

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 524

SPONSOR: Criminal Justice Committee and Senator Burt

SUBJECT: Criminal Use of Personal Information

DATE: March 27, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	_____	_____	APJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 524 is the substance of several legislative recommendations of the Task Force on Privacy and Technology to address identity theft.

The CS amends the identity theft statute to create a new identity theft offense. It is provided that any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a second degree felony if the pecuniary benefit, the value of services received, the payment sought to be avoided, or the amount of the injury perpetrated is \$75,000 or more.

The CS further provides for reclassification of identity theft offenses that were furthered or facilitated by the use of a public record, ranks identity theft offenses, and directs how reclassified offenses shall be ranked.

The CS further provides that the proper venue for prosecuting a violation of the identity theft statute is the county where the victim resides or a county in which any element of the violation occurred.

Finally, the CS provides that a prosecution of a felony violation of the identity theft statute must be commenced within 3 years after the offense occurred. However, a prosecution may be commenced within 1 year after discovery of the offense by an aggrieved party, or by a person who has the legal duty to represent the aggrieved party and who is not a party to the offense, if such prosecution is commenced within 5 years.

This CS substantially amends the following sections of the Florida Statutes: 817.568; 921.0022.

II. Present Situation:

On January 11, 2001, the Task Force on Privacy and Technology submitted its recommendations. *Executive Summary of Policy Recommendations*, Task Force on Privacy and Technology (January 11, 2001). The Task Force was particularly concerned about the crime of identity theft, which Florida law punishes in s. 817.568, F.S. The Task Force reported the extent of identity theft and its effects:

Recent surveys have indicated that identity theft is one of the fastest growing crimes in America, affecting nearly half a million victims in 1998 and expected to affect more than 750,000 victims this year. The problem is particularly acute in Florida, which accounts for more reported complaints of identity theft to the Federal Trade Commission than any State except California and New York. Approximately 54% of identity theft victims reported credit card fraud, while 26% reported that an identity thief opened up telephone, cellular or other utility services in the victim's name. Bank fraud and fraudulent loans accounted for approximately 27% of identity theft reports. Although many instances of identity theft occur without the use of the sophisticated technologies of the New Economy, experts agree that technological changes may make identity theft easier and more prevalent in coming years.

In response to the surge in reported instances of identity theft, 27 states enacted identity protection legislation in 1999 and an additional 10 states enacted legislation in 2000. Florida enacted its identity protection legislation – now codified at Section 817.568, Florida Statutes – in 1999.

Reports from identity theft victims and individuals presenting information to the Task Force uniformly suggested that the toll of identity theft on victims is extraordinarily significant. On average, identity theft victims spend more than 175 hours to regain their financial health, at a personal cost fast approaching \$1,000. The Task Force also received evidence that the victims of identity theft include our Nation's large and small businesses, all of whom must absorb or pass on to consumers' annual costs in excess of \$1 billion arising from identity theft-related fraud. Both business and individual victims of identity theft spoke repeatedly about the need for government, and private sector credit granting and credit reporting institutions, to do more to address the critical task of identity restoration for victims.

The Task Force also heard about the need to do more with respect to identity theft prosecution and deterrence. The Task Force reviewed a survey conducted by the Cal/PIRG-Privacy Clearinghouse group in which three-fourths of respondents felt that law enforcement officers were often unhelpful in identity theft cases.

Respondents also noted that law enforcement officers were sometimes unwilling to even file formal police reports in response to victim complaints. Anecdotal evidence received by the Task Force confirmed these survey findings. Evidence presented to the Task Force also confirmed that there are significant gaps in Florida's existing identity protection legislation and law enforcement capacity. In addition, the Task Force heard from presenters who suggested that private sector credit granting and

reporting institutions, and governmental entities such as public universities, could modify their practices in order to deter more instances of identity theft.

Among the recommendations made by the Task Force were the following three legislative recommendations:

1. *Expand Venue For Prosecution:* Victims and law enforcement officers testified before the Task Force that existing venue restrictions make it difficult to pursue criminal charges in some identity theft cases where the crime is committed via technology in a jurisdiction other than the one in which the victim lives. Accordingly, the Task Force recommended legislation to allow venue for prosecution of identity theft in the Florida county of residence of the victim or where any element of the crime is committed (*CS/SB 524 contains the substance of language proposed and incorporated in See Tab 1 of the Executive Summary*)

2. *Extend Statute of Limitations:* Victims and law enforcement officers indicated to the Task Force that existing statutes of limitations are too restrictive for prosecution of identity theft crimes, which can be complex and difficult to detect and investigate. Accordingly, the Task Force recommended legislation to extend the statute of limitations, up to a maximum of five years, for certain identity theft crimes. (*CS/SB 524 contains the substance of language proposed and incorporated in See Tab 1 of the Executive Summary*)

3. *Enhance Existing Penalties:* Victims and law enforcement officers suggested to the Task Force that it would be appropriate to enhance the existing and relatively minor penalties in current law for identity theft, especially when public record information has been used to facilitate the crime. Accordingly, the Task Force recommended legislation to enhance sentencing penalties for identity theft. (*CS/SB 524 contains provisions for reclassification of existing penalties that are consistent with Alternative 3 in Tab 1 of the Executive Summary*)

Section 817.568(2), F.S., provides that any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent, commits the offense of fraudulent use of personal identification information, which is a felony of the third degree.

Section 817.568(3), F.S., provides that any person who willfully and without authorization possesses, uses, or attempts to use personal identification information concerning an individual without first obtaining that individual's consent, and who does so for the purpose of harassing that individual, commits the offense of harassment by use of personal identification information, which is a misdemeanor of the first degree.

The third degree felony offense in s. 817.568(3), F.S., is unranked for purposes of sentencing, and therefore receives a default level ranking within level 1. s. 921.0023, F.S.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 524 is the substance of several legislative recommendations of the Task Force on Privacy and Technology to address identity theft.

The CS amends s. 817.568, F.S., to create a new identity theft offense. It is provided that any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a second degree felony if the pecuniary benefit, the value of services received, the payment sought to be avoided, or the amount of the injury perpetrated is \$75,000 or more.

The CS further provides for the reclassification of the first degree misdemeanor offense in s. 817.568(3), F.S., to a third degree felony; the reclassification of the third degree felony offense in s. 817.568(2)(a), F.S., to a second degree felony; and the reclassification of the second degree felony offense in s. 817.568(2)(b), F.S., to a first degree felony, if the offenses were facilitated or furthered by the use of a public record, as defined in s. 119.011, F.S. The CS ranks the first degree misdemeanor (when reclassified to a third degree) in level 2. Felony offenses that are reclassified are ranked one level above the ranking of the offense prior to reclassification.

The CS further provides that the proper venue for prosecuting a violation of s. 817.568, F.S., is the county where the victim resides or a county in which any element of the violation occurred.

Finally, the CS provides that a prosecution of an offense prohibited under s. 817.568(2), F.S., must be commenced within 3 years after the offense occurred. However, a prosecution may be commenced within 1 year after discovery of the offense by an aggrieved party, or by a person who has the legal duty to represent the aggrieved party and who is not a party to the offense, if such prosecution is commenced within 5 years.

The CS takes effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Senate Committee on Criminal Justice has previously approved Senate Bill 514, which makes it a crime to knowingly use any public record or information obtainable only through a public record, to facilitate or further the commission of a first degree misdemeanor or a felony. The crime is a first degree misdemeanor, if the public record is used to facilitate or further the commission of a first degree misdemeanor, and is a third degree felony, if the public record is used to facilitate or further the commission of a felony. The third degree felony receives a level 1 offense severity ranking for the purpose of sentencing.

It appears a person could be convicted of the new offense created by SB 514 and a current offense in s. 817.568, F.S., but not convicted of the new offense created by SB 514 and a current offense in s. 817.568 that has been reclassified on the basis that a public record was used to facilitate or further the offense. *See Kio v. State*, 624 So.2d 744 (Fla. 1st DCA 1993).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An impact analysis of this legislation was requested from the Criminal Justice Estimating Conference but was not received at the time this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.