

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: SB 2492

SPONSOR: Senator Alexander

SUBJECT: Criminal Use of Personal ID

DATE: March 22, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 2492 amends s. 817.568, F.S., commonly known as the Identity Theft statute, creating new definitions, crimes, penalties, and penalty enhancements. The focus of the bill is on identity theft with regard to the identities of people who have passed away, using either the deceased person's actual personal identification or counterfeit personal identification. The bill also provides for leniency in sentencing of defendants who have provided substantial assistance to law enforcement. The bill also creates a penalty enhancement where the defendant misrepresents him or herself as a law enforcement officer or as a person who is seeking to assist the victim with the victim's credit history.

This bill substantially amends the following sections of the Florida Statutes: 817.568 and 921.0022.

II. Present Situation:

Criminal Use of Personal Identification Information

Section 817.568, F.S., proscribes the "criminal use of personal identification information," a number of criminal acts which are popularly referred to as "identity theft" crimes (or "identity fraud" crimes).

The term "personal identification information" is defined in s. 817.568(g), F.S., 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, social security number, date of birth, official driver's license or identification number, alien registration number, passport number, employer or taxpayer identification

- number, Medicaid or food stamp identification number, bank account or credit card number; or
- Unique biometric data, such as fingerprint, voice print, retina or iris image, other unique physical representation; or
 - Unique electronic identification number, address or routing code; or
 - Telecommunication identifying information or access device.

As used in s. 817.568, F.S., “access device” means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access, which can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or which can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

The term “fraud” or “fraudulent use” is not defined in this section, but is generally understood to mean “a deception deliberately practiced in order to secure...gain.” *Alvarez v. State*, 800 So.2d 237 (Fla. 3rd DCA, 2001), citing *The American Heritage Dictionary of the English Language* (1979).

“Counterfeit” is generally defined as made in imitation of what is genuine with the intent to defraud. “Fictitious” is defined as adopted or assumed in order to deceive, and “fabricate(d)” means to make up in order to deceive. *The American Heritage Dictionary* (1985). These terms are not defined in the bill.

Section 817.568, F.S., provides that it is a third degree felony for any 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. However, it is a second degree felony, with a 3-year mandatory minimum sentence, to use the personal identification 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 personal identification information of 10 or more individuals without their consent. When the pecuniary benefit is \$50,000 or there are 20 or more victims, the offense is a first degree felony with a 5-year mandatory minimum sentence. When the pecuniary benefit is \$100,000 or more or there are 30 or more victims, the offense is a first degree felony with a 10-year mandatory minimum sentence.

It is also a first degree misdemeanor to possess or use personal identification information of an individual for the purpose of harassing that individual.

If an offense prohibited under s. 817.568, F.S., was facilitated or furthered by the use of a public record, the offense is reclassified to the next higher degree.

It is also 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.

It is also a second degree felony for any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, to willfully and fraudulently use personal identification information of that individual.

III. Effect of Proposed Changes:

Senate Bill 2492 amends s. 817.568, F.S., commonly known as the Identity Theft statute, creating new definitions, crimes, penalties, and penalty enhancements. The focus of the bill is on identity theft with regard to the identities of people who have passed away, using either the deceased person's actual personal identification or counterfeit personal identification. The bill also provides for leniency in sentencing of defendants who have provided substantial assistance to law enforcement. The bill also creates a penalty enhancement where the defendant misrepresents him or herself as a law enforcement officer or as a person who is seeking to assist the victim with the victim's credit history.

Specifically the bill revises s. 817.568, F.S., as follows:

- Creates a definition for the term “counterfeit or fictitious personal identification information”;
- Adds “address” to the existing list of things that are considered “personal identification information”;
- Creates a new third degree felony offense where a person *possesses with intent to fraudulently use* a deceased person's personal identification – this offense carries a five year minimum mandatory prison sentence;
- Creates new second degree felony offenses where a person *uses a deceased person's personal identification* for pecuniary gain
 - if the pecuniary gain amounts to *\$50,000 or more* the defendant is subject to a ten year minimum mandatory prison sentence and it is a first degree felony
 - if the person fraudulently uses the identification of *more than one deceased person*, the offense is a first degree felony which carries a minimum mandatory five year prison sentence;
- Creates a new third degree felony offense of *fraudulent creation, use, or possession with intent to fraudulently use counterfeit or fictitious personal identification information*;
- Provides for a prosecutor to request that a defendant's sentence be reduced or suspended where he or she has provided substantial assistance to law enforcement or prosecutors in arrests or convictions in other identity theft cases; and
- Reclassifies identity theft crimes prohibited in s. 817.568, F.S., in cases where a person misrepresents him or herself to be a law enforcement officer or employee or representative of a bank, credit card company, credit counseling company, or a credit reporting agency, or who wrongfully represents that he or she is helping the victim with a credit problem.

The bill amends the Criminal Punishment Code to change existing references to the extent that subsection numbers were changed by the bill. The bill becomes effective July 1, 2004.

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:

So long as the provisions of the bill that enhance penalties for existing crimes are only applied in crimes that occur after this act becomes a law, there is no anticipated constitutional issue.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill has not yet been considered by the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.