the entire
58 custodial property when the minor attains 21 years of age.

59 (3) As to a custodianship described in subsection (2), a
60 transferor may provide, by delivery of a written instrument to
61 the custodian upon the creation of such custodianship, that the
62 minor's right to compel immediate distribution of the entire
63 custodial property will terminate upon the expiration of a fixed
64 period that begins with the custodian's delivery of a written
65 notice to the minor of the existence of such right. To be
66 effective to terminate the minor's right to compel an immediate
67 distribution of the entire custodial property when the minor
68 attains 21 years of age, the custodian's written notice must be
69 delivered at least 30 days before, and not later than 30 days
70 after, the date upon which the minor attains 21 years of age,
71 and the fixed period specified in the notice for the termination
72 of such right cannot expire before the later of 30 days after
73 the minor attains 21 years of age or 30 days after the custodian
74 delivers such notice.

75 (4) Notwithstanding s. 710.102(11), if the transferor
76 creates the custodianship to terminate when the minor attains 25
77 years of age, solely for purposes of the application of the
78 termination provisions of this section, the term "minor" means

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79 | an individual who has not attained 25 years of age.

80 | (5) A financial institution has no liability to a
81 | custodian or minor for distribution of custodial property to, or
82 | for the benefit of, the minor in a custodianship created by
83 | irrevocable gift or by irrevocable exercise of a general power
84 | of appointment when the minor attains 21 years of age.

85 | Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 493 Carrying a Concealed Weapon or Concealed Firearm
SPONSOR(S): Criminal Justice Subcommittee; Fitzenhagen and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 2 N, As CS	Cunningham	Cunningham
2) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. Carrying a concealed firearm is a third degree felony. These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm; or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
 - Self-defense chemical spray; or
 - A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S.

The bill defines "in the act of evacuating" as "the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered." The 48 hours may be extended by an order issued by the Governor.

The Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of the bill. However, on January 30, 2014, CJIC determined that a similar bill filed during the 2014 Legislative Session would have an insignificant positive prison bed impact on the Department of Corrections. The bill may also have a positive jail bed impact.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Mandatory Evacuation during a State of Emergency

Governor's Authority

Section 252.36, F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, and she or he terminates the state of emergency by executive order or proclamation.¹ No state of emergency may continue for longer than 60 days unless renewed by the Governor.²

As part of his or her emergency management powers, the Governor is authorized to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if she or he deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery.³ The Governor may also suspend or limit the sale, dispensing, or transportation of firearms.⁴

Local Authority

Section 870.043, F.S., authorizes sheriffs and designated city officials to declare a state of emergency if he or she determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof. The state of emergency commences upon its declaration and terminates 72 hours thereafter unless, prior to the end of the 72-hour period, the public official, Governor, county commission, or city council terminate it.⁵

Whenever a sheriff or city official declares a state of emergency, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with any limitations and conditions he or she deems appropriate:

- The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking;
- The prohibition of the sale or distribution of any alcoholic beverage;
- The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;
- The closing of places of public assemblage with designated exceptions;
- The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof; and
- The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.⁶

¹ s. 252.36(2), F.S.

² *Id.*

³ s. 252.36(5)(e), F.S.

⁴ s. 252.36(5)(h), F.S.

⁵ s. 870.047, F.S.

⁶ s. 870.045, F.S. These measures remain in effect during the period of the emergency in the area or areas for which the emergency has been declared.

In addition to the above-described measures that a local public official has discretion to order, the following acts are prohibited during a state of emergency:

- The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description;
- The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description; and
- The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.⁷

A violation of any of the above-described provisions is a first degree misdemeanor.⁸

Carrying a Concealed Weapon or Firearm

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon⁹ or electric weapon or device¹⁰ on or about his or her person. Carrying a concealed firearm¹¹ is a third degree felony.^{12,13} These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.;¹⁴ or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
 - Self-defense chemical spray;¹⁵ or
 - A nonlethal stun gun or dart-firing stun gun¹⁶ or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹⁷

The statute does not provide an exception for carrying a concealed weapon or firearm while complying with a mandatory evacuation order during a state of emergency.

Effect of the Bill

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S.

⁷ s. 870.044, F.S.

⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 790.001(3)(a), F.S., defines "concealed weapon" as any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

¹⁰ Section 790.001(14), F.S., defines "electric weapon or device" as any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

¹¹ Section 790.001(2), F.S., defines "concealed firearm" as any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person. Section 790.001(6), F.S., defines "firearm" as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

¹² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹³ s. 790.01(2), F.S.

¹⁴ Section 790.06, F.S., sets forth the requirements for obtaining a concealed weapon and concealed firearms license.

¹⁵ Section 790.001(3)(b), F.S., defines "self-defense chemical spray" as a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.

¹⁶ Section 790.001(15), F.S., defines "dart-firing stun gun" as any device having one or more darts that are capable of delivering an electrical current.

¹⁷ s. 790.01(3) and (4), F.S.

The bill defines "in the act of evacuating" as "the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered." The 48 hours may be extended by an order issued by the Governor.

The bill does not alter any laws relating to when a person may lawfully use force or where a person may lawfully carry a weapon or firearm.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.01, F.S., relating to carrying concealed weapons.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not met to determine the prison bed impact of the bill. However, on January 30, 2014, CJIC determined that a similar bill filed during the 2014 Legislative Session would have an insignificant positive prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. The bill creates an additional exception to this statute, which could have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill authorizes a person to carry a concealed weapon or firearm without a license while in the act of evacuating during a mandatory evacuation order issued during a state of emergency declared by a local authority pursuant to ch. 870, F.S. However, ch. 870, F.S., does not specifically grant a local official authority to issue mandatory evacuation orders during a state of emergency.

Section 870.044, F.S., prohibits a person from intentionally possessing a firearm in a public place during a state of emergency declared by a local authority. This provision appears to conflict with the bill, which allows a person to carry a concealed weapon or firearm while evacuating during a mandatory evacuation order issued during a state of emergency declared by a local authority.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment defined the term "in the act of evacuating."

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to carrying a concealed weapon or a
 3 concealed firearm; amending s. 790.01, F.S.; providing
 4 an exemption from criminal penalties for carrying a
 5 concealed weapon or a concealed firearm when
 6 evacuating pursuant to a mandatory evacuation order
 7 during a declared state of emergency; defining the
 8 term "in the act of evacuating"; providing an
 9 effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.01, Florida Statutes, is amended to read:

790.01 Unlicensed carrying of concealed weapons or concealed firearms.—

(1) Except as provided in subsection (3) ~~(4)~~, a person who is not licensed under s. 790.06 and who carries a concealed weapon or electric weapon or device on or about his or her person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Except as provided in subsection (3), a person who is not licensed under s. 790.06 and who carries a concealed firearm on or about his or her person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

27 (3) This section does not apply to: ~~a person licensed to~~
 28 ~~carry a concealed weapon or a concealed firearm pursuant to the~~
 29 ~~provisions of s. 790.06.~~

30 (a) A person who carries a concealed weapon, or a person
 31 who may lawfully possess a firearm and who carries a concealed
 32 firearm, on or about his or her person while in the act of
 33 evacuating during a mandatory evacuation order issued during a
 34 state of emergency declared by the Governor pursuant to chapter
 35 252 or declared by a local authority pursuant to chapter 870.
 36 For purposes of this paragraph, the term "in the act of
 37 evacuating" means the immediate and urgent movement of a person
 38 away from the evacuation zone within 48 hours after a mandatory
 39 evacuation is ordered. This 48-hour period may be extended by
 40 executive order of the Governor.

41 ~~(b)(4) It is not a violation of this section for~~ A person
 42 ~~who carries to carry~~ for purposes of lawful self-defense, in a
 43 concealed manner:

44 1.(a) A self-defense chemical spray.

45 2.(b) A nonlethal stun gun or dart-firing stun gun or
 46 other nonlethal electric weapon or device that is designed
 47 solely for defensive purposes.

48 ~~(4)(5)~~ This section does not preclude any prosecution for
 49 the use of an electric weapon or device, a dart-firing stun gun,
 50 or a self-defense chemical spray during the commission of any
 51 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.
 52 790.235, or for any other criminal offense.

CS/HB 493

2015

53 | Section 2. This act shall take effect July 1, 2015. |



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Fitzenhagen offered the following:

3

4 **Amendment**

5 Remove line 53 and insert:

6 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB CRJS 15-01 Intercepting and Recording Oral Communications
SPONSOR(S): Criminal Justice Subcommittee; Trujillo and Moskowitz
TIED BILLS: **IDEN./SIM. BILLS:** SB 542

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
1) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 934.03, F.S., makes it a third degree felony for a person to intentionally intercept an oral communication. The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception; and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.

In *McDade v. State*, a 16-year old girl secretly recorded conversations with her step-father that confirmed that he had sexually abused her. The trial court admitted these recordings into evidence, and the defendant was convicted. On appeal, the 2nd District Court of Appeal affirmed the trial court's decision to admit the recordings into evidence. The Florida Supreme Court disagreed and held that because the recordings impermissibly intercepted oral communications, they were inadmissible as evidence. However, the court stated the following:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity – or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature.

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a person to intercept and record an oral communication if:

- The person is a party to the communication; and
- Has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful act of physical force or violence against a person.

The bill creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. To the extent this results in fewer people being convicted for violating s. 934.03, F.S., the bill may have a positive prison bed impact. The bill also allows additional evidence relating to a crime of violence to be used in court proceedings. This may result in additional criminal prosecutions.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 934.03, F.S., makes it a third degree felony¹ for a person to intentionally intercept² an oral communication.³ The statute sets forth a variety of exceptions to this prohibition. For example:

- It is not a crime for a person to intercept an oral communication if all parties to the communication consent to the interception;⁴ and
- A law enforcement officer or a person acting under the direction of a law enforcement officer may intercept an oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.⁵

Oral communications that have been intercepted illegally cannot be used as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof.⁶

In *McDade v. State*,⁷ a 16-year old girl secretly recorded conversations with her step-father that confirmed that he had sexually abused her. The trial court admitted these recordings into evidence, and the defendant was convicted. On appeal, the 2nd District Court of Appeal affirmed the trial court's decision to admit the recordings into evidence reasoning that the defendant did not have an expectation of privacy in the communication that "society [was] prepared to accept as reasonable."⁸ After examining the plain language of the prohibitions in s. 934.03, F.S., the Florida Supreme Court disagreed and held that because the recordings impermissibly intercepted oral communications, they were inadmissible as evidence.⁹ However, the court stated the following:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity – or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature.¹⁰

Effect of the Bill

The bill amends s. 934.03, F.S., to create an additional exception to the prohibition on intercepting oral communications. The bill makes it lawful for a person to intercept and record an oral communication if:

- The person is a party to the communication; and

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

² Section 934.02, F.S., defines "intercept" as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

³ Section 934.02, F.S., defines "oral communication" as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

⁴ Section 934.03(2)(d), F.S. As of August 2012, Florida was one of 12 states that required the consent of all parties (rather than one party) to a communication to consent in order for interception to be lawful. Reporters Committee for Freedom of the Press, *Reporter's Recording Guide - A State-by-State Guide to Taping Phone Calls and In-Person Conversations*, August 1, 2012, <http://www.rcfp.org/rcfp/orders/docs/RECORDING.pdf> (last accessed on March 9, 2015).

⁵ s. 934.03(2)(c), F.S.

⁶ s. 934.06, F.S.

⁷ 154 So.3d 292 (Fla. 2014)

⁸ *McDade v. State*, 154 So.3d 292, 296 (Fla. 2014)(citing *McDade v. State*, 114 So.3d 465 at 470 (Fla. 2d DCA 2013)).

⁹ *McDade v. State*, 154 So.3d 292 (Fla.2014).

¹⁰ *Id.* at 299

- Has reasonable grounds to believe that the recording will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful act of physical force or violence against a person.

B. SECTION DIRECTORY:

Section 1. Amends s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications prohibited.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill creates an additional exception to the prohibitions found in s. 934.03, F.S., violations of which are a third degree felony. To the extent this results in fewer people being arrested for violating s. 934.03, F.S., the bill may have a positive prison bed impact. The bill also allows additional evidence relating to a crime of violence to be used in court proceedings. This may result in additional criminal prosecutions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

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:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 7001

2015

1 A bill to be entitled
 2 An act relating to intercepting and recording oral
 3 communications; amending s. 934.03, F.S.; providing
 4 that it is lawful to intercept and record certain oral
 5 communications; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (k) is added to subsection (2) of
 10 section 934.03, Florida Statutes, to read:

11 934.03 Interception and disclosure of wire, oral, or
 12 electronic communications prohibited.—

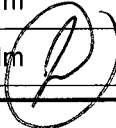

13 (2)

14 (k) It is lawful under ss. 934.03-934.09 for a person to
 15 intercept and record an oral communication if the person is a
 16 party to the communication and has reasonable grounds to believe
 17 that the recording will capture a statement by another party to
 18 the communication that the other party intends to commit, is
 19 committing, or has committed an unlawful act of physical force
 20 or violence against a person.

21 Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7059 PCB CJS 15-01 Offenses Concerning Racketeering and Illegal Debts
SPONSOR(S): Civil Justice Subcommittee; Passidomo
TIED BILLS: HB 7061 **IDEN./SIM. BILLS:** SB 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
1) Judiciary Committee		Malcolm 	Havlicak 

SUMMARY ANALYSIS

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act imposes criminal and civil liability on any person who engages in racketeering or the collection of unlawful debt to acquire real property or establish or operate any enterprise or be associated with such an enterprise. Any property that is used in the course of or derived from the illegal conduct is subject to forfeiture by the state. The bill makes a number of changes to the civil enforcement provisions of the RICO Act:

- If property subject to forfeiture is diminished in value, an investigative agency may pursue an action in circuit court to recover fair market value of the property;
- Investigative agencies may recover fair market value of any property that is diminished in value or made unavailable for forfeiture regardless of when the property is diminished in value or rendered unavailable for forfeiture;
- A court may order the forfeiture of any other property of the defendant up to the value of any property that is unavailable or is diminished in value;
- Civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person may be imposed for violations of the RICO Act;
- All investigatory subpoenas issued pursuant to the RICO Act are confidential for 120 days after the date of its issuance;
- Any party to a RICO Act civil action may petition the court for entry of a consent decree or for approval of a settlement agreement; and
- Requires a court to order distribution of forfeiture proceeds to the victims of the racketeering activity.

The bill appears to have an indeterminate positive fiscal impact on state revenues. The bill does not appear to have a fiscal impact on local government.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida RICO Act

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act¹ makes it a first-degree felony for any person to engage in, or conspire to engage in, racketeering activity or the collection of unlawful debt to acquire real property or establish or operate any enterprise or to be associated with such an enterprise.² The term "racketeering activity" encompasses a broad range of state and federal criminal offenses identified in current law.³

In addition to criminal penalties, the RICO Act imposes civil liability for violations of the Act, including forfeiture to the state of all property, including money, "used in the course of, intended for use in the course of, derived from, or realized through conduct" in violation of the Act.⁴

The bill makes a number of changes to the RICO Act:

Property Rendered Unavailable for Forfeiture

Current law, s. 895.05(2), F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice⁵ or after the filing of a civil or criminal proceeding pursuant to the Act, whichever is earlier, the investigative agency⁶ may institute an action to recover an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action.

The bill amends s. 895.05(2), F.S., to include property subject to forfeiture that is diminished in value among the conditions that an investigative agency may pursue an action in circuit court to recover fair market value of the property. The bill also repeals that portion of s. 895.05(2), F.S., that provided investigative agencies the authority to pursue an action to recover fair market value of the unavailable property only if the property became unavailable "after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding." Consequently, the bill gives investigative agencies the authority to pursue an action to recover fair market value of the unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or rendered unavailable for forfeiture.

In addition to recovering the fair market value of the property of the unavailable or diminished property, the bill allows a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property.

Civil Proceedings by Investigative Agencies and the Department of Legal Affairs

The bill restates and reorganizes current law provisions in s. 895.05, F.S., that provide for the filing of RICO Act civil proceedings by an investigative agency and the Department of Legal Affairs.

¹ Chapter 895, F.S.

² Sections 895.03 and 895.04, F.S.

³ Section 895.02(1)(a), F.S.

⁴ Section 895.05(2)(a), F.S.

⁵ An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. Section 895.07, F.S.

⁶ "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney." Section 895.02(7), F.S.

An investigative agency may institute a civil proceeding for forfeiture in the judicial circuit in which the defendant's real or personal tangible property is located and may institute a civil proceeding for forfeiture in any circuit court in the state regarding the defendant's intangible property.

The Department of Legal Affairs may bring an action to obtain injunctive relief, attorney fees, and costs incurred in the investigation and prosecution under the RICO Act. Money recovered by the Department of Legal Affairs for attorney fees and costs must be deposited in the Legal Affairs Revolving Trust Fund.

The Department of Legal Affairs may also bring an action for newly created civil penalties. Any natural person who violates the RICO Act is subject to a civil penalty of up to \$100,000, any other person is subject to a civil penalty of up to \$1 million. Money recovered for civil penalties must be deposited into the General Revenue Fund.

Court Approval of Consent Decrees and Settlement Agreements

Current law does not address consent decrees or settlement agreements in civil actions for RICO Act violations brought by the Department of Legal Affairs. The bill provides that any party to such a civil action may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement must specify the alleged violations, the future obligations of the parties, the agreed upon relief, and the reasons for entering into the decree or settlement.

Confidentiality of Subpoenas

During the course of a civil enforcement investigation, an investigating agency may subpoena witnesses or material.⁷ Generally, investigatory subpoenas are used to obtain information from third-parties through the production of documents, files, and records or through testimony. Section 895.06, F.S., authorizes investigative agencies to apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days. The 90 day time limit may be extended by the court for good cause shown by the investigative agency.

The bill amends s. 895.06, F.S., to make all subpoenas issued pursuant to the RICO Act automatically confidential for 120 days. The subpoenaed person or entity may only disclose the existence of the subpoena to his or her attorney during the 120-day period. The subpoena must include a reference to the confidentiality of the subpoena and a notice to the recipient that disclosure of the existence of the subpoena to anyone except the subpoenaed person's or entity's attorney is prohibited. The investigative agency may apply for an extension of the confidentiality period for good cause.

The bill also provides that an investigative agency may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.

Restitution for Victims of RICO Act Violations

Current law requires a court to direct the distribution of the proceeds from a forfeiture in the following priority: the clerk of the court to cover statutory fees; claims by people whose interests in the property are preserved (known as "innocent persons"); and claims by the Board of Trustees of the Internal Improvement Trust Fund.⁸ Remaining funds are split between four government funds. However, current law does not authorize restitution to the victims of RICO Act violations.

⁷ Section 895.06(2), F.S.

⁸ Section 859.09(1), F.S.

The bill amends s. 895.09(1), F.S., to require a court to direct the distribution of the proceeds from a forfeiture to claims for restitution for victims of the racketeering activity after the proceeds have been distributed to the clerk, innocent persons, and claims of the Board of Trustees. If the forfeiture action was brought by the Department of Legal Affairs, the restitution must be distributed through the Legal Affairs Revolving Trust Fund; otherwise, the restitution will be distributed by the clerk of the court.

Other Effects of the Bill

The bill deletes duplicative definitions, updates cross-references, and makes conforming changes.

The bill reenacts trust funds in current law for the purpose of incorporating changes made to s. 895.05, F.S.

The bill has an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 895.02, F.S., related to definitions.

Section 2 amends s. 895.05, F.S., related to civil remedies.

Section 3 amends s. 895.06, F.S., related to civil investigative subpoenas.

Section 4 amends s. 895.09, F.S., related to the disposition of funds obtained through forfeiture.

Section 5 amends s. 16.56, F.S., related to the Office of Statewide Prosecution.

Section 6 amends s. 905.34, F.S., related to the powers and duties of a statewide grand jury; law applicable.

Section 7 reenacts s. 16.53, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S. Section 7 also corrects a cross-reference.

Section 8 reenacts s. 27.345, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 9 reenacts s. 92.142, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 10 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person for RICO Act violations created by the bill may have an indeterminate positive revenue impact on the General Revenue Fund.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to offenses concerning racketeering
 and illegal debts; reordering and amending s. 895.02,
 F.S.; specifying the earliest date that incidents
 constituting a pattern of racketeering activity may
 have occurred; conforming a cross-reference; amending
 s. 895.05, F.S.; authorizing an investigative agency
 to institute a civil proceeding for forfeiture in a
 circuit court in certain circumstances; adding
 diminution in value as a ground for an action under
 certain circumstances; removing certain grounds for an
 action; authorizing a court to order the forfeiture of
 other property of the defendant up to the value of
 unavailable property in certain circumstances;
 authorizing the Department of Legal Affairs to bring
 an action for certain violations to obtain specified
 relief, fees, and costs for certain purposes;
 providing for civil penalties for natural persons and
 other persons who commit certain violations; providing
 for deposit of moneys received for certain violations;
 authorizing a party to a specific civil action to
 petition the court for entry of a consent decree or
 for approval of a settlement agreement; providing
 requirements for such decrees or agreements; amending
 s. 895.06, F.S.; deleting the definition of
 "investigative agency" for purposes of provisions

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 relating to civil investigative subpoenas; providing
28 that a subpoena must be confidential for a specified
29 time; restricting to whom the subpoenaed person or
30 entity may disclose the existence of the subpoena;
31 requiring certain information be included in the
32 subpoena; authorizing the investigative agency to
33 apply for an order extending the amount of time the
34 subpoena remains confidential rather than having it
35 extended by the court for a specified period;
36 providing that the investigative agency has the
37 authority to stipulate to protective orders with
38 respect to documents and information submitted in
39 response to a subpoena; amending s. 895.09, F.S.;
40 conforming a cross-reference; providing for
41 distribution of forfeiture proceeds to victims;
42 amending ss. 16.56 and 905.34, F.S.; conforming cross-
43 references; reenacting and amending s. 16.53, F.S.,
44 relating to the Department of Legal Affairs Trust
45 Fund, to incorporate the amendment made by the act to
46 s. 895.05, F.S., in references thereto; conforming a
47 cross-reference; reenacting ss. 27.345(1) and
48 92.142(3), F.S., relating to the State Attorney RICO
49 Trust Fund and witness pay, respectively, to
50 incorporate the amendment made by the act to s.
51 895.05, F.S., in references thereto; providing an
52 effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 895.02, Florida Statutes, is reordered and amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1)~~(8)~~ "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

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79 (2)~~(12)~~ "Civil proceeding" means any civil proceeding
80 commenced by an investigative agency under s. 895.05 or any
81 other provision of the Florida RICO Act.

82 (3)~~(11)~~ "Criminal proceeding" means any criminal
83 proceeding commenced by an investigative agency under s. 895.03
84 or any other provision of the Florida RICO Act.

85 (4)~~(5)~~ "Documentary material" means any book, paper,
86 document, writing, drawing, graph, chart, photograph,
87 phonorecord, magnetic tape, computer printout, other data
88 compilation from which information can be obtained or from which
89 information can be translated into usable form, or other
90 tangible item.

91 (5)~~(3)~~ "Enterprise" means any individual, sole
92 proprietorship, partnership, corporation, business trust, union
93 chartered under the laws of this state, or other legal entity,
94 or any unchartered union, association, or group of individuals
95 associated in fact although not a legal entity; and it includes
96 illicit as well as licit enterprises and governmental, as well
97 as other, entities. A criminal gang, as defined in s. 874.03,
98 constitutes an enterprise.

99 (6)~~(7)~~ "Investigative agency" means the Department of
100 Legal Affairs, the Office of Statewide Prosecution, or the
101 office of a state attorney.

102 (7)~~(4)~~ "Pattern of racketeering activity" means engaging
103 in at least two incidents of racketeering conduct that have the
104 same or similar intents, results, accomplices, victims, or

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105 methods of commission or that otherwise are interrelated by
106 distinguishing characteristics and are not isolated incidents,
107 provided at least one of such incidents occurred after October
108 1, 1977, ~~the effective date of this act~~ and that the last of
109 such incidents occurred within 5 years after a prior incident of
110 racketeering conduct.

111 (8)~~(1)~~ "Racketeering activity" means to commit, to attempt
112 to commit, to conspire to commit, or to solicit, coerce, or
113 intimidate another person to commit:

114 (a) Any crime that is chargeable by petition, indictment,
115 or information under the following provisions of the Florida
116 Statutes:

117 1. Section 210.18, relating to evasion of payment of
118 cigarette taxes.

119 2. Section 316.1935, relating to fleeing or attempting to
120 elude a law enforcement officer and aggravated fleeing or
121 eluding.

122 3. Section 403.727(3)(b), relating to environmental
123 control.

124 4. Section 409.920 or s. 409.9201, relating to Medicaid
125 fraud.

126 5. Section 414.39, relating to public assistance fraud.

127 6. Section 440.105 or s. 440.106, relating to workers'
128 compensation.

129 7. Section 443.071(4), relating to creation of a
130 fictitious employer scheme to commit reemployment assistance

- 131 fraud.
- 132 8. Section 465.0161, relating to distribution of medicinal
- 133 drugs without a permit as an Internet pharmacy.
- 134 9. Section 499.0051, relating to crimes involving
- 135 contraband and adulterated drugs.
- 136 10. Part IV of chapter 501, relating to telemarketing.
- 137 11. Chapter 517, relating to sale of securities and
- 138 investor protection.
- 139 12. Section 550.235 or s. 550.3551, relating to dogracing
- 140 and horseracing.
- 141 13. Chapter 550, relating to jai alai frontons.
- 142 14. Section 551.109, relating to slot machine gaming.
- 143 15. Chapter 552, relating to the manufacture,
- 144 distribution, and use of explosives.
- 145 16. Chapter 560, relating to money transmitters, if the
- 146 violation is punishable as a felony.
- 147 17. Chapter 562, relating to beverage law enforcement.
- 148 18. Section 624.401, relating to transacting insurance
- 149 without a certificate of authority, s. 624.437(4)(c)1., relating
- 150 to operating an unauthorized multiple-employer welfare
- 151 arrangement, or s. 626.902(1)(b), relating to representing or
- 152 aiding an unauthorized insurer.
- 153 19. Section 655.50, relating to reports of currency
- 154 transactions, when such violation is punishable as a felony.
- 155 20. Chapter 687, relating to interest and usurious
- 156 practices.

157 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 158 real estate timeshare plans.

159 22. Section 775.13(5)(b), relating to registration of
 160 persons found to have committed any offense for the purpose of
 161 benefiting, promoting, or furthering the interests of a criminal
 162 gang.

163 23. Section 777.03, relating to commission of crimes by
 164 accessories after the fact.

165 24. Chapter 782, relating to homicide.

166 25. Chapter 784, relating to assault and battery.

167 26. Chapter 787, relating to kidnapping or human
 168 trafficking.

169 27. Chapter 790, relating to weapons and firearms.

170 28. Chapter 794, relating to sexual battery, but only if
 171 such crime was committed with the intent to benefit, promote, or
 172 further the interests of a criminal gang, or for the purpose of
 173 increasing a criminal gang member's own standing or position
 174 within a criminal gang.

175 29. Former section 796.03, former s. 796.035, s. 796.04,
 176 s. 796.05, or s. 796.07, relating to prostitution.

177 30. Chapter 806, relating to arson and criminal mischief.

178 31. Chapter 810, relating to burglary and trespass.

179 32. Chapter 812, relating to theft, robbery, and related
 180 crimes.

181 33. Chapter 815, relating to computer-related crimes.

182 34. Chapter 817, relating to fraudulent practices, false

- 183 | pretenses, fraud generally, and credit card crimes.
- 184 | 35. Chapter 825, relating to abuse, neglect, or
- 185 | exploitation of an elderly person or disabled adult.
- 186 | 36. Section 827.071, relating to commercial sexual
- 187 | exploitation of children.
- 188 | 37. Section 828.122, relating to fighting or baiting
- 189 | animals.
- 190 | 38. Chapter 831, relating to forgery and counterfeiting.
- 191 | 39. Chapter 832, relating to issuance of worthless checks
- 192 | and drafts.
- 193 | 40. Section 836.05, relating to extortion.
- 194 | 41. Chapter 837, relating to perjury.
- 195 | 42. Chapter 838, relating to bribery and misuse of public
- 196 | office.
- 197 | 43. Chapter 843, relating to obstruction of justice.
- 198 | 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
- 199 | s. 847.07, relating to obscene literature and profanity.
- 200 | 45. Chapter 849, relating to gambling, lottery, gambling
- 201 | or gaming devices, slot machines, or any of the provisions
- 202 | within that chapter.
- 203 | 46. Chapter 874, relating to criminal gangs.
- 204 | 47. Chapter 893, relating to drug abuse prevention and
- 205 | control.
- 206 | 48. Chapter 896, relating to offenses related to financial
- 207 | transactions.
- 208 | 49. Sections 914.22 and 914.23, relating to tampering with

209 or harassing a witness, victim, or informant, and retaliation
 210 against a witness, victim, or informant.

211 50. Sections 918.12 and 918.13, relating to tampering with
 212 jurors and evidence.

213 (b) Any conduct defined as "racketeering activity" under
 214 18 U.S.C. s. 1961(1).

215 (9) "Real property" means any real property or any
 216 interest in such real property, including, but not limited to,
 217 any lease of or mortgage upon such real property.

218 (10)~~(6)~~ "RICO lien notice" means the notice described in
 219 s. 895.05(13) ~~895.05(12)~~ or in s. 895.07.

220 (11)~~(10)~~ "Trustee" means any of the following:

221 (a) Any person acting as trustee pursuant to a trust
 222 established under s. 689.07 or s. 689.071 in which the trustee
 223 holds legal or record title to real property.

224 (b) Any person who holds legal or record title to real
 225 property in which any other person has a beneficial interest.

226 (c) Any successor trustee or trustees to any or all of the
 227 foregoing persons.

228
 229 However, the term "trustee" does not include any person
 230 appointed or acting as a personal representative as defined in
 231 s. 731.201 or appointed or acting as a trustee of any
 232 testamentary trust or as a trustee of any indenture of trust
 233 under which any bonds have been or are to be issued.

234 (12)~~(2)~~ "Unlawful debt" means any money or other thing of

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235 value constituting principal or interest of a debt that is
 236 legally unenforceable in this state in whole or in part because
 237 the debt was incurred or contracted:

238 (a) In violation of any one of the following provisions of
 239 law:

240 1. Section 550.235 or s. 550.3551, relating to dogracing
 241 and horseracing.

242 2. Chapter 550, relating to jai alai frontons.

243 3. Section 551.109, relating to slot machine gaming.

244 4. Chapter 687, relating to interest and usury.

245 5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
 246 849.25, relating to gambling.

247 (b) In gambling activity in violation of federal law or in
 248 the business of lending money at a rate usurious under state or
 249 federal law.

250 Section 2. Subsections (9) through (12) of section 895.05,
 251 Florida Statutes, are renumbered as subsections (10) through
 252 (13), respectively, subsection (2) and present subsections (9)
 253 through (12) are amended, and a new subsection (9) is added to
 254 that section, to read:

255 895.05 Civil remedies.—

256 (2)(a) All property, real or personal, including money,
 257 used in the course of, intended for use in the course of,
 258 derived from, or realized through conduct in violation of a
 259 ~~provision of~~ ss. 895.01-895.05 is subject to civil forfeiture to
 260 the state.

261 (b) An investigative agency may, on behalf of the state,
 262 institute a civil proceeding for forfeiture in the circuit court
 263 for the judicial circuit in which real or personal tangible
 264 property, as described in paragraph (a) is located. An
 265 investigative agency may, on behalf of the state, institute a
 266 civil proceeding for forfeiture in a circuit court in the state
 267 regarding intangible property as described in paragraph (a).

268 (c) Upon the entry of a final judgment of forfeiture in
 269 favor of the state, the title of the state to the forfeited
 270 property shall relate back:

271 1. In the case of real property or a beneficial interest,
 272 to the date of filing of the RICO lien notice in the official
 273 records of the county where the real property or beneficial
 274 trust is located; if no RICO lien notice is filed, then to the
 275 date of the filing of any notice of lis pendens under s.
 276 895.07(5)(a) in the official records of the county where the
 277 real property or beneficial interest is located; and if no RICO
 278 lien notice or notice of lis pendens is filed, then to the date
 279 of recording of the final judgment of forfeiture in the official
 280 records of the county where the real property or beneficial
 281 interest is located.

282 2. In the case of personal property, to the date the
 283 personal property was seized by the investigating agency.

284 (d) If property subject to forfeiture is conveyed,
 285 alienated, disposed of, diminished in value, or otherwise
 286 rendered unavailable for forfeiture ~~after the filing of a RICO~~

287 | ~~lien notice or after the filing of a civil proceeding or~~
 288 | ~~criminal proceeding, whichever is earlier,~~ the investigative
 289 | agency may, on behalf of the state, institute an action in any
 290 | circuit court against the person named in the RICO lien notice
 291 | or the defendant in the civil proceeding or criminal proceeding,
 292 | and the court shall enter final judgment against the person
 293 | named in the RICO lien notice or the defendant in the civil
 294 | proceeding or criminal proceeding in an amount equal to the fair
 295 | market value of the property, together with investigative costs
 296 | and attorney ~~attorney's~~ fees incurred by the investigative
 297 | agency in the action. In the alternative, the court may order
 298 | the forfeiture of any other property of the defendant up to the
 299 | value of the property subject to forfeiture. If a civil
 300 | proceeding is pending, such action shall be filed only in the
 301 | court where the civil proceeding is pending.

302 | (e) ~~(e)~~ The state shall dispose of all forfeited property
 303 | as soon as commercially feasible. If property is not exercisable
 304 | or transferable for value by the state, it shall expire. All
 305 | forfeitures or dispositions under this section shall be made
 306 | with due provision for the rights of innocent persons. The
 307 | proceeds realized from such forfeiture and disposition shall be
 308 | promptly distributed in accordance with the provisions of s.
 309 | 895.09.

310 | (9) The Department of Legal Affairs may bring an action
 311 | for a violation of s. 895.03 to obtain injunctive relief, civil
 312 | penalties as provided in this subsection, attorney fees, and

313 costs incurred in the investigation and prosecution of any
 314 action under this chapter.

315 (a) A natural person who violates s. 895.03 is subject to
 316 a civil penalty of up to \$100,000. Any other person who violates
 317 s. 895.03 is subject to a civil penalty of up to \$1 million.
 318 Moneys recovered for civil penalties under this paragraph shall
 319 be deposited into the General Revenue Fund.

320 (b) Moneys recovered by the Department of Legal Affairs
 321 for attorney fees and costs under this subsection shall be
 322 deposited into the Legal Affairs Revolving Trust Fund, which may
 323 be used to investigate and enforce this chapter.

324 (c) In a civil action brought under this subsection by the
 325 Department of Legal Affairs, any party to such action may
 326 petition the court for entry of a consent decree or for approval
 327 of a settlement agreement. The proposed decree or settlement
 328 shall specify the alleged violations, the future obligations of
 329 the parties, the relief agreed upon, and the reasons for
 330 entering into the consent decree or settlement agreement.

331 (10)(9) The Department of Legal Affairs may, upon timely
 332 application, intervene in any civil action or proceeding brought
 333 under subsection (6) or subsection (7) if it certifies that, in
 334 its opinion, the action or proceeding is of general public
 335 importance. In such action or proceeding, the state shall be
 336 entitled to the same relief as if the Department of Legal
 337 Affairs had instituted the action or proceeding.

338 (11)(10) Notwithstanding any other provision of law, a

339 criminal or civil action or proceeding under this chapter act
 340 may be commenced at any time within 5 years after the conduct in
 341 violation of ~~a provision of this chapter act~~ terminates or the
 342 cause of action accrues. If a criminal prosecution or civil
 343 action or other proceeding is brought, or intervened in, to
 344 punish, prevent, or restrain any violation of ~~the provisions of~~
 345 this chapter act, the running of the period of limitations
 346 prescribed by this section with respect to any cause of action
 347 arising under subsection (6), ~~or~~ subsection (7), or subsection
 348 (9) which is based in whole or in part upon any matter
 349 complained of in any such prosecution, action, or proceeding
 350 shall be suspended during the pendency of such prosecution,
 351 action, or proceeding and for 2 years following its termination.

352 (12)~~(11)~~ The application of one civil remedy under any
 353 provision of this chapter act does not preclude the application
 354 of any other remedy, civil or criminal, under this chapter act
 355 or any other provision of law. Civil remedies under this chapter
 356 act are supplemental, and not mutually exclusive.

357 (13)~~(12)~~(a) In addition to the authority to file a RICO
 358 lien notice set forth in s. 895.07(1), the Department of Legal
 359 Affairs, the Office of Statewide Prosecution, or the office of a
 360 state attorney may apply ex parte to a criminal division of a
 361 circuit court and, upon petition supported by sworn affidavit,
 362 obtain an order authorizing the filing of a RICO lien notice
 363 against real property upon a showing of probable cause to
 364 believe that the property was used in the course of, intended

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365 for use in the course of, derived from, or realized through
366 conduct in violation of ~~a provision of~~ ss. 895.01-895.05. If the
367 lien notice authorization is granted, the department shall,
368 after filing the lien notice, forthwith provide notice to the
369 owner of the property by one of the following methods:

370 1. By serving the notice in the manner provided by law for
371 the service of process.

372 2. By mailing the notice, postage prepaid, by ~~registered~~
373 ~~or~~ certified mail to the person to be served at his or her last
374 known address and evidence of the delivery.

375 3. If neither of the foregoing can be accomplished, by
376 posting the notice on the premises.

377 (b) The owner of the property may move the court to
378 discharge the lien, and such motion shall be set for hearing at
379 the earliest possible time.

380 (c) The court shall discharge the lien if it finds that
381 there is no probable cause to believe that the property was used
382 in the course of, intended for use in the course of, derived
383 from, or realized through conduct in violation of ~~a provision of~~
384 ss. 895.01-895.05 or if it finds that the owner of the property
385 neither knew nor reasonably should have known that the property
386 was used in the course of, intended for use in the course of,
387 derived from, or realized through conduct in violation of ~~a~~
388 ~~provision of~~ ss. 895.01-895.05.

389 (d) No testimony presented by the owner of the property at
390 the hearing is admissible against him or her in any criminal

391 proceeding except in a criminal prosecution for perjury or false
 392 statement, nor shall such testimony constitute a waiver of the
 393 owner's constitutional right against self-incrimination.

394 (e) A lien notice secured under ~~the provisions of~~ this
 395 subsection is valid for a period of 90 days from the date the
 396 court granted authorization, which period may be extended for an
 397 additional 90 days by the court for good cause shown, unless a
 398 civil proceeding is instituted under this section and a lien
 399 notice is filed under s. 895.07, in which event the term of the
 400 lien notice is governed by s. 895.08.

401 (f) The filing of a lien notice, whether or not
 402 subsequently discharged or otherwise lifted, shall constitute
 403 notice to the owner and knowledge by the owner that the property
 404 was used in the course of, intended for use in the course of,
 405 derived from, or realized through conduct in violation of a
 406 ~~provision of~~ ss. 895.01-895.05, such that lack of such notice
 407 and knowledge shall not be a defense in any subsequent civil or
 408 criminal proceeding under this chapter.

409 Section 3. Section 895.06, Florida Statutes, is amended to
 410 read:

411 895.06 Civil investigative subpoenas.-

412 ~~(1) As used in this section, the term "investigative~~
 413 ~~agency" means the Department of Legal Affairs, the Office of~~
 414 ~~Statewide Prosecution, or the office of a state attorney.~~

415 (1)(2) If, pursuant to the civil enforcement provisions of
 416 s. 895.05, an investigative agency has reason to believe that a

417 person or other enterprise has engaged in, or is engaging in,
418 activity in violation of this chapter ~~act~~, the investigative
419 agency may administer oaths or affirmations, subpoena witnesses
420 or material, and collect evidence.

421 (2)(3) A subpoena issued pursuant to this chapter is
422 confidential for 120 days after the date of its issuance. The
423 subpoenaed person or entity may not disclose the existence of
424 the subpoena to any person or entity other than his or her
425 attorney during the 120-day period. The subpoena must include a
426 reference to the confidentiality of the subpoena and a notice to
427 the recipient of the subpoena that disclosure of the existence
428 of the subpoena to any other person or entity except the
429 subpoenaed person's or entity's attorney is prohibited. The
430 investigative agency may apply ex parte to the circuit court for
431 the circuit in which a subpoenaed person or entity resides, is
432 found, or transacts business for an order directing that the
433 subpoenaed person or entity not disclose the existence of the
434 subpoena to any other person or entity except the subpoenaed
435 person's attorney for an additional ~~a~~ period of time ~~90 days,~~
436 ~~which time may be extended by the court~~ for good cause shown by
437 the investigative agency. The order shall be served on the
438 subpoenaed person or entity with the subpoena, and the subpoena
439 must ~~shall~~ include a reference to the order and a notice to the
440 recipient of the subpoena that disclosure of the existence of
441 the subpoena to any other person or entity in violation of the
442 order may subject the subpoenaed person or entity to punishment

443 for contempt of court. Such an order may be granted by the court
444 only upon a showing:

445 (a) Of sufficient factual grounds to reasonably indicate a
446 violation of ss. 895.01-895.06;

447 (b) That the documents or testimony sought appear
448 reasonably calculated to lead to the discovery of admissible
449 evidence; and

450 (c) Of facts that ~~which~~ reasonably indicate that
451 disclosure of the subpoena would hamper or impede the
452 investigation or would result in a flight from prosecution.

453 ~~(3)-(4)~~ If matter that the investigative agency seeks to
454 obtain by the subpoena is located outside the state, the person
455 or enterprise subpoenaed may make such matter available to the
456 investigative agency or its representative for examination at
457 the place where such matter is located. The investigative agency
458 may designate representatives, including officials of the
459 jurisdiction in which the matter is located, to inspect the
460 matter on its behalf and may respond to similar requests from
461 officials of other jurisdictions.

462 ~~(4)-(5)~~ Upon failure of a person or enterprise, without
463 lawful excuse, to obey a subpoena issued under this section or a
464 subpoena issued in the course of a civil proceeding instituted
465 pursuant to s. 895.05, and after reasonable notice to such
466 person or enterprise, the investigative agency may apply to the
467 circuit court in which such civil proceeding is pending or, if
468 no civil proceeding is pending, to the circuit court for the

469 | judicial circuit in which such person or enterprise resides, is
 470 | found, or transacts business for an order compelling compliance.
 471 | Except in a prosecution for perjury, an individual who complies
 472 | with a court order to provide testimony or material after
 473 | asserting a privilege against self-incrimination to which the
 474 | individual is entitled by law shall not have the testimony or
 475 | material so provided, or evidence derived therefrom, received
 476 | against him or her in any criminal investigation or proceeding.

477 | ~~(5)(6)~~ A person who fails to obey a court order entered
 478 | pursuant to this section may be punished for contempt of court.

479 | (6) The investigative agency may stipulate to protective
 480 | orders with respect to documents and information submitted in
 481 | response to a subpoena issued under this section.

482 | Section 4. Paragraph (b) of subsection (1) of section
 483 | 895.09, Florida Statutes, is amended, and paragraph (d) is added
 484 | to that subsection, to read:

485 | 895.09 Disposition of funds obtained through forfeiture
 486 | proceedings.—

487 | (1) A court entering a judgment of forfeiture in a
 488 | proceeding brought pursuant to s. 895.05 shall retain
 489 | jurisdiction to direct the distribution of any cash or of any
 490 | cash proceeds realized from the forfeiture and disposition of
 491 | the property. The court shall direct the distribution of the
 492 | funds in the following order of priority:

493 | (b) Any claims against the property by persons who have
 494 | previously been judicially determined to be innocent persons,

495 pursuant to s. 895.05(2)(e) ~~the provisions of s. 895.05(2)(e)~~,
 496 and whose interests are preserved from forfeiture by the court
 497 and not otherwise satisfied. Such claims may include any claim
 498 by a person appointed by the court as receiver pending
 499 litigation.

500 (d) Any claims for restitution by victims of the
 501 racketeering activity. Where the forfeiture action was brought
 502 by the Department of Legal Affairs, the restitution shall be
 503 distributed though the Legal Affairs Revolving Trust Fund;
 504 otherwise, the restitution shall be distributed by the clerk of
 505 the court.

506 Section 5. Paragraph (a) of subsection (1) of section
 507 16.56, Florida Statutes, is amended to read:

508 16.56 Office of Statewide Prosecution.-

509 (1) There is created in the Department of Legal Affairs an
 510 Office of Statewide Prosecution. The office shall be a separate
 511 "budget entity" as that term is defined in chapter 216. The
 512 office may:

513 (a) Investigate and prosecute the offenses of:

514 1. Bribery, burglary, criminal usury, extortion, gambling,
 515 kidnapping, larceny, murder, prostitution, perjury, robbery,
 516 carjacking, and home-invasion robbery;

517 2. Any crime involving narcotic or other dangerous drugs;

518 3. Any violation of the provisions of the Florida RICO
 519 (Racketeer Influenced and Corrupt Organization) Act, including
 520 any offense listed in the definition of racketeering activity in

521 | s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is
 522 | investigated in connection with a violation of s. 895.03 and is
 523 | charged in a separate count of an information or indictment
 524 | containing a count charging a violation of s. 895.03, the
 525 | prosecution of which listed offense may continue independently
 526 | if the prosecution of the violation of s. 895.03 is terminated
 527 | for any reason;

528 | 4. Any violation of the provisions of the Florida Anti-
 529 | Fencing Act;

530 | 5. Any violation of the provisions of the Florida
 531 | Antitrust Act of 1980, as amended;

532 | 6. Any crime involving, or resulting in, fraud or deceit
 533 | upon any person;

534 | 7. Any violation of s. 847.0135, relating to computer
 535 | pornography and child exploitation prevention, or any offense
 536 | related to a violation of s. 847.0135 or any violation of
 537 | chapter 827 where the crime is facilitated by or connected to
 538 | the use of the Internet or any device capable of electronic data
 539 | storage or transmission;

540 | 8. Any violation of the provisions of chapter 815;

541 | 9. Any criminal violation of part I of chapter 499;

542 | 10. Any violation of the provisions of the Florida Motor
 543 | Fuel Tax Relief Act of 2004;

544 | 11. Any criminal violation of s. 409.920 or s. 409.9201;

545 | 12. Any crime involving voter registration, voting, or
 546 | candidate or issue petition activities;

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547 13. Any criminal violation of the Florida Money Laundering
548 Act;

549 14. Any criminal violation of the Florida Securities and
550 Investor Protection Act; or

551 15. Any violation of the provisions of chapter 787, as
552 well as any and all offenses related to a violation of the
553 provisions of chapter 787;

554
555 or any attempt, solicitation, or conspiracy to commit any of the
556 crimes specifically enumerated above. The office shall have such
557 power only when any such offense is occurring, or has occurred,
558 in two or more judicial circuits as part of a related
559 transaction, or when any such offense is connected with an
560 organized criminal conspiracy affecting two or more judicial
561 circuits. Informations or indictments charging such offenses
562 shall contain general allegations stating the judicial circuits
563 and counties in which crimes are alleged to have occurred or the
564 judicial circuits and counties in which crimes affecting such
565 circuits or counties are alleged to have been connected with an
566 organized criminal conspiracy.

567 Section 6. Subsection (3) of section 905.34, Florida
568 Statutes, is amended to read:

569 905.34 Powers and duties; law applicable.—The jurisdiction
570 of a statewide grand jury impaneled under this chapter shall
571 extend throughout the state. The subject matter jurisdiction of
572 the statewide grand jury shall be limited to the offenses of:

573 (3) Any violation of the provisions of the Florida RICO
 574 (Racketeer Influenced and Corrupt Organization) Act, including
 575 any offense listed in the definition of racketeering activity in
 576 s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is
 577 investigated in connection with a violation of s. 895.03 and is
 578 charged in a separate count of an information or indictment
 579 containing a count charging a violation of s. 895.03, the
 580 prosecution of which listed offense may continue independently
 581 if the prosecution of the violation of s. 895.03 is terminated
 582 for any reason;

583
 584 or any attempt, solicitation, or conspiracy to commit any
 585 violation of the crimes specifically enumerated above, when any
 586 such offense is occurring, or has occurred, in two or more
 587 judicial circuits as part of a related transaction or when any
 588 such offense is connected with an organized criminal conspiracy
 589 affecting two or more judicial circuits. The statewide grand
 590 jury may return indictments and presentments irrespective of the
 591 county or judicial circuit where the offense is committed or
 592 triable. If an indictment is returned, it shall be certified and
 593 transferred for trial to the county where the offense was
 594 committed. The powers and duties of, and law applicable to,
 595 county grand juries shall apply to a statewide grand jury except
 596 when such powers, duties, and law are inconsistent with the
 597 provisions of ss. 905.31-905.40.

598 Section 7. For the purpose of incorporating the amendment

599 made by this act to section 895.05, Florida Statutes, in a
 600 reference thereto, subsection (4) and paragraph (a) of
 601 subsection (5) of section 16.53, Florida Statutes, are
 602 reenacted, and subsection (6) of that section is amended, to
 603 read:

604 16.53 Legal Affairs Revolving Trust Fund.—

605 (4) Subject to the provisions of s. 895.09, when the
 606 Attorney General files an action pursuant to s. 895.05, funds
 607 provided to the Department of Legal Affairs pursuant to s.
 608 895.09(2)(a) or, alternatively, attorneys' fees and costs,
 609 whichever is greater, shall be deposited in the fund.

610 (5)(a) In the case of a forfeiture action pursuant to s.
 611 895.05, the remainder of the moneys recovered shall be
 612 distributed as set forth in s. 895.09.

613 (6) "Moneys recovered" means damages or penalties or any
 614 other monetary payment, including monetary proceeds from
 615 property forfeited to the state pursuant to s. 895.05 remaining
 616 after satisfaction of any valid claims made pursuant to s.
 617 895.09(1)(a)-(d) ~~895.09(1)(a)-(e)~~, which damages, penalties, or
 618 other monetary payment is made by any defendant by reason of any
 619 decree or settlement in any Racketeer Influenced and Corrupt
 620 Organization Act or state or federal antitrust action prosecuted
 621 by the Attorney General, but excludes attorney ~~attorneys'~~ fees
 622 and costs.

623 Section 8. For the purpose of incorporating the amendment
 624 made by this act to section 895.05, Florida Statutes, in a

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625 reference thereto, subsection (1) of section 27.345, Florida
 626 Statutes, is reenacted to read:

627 27.345 State Attorney RICO Trust Fund; authorized use of
 628 funds; reporting.—

629 (1) Subject to the provisions of s. 895.09, when a state
 630 attorney files an action pursuant to s. 895.05, funds provided
 631 to the state attorney pursuant to s. 895.09(2)(a) or,
 632 alternatively, attorneys' fees and costs, whichever is greater,
 633 shall be deposited in the State Attorney RICO Trust Fund.

634 Section 9. For the purpose of incorporating the amendment
 635 made by this act to section 895.05, Florida Statutes, in a
 636 reference thereto, subsection (3) of section 92.142, Florida
 637 Statutes, is reenacted to read:

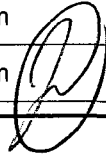

638 92.142 Witnesses; pay.—

639 (3) Any witness subpoenaed to testify on behalf of the
 640 state in any action brought pursuant to s. 895.05 or chapter 542
 641 who is required to travel outside his or her county of residence
 642 and more than 50 miles from his or her residence, or who is
 643 required to travel from out of state, shall be entitled to per
 644 diem and travel expenses at the same rate provided for state
 645 employees under s. 112.061 in lieu of any state witness fee.

646 Section 10. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7061 PCB CJS 15-02 Pub. Rec./Florida RICO Act
SPONSOR(S): Civil Justice Subcommittee; Passidomo
TIED BILLS: HB 7059 IDEN./SIM. BILLS: SB 1536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
1) Judiciary Committee		Malcolm 	Havlicak 

SUMMARY ANALYSIS

The bill creates a public records exemption related to investigations of violations of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Information held by an investigative agency during an investigation of RICO Act violations is generally confidential and exempt from a public records request.

The bill contains the following Legislative findings:

- It is a public necessity that the information held by an investigative agency related to an investigation of RICO Act violations be confidential and exempt;
- Premature release of the information could thwart the investigation and impair the ability of the agency to enforce the Act and;
- It protects the reputation of potential defendants in the event the investigation is closed without further action.

The bill contains a sunset provision and will be repealed on October 2, 2020, unless it is reenacted.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemption will take effect on the same date as HB 7059 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain information related to civil investigative subpoenas; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law - In General

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.² If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.³ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in statute.⁴ However, the agency is not prohibited from disclosing the records in all circumstances where the records are deemed only exempt.⁵

Civil Investigative Subpoenas

Under the RICO Act, an investigative agency⁶ may, during the course of an investigation into civil violations of the RICO Act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in conduct that violates the RICO Act. Generally, investigatory subpoenas are used to obtain information from third-parties through the production of documents, files, and records or through testimony.

Section 895.06, F.S., authorizes investigative agencies to apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed to not disclose the existence of the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days.

HB 7059 amends s. 895.06, F.S., to make all subpoenas issued pursuant to the RICO Act automatically confidential for 120 days after the date of its issuance. The subpoenaed person or entity may only disclose the existence of the subpoena to his or her attorney during the 120-day period.

Effect of the Bill

The bill creates a public records exemption that corresponds to the investigative subpoena non-disclosure requirement in HB 7059. Specifically, the bill provides that information held by an investigative agency pursuant to an investigation of a violation of the RICO Act is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, information that is

¹ Art I., s. 24(c), Fla. Const.

² *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA), *review denied*, 892 So.2d 1015 (Fla. 2004).

³ *Id.*

⁴ *Id.*

⁵ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

⁶ "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.

confidential and exempt may be disclosed by the investigative agency to a government entity in the performance of its official duties and a court or tribunal. The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The bill provides that the exemption it creates is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 895.06, F.S., regarding civil investigative subpoenas.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of HB 7059, if adopted in the same legislative session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs and law enforcement agencies. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to investigative subpoenas; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to investigative subpoenas; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to investigative subpoenas and, similar to other investigative subpoenas, provides that the record is open to public inspection as soon as the investigation is complete.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
 2 An act relating to public records; amending s. 895.06,
 3 F.S.; providing an exemption from public records
 4 requirements for certain documents and information
 5 held by an investigative agency pursuant to an
 6 investigation relating to an activity prohibited under
 7 the Florida RICO Act; authorizing disclosure of such
 8 documents and information under certain conditions;
 9 providing for future legislative review and repeal of
 10 the exemption; providing a statement of public
 11 necessity; providing a contingent effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (7) is added to section 895.06,
 16 Florida Statutes, to read:

17 895.06 Civil investigative subpoenas; public records
 18 exemption.—

19 (7) (a) Information held by an investigative agency
 20 pursuant to an investigation of a violation of s. 895.03 is
 21 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 22 of the State Constitution.

23 (b) Information made confidential and exempt under
 24 paragraph (a) may be disclosed by the investigative agency to:

25 1. A government entity in the performance of its official
 26 duties.

27 2. A court or tribunal.

28 (c) Information made confidential and exempt under
 29 paragraph (a) is no longer confidential and exempt once all
 30 investigations to which the information pertains are completed,
 31 unless the information is otherwise protected by law.

32 (d) For purposes of this subsection, an investigation is
 33 considered complete once the investigative agency either files
 34 an action or closes its investigation without filing an action.

35 (e) This subsection is subject to the Open Government
 36 Sunset Review Act in accordance with s. 119.15 and shall stand
 37 repealed on October 2, 2020, unless reviewed and saved from
 38 repeal through reenactment by the Legislature.

39 Section 2. The Legislature finds that it is a public
 40 necessity that the information held by an investigative agency
 41 pursuant to an investigation of a violation of s. 895.03,
 42 Florida Statutes, relating to an activity prohibited under the
 43 Florida RICO Act, be made confidential and exempt from s.
 44 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 45 State Constitution. Because a Florida RICO Act investigation
 46 conducted by an investigative agency may lead to the filing of a
 47 civil action, the premature release of the information held by
 48 such investigative agency could frustrate or thwart the
 49 investigation and impair the ability of the investigative agency
 50 to effectively and efficiently administer its duties under the
 51 Florida RICO Act, ss. 895.01-895.09, Florida Statutes. This
 52 exemption also protects the reputation of the potential

53 defendant in the event that the investigation is closed without
54 the filing of a civil action. Further, without this exemption, a
55 potential defendant under the Florida RICO Act may learn of the
56 investigation and dissipate his or her assets and thwart any
57 future enforcement action under the act. Therefore, the
58 Legislature finds that it is a public necessity that the
59 documents and information held by the investigative agency
60 pursuant to an investigation of a violation of s. 895.03,
61 Florida Statutes, relating to an activity prohibited under the
62 Florida RICO Act, be made confidential and exempt from public
63 records requirements.

64 Section 3. This act shall take effect on the same date
65 that HB 7059 or similar legislation relating to offenses
66 concerning racketeering and illegal debts takes effect, if such
67 legislation is enacted in the same legislative session or an
68 extension thereof and becomes law.