

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1472

INTRODUCER: Criminal Justice Committee and Senator Abruzzo

SUBJECT: Personal Identification Information Theft

DATE: April 8, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1472 amends s. 817.568, F.S. (criminal use of personal identification information), to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining that individual's consent, who is:

- 60 years of age or older;
- A disabled adult;
- A public servant;
- A veteran;
- A first responder; or
- A state or federal employee.

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S., and specifies how that surcharge is allocated.

The bill also creates s. 817.5686, F.S., which establishes the Identity Theft and Fraud Task Force within the Florida Department of Law Enforcement (FDLE). The purpose of this task force is to develop strategies and techniques that will assist in the investigation and prosecution of the criminal use of personal identification information in Palm Beach County, Broward County, and Miami-Dade County.

The Criminal Justice Impact Conference found that similar House Bill 1029 would have an insignificant impact on the need for prison beds. The FDLE states that implementing the task force provision of the bill will require, at a minimum, four additional FTEs at a total cost of \$318,767 for salary, benefits, expenses, and equipment. However, the FDLE is reevaluating its estimate. The surcharge that must be imposed on persons who are convicted of fraudulent use of personal identification information is expected to produce a total of approximately \$180,000 annually.

II. Present Situation:

Section 817.568, F.S., punishes criminal use of personal identification information (often referred to as “identity theft” or “identity fraud”). For purposes of this statute, “personal identification information” is any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any of the following:

- Name.
- Postal or electronic mail address.
- Telephone number.
- Social security number.
- Date of birth.
- Mother’s maiden name.
- Official state-issued or United States-issued driver’s license or identification number.
- Alien registration number.
- Government passport number.
- Employer or taxpayer identification number.
- Medicaid or food assistance account number.
- Bank account number.
- Credit or debit card number.
- Personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card.
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation.
- Unique electronic identification number, address, or routing code.
- Medical records.
- Telecommunication identifying information or access device.
- Other number or information that can be used to access a person’s financial resources.¹

It is a third degree felony² for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual’s consent.³ However, it is:

¹ Section 817.568(1)(f), F.S.

² A third degree felony is punishable by up to five years in state prison, a fine of up to \$5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082, F.S.

³ Section 817.568(2)(a), F.S.

- A second degree felony,⁴ punishable by a three-year minimum mandatory sentence, if the person commits the prohibited act and the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$5,000 or more or if the person fraudulently uses the personal identification information of ten or more individuals, but fewer than 20 individuals, without their consent;⁵
- A first degree felony,⁶ punishable by a five-year minimum mandatory sentence, if the person commits the prohibited act and the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals;⁷ or
- A first degree felony, punishable by a ten-year minimum mandatory sentence, if the person commits the prohibited act and the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is \$100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.^{8,9}

The statute also provides that it is a second degree felony for any person to willfully and without authorization fraudulently use personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian.¹⁰ It is a second degree felony for a person who is in the relationship of parent or legal guardian, or otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification of that individual.¹¹

III. Effect of Proposed Changes:

The bill creates an identity theft offense, imposes a surcharge on persons convicted of identity theft, and establishes a task force to address identity theft in three counties. The effective date of the bill is July 1, 2014.

Creates an Identity Theft Offense

The bill amends s. 817.568, F.S. (criminal use of personal identification information), to make it a second degree felony for any person to willfully and without authorization fraudulently use the personal identification information of an individual, without first obtaining that individual's consent, who is:

- 60 years of age or older;

⁴ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

⁵ Section 817.568(2)(b), F.S.

⁶ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

⁷ Section 817.568(2)(c), F.S.

⁸ Section 817.568(2)(c), F.S.

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

¹⁰ Section 817.568(6), F.S.

¹¹ Section 817.568(7), F.S.

- A disabled adult as defined in s. 825.101, F.S.;¹²
- A public servant as defined in s. 838.014, F.S.;¹³
- A veteran as defined in s. 1.01, F.S.;¹⁴
- A first responder as defined in s. 125.01045, F.S.;¹⁵
- An individual who is employed by the State of Florida; or
- An individual who is employed by the Federal Government.

Identity Theft Surcharge

The bill also requires the court to impose a \$151 surcharge on persons convicted of any crime in s. 817.568, F.S. Payment of the surcharge must be a condition of probation, community control, or any other court-ordered supervision and may not be waived by the court. If a defendant has been ordered to pay restitution in accordance with s. 775.089, F.S., the \$151 surcharge must be included in a judgment. The bill allocates the surcharge as follows:

- \$75 of the surcharge is deposited into the FDLE Operating Trust Fund for FDLE to provide grants to local law enforcement agencies in Palm Beach County, Broward County, and Miami-Dade County to investigate the criminal use of personal identification information;
- \$75 of the surcharge is deposited into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of personal identification information in the Eleventh Judicial Circuit, Fifteenth Judicial Circuit, and Seventeenth Judicial Circuit; and
- The clerk of the court retains \$1 of the surcharge.

Establishes the Identity Theft and Fraud Task Force

The bill creates s. 817.5686, F.S.,¹⁶ which establishes the Identity Theft and Fraud Task Force within FDLE. The purpose of this task force is to develop strategies and techniques that will

¹² The statute defines a “disabled adult” as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

¹³ The statute defines a “public servant” to mean:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function;
- A candidate for election or appointment to any of the positions listed in this subsection, or
- An individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

¹⁴ The statute defines a “veteran” as a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

¹⁵ The statute defines a “first responder” as a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is employed by the state or a local government

¹⁶ The statute is repealed on December 31, 2017.

assist in the investigation and prosecution of the criminal use of personal identification information in Palm Beach County, Broward County, and Miami-Dade County.¹⁷

The task force consists of the following members or their designees:

- The special agent in charge of the FDLE's Miami Regional Operation Center, who serves as chair;
- The sheriffs of Palm Beach County and Broward County;
- The police chief from the Miami-Dade Police Department;
- The state attorneys of the Eleventh Judicial Circuit, Fifteenth Judicial Circuit, and Seventeenth Judicial Circuit; and
- Six members appointed by the chair, consisting of two chiefs of police from Palm Beach County, two chiefs of police from Broward County, and two representatives from the Miami-Dade Police Department.

Members of the task force serve without compensation but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. Further, the bill provides the following legislative finding that task force participation does not preclude holding public office or employment with a public entity: "The Legislature finds that the task force serves a legitimate state, county, and municipal purpose and that service on the task force is consistent with a member's principal service in public office or employment. Therefore, membership on the task force does not disqualify a member from holding any other public office or from being employed by a public entity."

The FDLE must provide administrative and support services for the task force, and must also adopt rules to implement the requirements of s. 817.5686, F.S.

The task force must organize by December 31, 2014, and meet at least four times per year thereafter.¹⁸ Additional meetings may be held if the chair determines that extraordinary circumstances require such meetings. A majority of the members of the task force constitutes a quorum. The chair of the task force may appoint subcommittees and subcommittee chairs as necessary in order to address issues related to the task force.¹⁹

The task force must coordinate efforts in Palm Beach County, Broward County, and Miami-Dade County to:

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

¹⁷ The bill provides the following legislative intent language: "The Legislature finds that there is a need to develop and implement a strategy to address the investigation and prosecution of the criminal use of personal identification information in Palm Beach, Broward, and Miami-Dade Counties."

¹⁸ Members may appear at meetings by electronic means.

¹⁹ A subcommittee chair serves at the pleasure of the chair.

By December 1, 2017, the task force must submit a report on its activities to the governor, the president of the Senate, and the speaker of the House of Representatives. The report must include any recommendations on how to better investigate and prosecute the criminal use of personal identification information. The task force dissolves on December 31, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The FDLE states that the Government in the Sunshine Law, s. 286.011, F.S., applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision,” and may apply to the task force created by the bill. If the law does apply to the task force, the FDLE states that task force meetings will have to be noticed and public access provided.²⁰ The FDLE also states that two or more task force members would be prohibited from “discussing any matter which would foreseeably come before the [task force] for action outside the public forum,” and task force members would have to avoid discussing active criminal investigations and confidential information during meetings “in order to avoid compromising pending investigations.”²¹

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Prison Bed Impact

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation has not reviewed CS/SB 1472.

²⁰ There is no separate bill providing for closed meetings of the task force or for closing a portion of task force meetings.

²¹ 2014 FDLE Legislative Analysis (CS/SB 1472) (March 31, 2014) (on file with the Senate Committee on Criminal Justice).

However, the CJIC has reviewed CS/HB 1029, which is substantively identical to CS/SB 1472, and estimated the bill will have an insignificant prison bed impact.²²

FDLE Impact

The FDLE has analyzed CS/SB 1472 and determined the bill will have an impact on the department.²³

Revenue:

The FDLE states:

\$151 will be imposed for any sanction applied by the Court for criminal use of personal identification violations. State Attorneys will receive \$75 to assist with prosecution, but the \$75 deposited with FDLE is for establishment of a grant program for specific local law enforcement agencies to assist with their investigation of criminal use of personal identification, rather than to fund identity theft investigations statewide.

The Office of Economic and Demographic Research indicates that approximately 1,200 offenders were sentenced for fraudulent use of personal identification information in Fiscal Year 2012-2013. Based upon 1,200 convictions each year, the total surcharge collected annually is likely to be approximately \$180,000, with \$90,000 going to FDLE for grants, \$90,000 going to state attorneys to assist with prosecutions, and \$1,200 retained by the clerks of court as a service charge.

Expenditures:

The FDLE states that implementing the task force provision (included in the bill) will require, at a minimum, four additional FTEs at a total cost of \$318,767 for salary, benefits, expenses, and equipment. The FTEs are itemized below:

- One Government Analyst I to coordinate meetings, minutes, analyze funding requests and make funding recommendations, and to prepare quarterly and annual task force reports.
- One Operations Review Specialist to monitor and report each grant's performance.
- One Accountant II to track grant awards, expenditures, requests for reimbursements, and prepare financial reports required by the Department of Financial Services.
- One Special Agent in the MROC region (includes Palm Beach, Broward, and Miami-Dade counties) trained and equipped for identity theft investigations and investigative forensics.

²² The identity theft offense created by the bill is a second degree felony. Since this second degree felony is not specifically ranked in the offense severity ranking chart of the Criminal Punishment Code, it defaults to a Level 4 ranking pursuant to s. 921.0023, F.S.

²³ 2014 FDLE Legislative Analysis (CS/SB 1472) (March 26, 2014). All information in the "Government Sector Impact" section of this analysis relevant to FDLE impact and court impact is from the FDLE analysis.

Position	Salary & Benefits	Expenses & Equipment	Total Including Nonrecurring
GA I	\$53,142	\$10,378	\$63,520
ORS	\$58,296	\$10,378	\$68,674
Accountant II	\$41,722	\$10,378	\$52,100
Special Agent	\$75,832	\$58,641	\$134,473
Total	\$228,992	\$89,775	\$318,767

The FDLE is reevaluating its estimate of the additional workload that would be required for administration of the task force and of any grants from revenues gained from the \$75 portion of the surcharge that is designated for grants to local law enforcement agencies.

Court Impact

An analysis of CS/SB 1472 by the Office of the State Courts Administrator was not available. The FDLE states the bill “[c]ould impact costs incurred by Clerks of the Courts for collection and transmitting of fines, although the Clerks are authorized to retain \$1 of the imposed fine which could offset these costs.”

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.568 of the Florida Statutes.

This bill creates section 817.5686 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 31, 2014:

- Creates a second degree felony for criminal use of personal ID of a person 60 years of age or older, a public servant, a veteran, a first responder, or a state or federal employee;
- Requires a court-imposed \$151 surcharge for an ID theft violation and specifies surcharge disbursement;
- Creates a temporary task force (dissolves December 31, 2017) in the FDLE to develop strategies/techniques to assist ID theft investigations/prosecutions in Palm Beach, Broward, and Miami-Dade Counties; and
- Changes the effective date of the bill to July 1, 2014.

B. Amendments:

None.

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