

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 157 Fraud

SPONSOR(S): Judiciary Committee; 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	16 Y, 0 N, As CS	Cox	Havlicak

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 business operating 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 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.

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.

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.

- 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; and
- 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;
- 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.

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.

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

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

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.

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:

- 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

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.

²⁸ Section 817.568(8)(b), F.S.

²⁹ Section 817.568(8)(c), F.S.

- 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.

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

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.

³⁴ Section 607.01401(5), F.S.

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.

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.

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

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.

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.

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.

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.

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 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:

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).

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.

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.

On March 11, 2015, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. This amendment aligns the language to federal law and requires the victim to show proof of a claim of identity theft by submitting both of the following documents to the business, rather than having the ability to submit one:

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

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.