

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 Committee on Rules

BILL: SB 608

INTRODUCER: Senator Passidomo

SUBJECT: Public Records/Identity Theft and Fraud Protection Act

DATE: January 24, 2018

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|------------------|
| 1. Peacock | Caldwell | GO | Favorable |
| 2. Farach | Cibula | JU | Favorable |
| 3. Peacock | Phelps | RC | Favorable |

I. Summary:

SB 608 creates the Identity Theft and Fraud Protection Act and requires an agency to review information to determine if it is susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website. The bill requires the Division of Library and Information Services of the Department of State to adopt rules establishing uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

The bill also requires an agency to establish a policy that allows a person to request removal of an image or a copy of a public record containing information susceptible to use for purposes of identity theft or fraud which is posted on an agency's publicly available website. Information that an agency may not post on a publicly available website, however, may be posted on a limited access area of the agency's website which is not available to the general public.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, or employee of the state, or of persons acting on their behalf.¹ This right to access public records includes records made or received by legislative, executive, and judicial branches of government.²

The statutes declare that agencies should strive to provide remote electronic access to public records to the extent feasible.³ If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Section 119.01(2)(e), F.S.

available to the agency providing the information.⁴ Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.⁵

Chapter 817, Fraudulent Practices

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices that are committed against individuals, corporations, and governments. Fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.⁶ Identity theft or fraud is the criminal use of an individual's personal identification information.⁷ Identity thieves steal such information as a person's name, social security number, driver's license information, or bank and credit card accounts and use the information to establish credit, make purchases, apply for loans, or seek employment. According to the Federal Trade Commission, Florida ranked second in the nation for identity theft in 2017, with 38,384 reported complaints.⁸

Section 817.568, F.S., punishes criminal use of personal identification information.⁹ For example, the statute makes it a third degree felony 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. The statute provides enhanced penalties if:

- The pecuniary benefit exceeds specified amounts;
- The person fraudulently uses the information of more than a certain number of people;
- The person commits the offense for purposes of harassment; or
- The victim is younger than 18 years of age or 60 years of age or older.

⁴ *Id.*

⁵ Section 119.01(2)(a), F.S.

⁶ BLACK'S LAW DICTIONARY (9th ed. 2009).

⁷ Office of the Attorney General, *Identity Theft*, <http://myfloridalegal.com/pages.nsf/Main/3C2A3BA3C2DA5C6F85256DBE006C1B30?OpenDocument> (last visited Jan. 13, 2018).

⁸ *Id.*

⁹ Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

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

- 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.

Exemption from Public Record Laws for Certain Sensitive Information

The Supreme Court has adopted rules to minimize the release of sensitive information from court files. Specifically, every pleading or other document filed with the court must comply with Florida Rules of Judicial Administration 2.420, Public Access to and Protection of Judicial Branch Records and 2.425, Minimization of the Filing of Sensitive Information.¹⁰ Certain sensitive information that may be susceptible to use in identity theft or other fraudulent practices, such as social security, bank account, charge, debit, and credit card numbers must be maintained by the clerk of court as confidential.¹¹ Furthermore, the rules of Judicial Administration prohibit or restrict the inclusion of sensitive financial information such as social security numbers, bank account numbers, and driver license numbers on court filings..¹²

Secretary of State

The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor.¹³ The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.¹⁴ The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records.¹⁵ The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.¹⁶

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the “Identity Theft and Fraud Protection Act.”

Section 2 amends section 119.021, F.S., to require a state agency¹⁷ to review the information in order to determine if it is susceptible to use for purposes of identity theft or fraud before posting the information on a publicly available website. The state agency is prohibited from posting an image or a copy of, or information from, a public record on the agency's publicly available website or another publicly available website used by the agency if the public record contains information susceptible to use for purposes of identity theft or fraud.

The bill requires the Division of Library and Information Services of the Department of State to adopt rules to establish uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

¹⁰ Fla. R. Civ. P. 1.020.

¹¹ Rule. 2.424(d)(1)(B)(iii) Fla. R. Jud. Admin.; ss. 119.071(5)(a) And 119.0714(2), F.S.

¹² Rule 2.245 Fla. R. Jud. Admin.

¹³ Section 20.10(1), F.S.

¹⁴ See Florida Department of State, *About the Department*, <http://dos.myflorida.com/about-the-department/> (last visited Jan. 13, 2018).

¹⁵ Section 20.10(1), F.S.

¹⁶ Section 20.10(2), F.S.

¹⁷ Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The bill also requires an agency to establish a policy that allows a person, or his or her attorney or legal guardian, to request that the agency remove an image or a copy of a public record containing information that is susceptible to use for purposes of identity theft or fraud which is posted on the agency's publicly available website or another publicly available website used by the agency to display such records. The request must specify which record contains the information that is susceptible to identity theft or fraud. Upon a valid request, the agency must remove the posting of the record containing such information as expeditiously as possible. The agency may not charge a fee to the person making the request.

Additionally, the bill does not prohibit an agency from posting images or copies of records not otherwise authorized under this section to a limited access area of the agency's website not made available to the general public. This provision does not authorize the disclosure of information or records that are otherwise exempted by law from public disclosure.

Section 3 provides a legislative finding that the bill fulfills an important state interest.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the financial losses caused or aided by the fraudulent use of public information that is readily available from an agency website.

C. Government Sector Impact:

Agencies will incur costs to comply with requests to remove information from their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is not a new public records exemption, but it creates a process for state agencies to consider what information they should post on publicly available websites.

VIII. Statutes Affected:

This bill substantially amends section 119.021 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.