

## Committee Substitute for House Bill No. 49

An act relating to criminal use of personal identification information; creating s. 817.568, F.S.; providing definitions; providing that a person who willfully and without authorization uses, or possesses with intent to use, personal identification information concerning an individual without previously obtaining the individual's consent commits either the offense of fraudulent use of personal identification information or the offense of harassment by use of personal identification information, depending on specified circumstances; providing penalties; providing for nonapplicability of the new provisions to specified law enforcement activities; providing for restitution, including attorney's fees and costs, to the victim; providing for prosecution by the state attorney or the statewide prosecutor; reenacting s. 464.018(1)(d), F.S., relating to disciplinary actions for violations of the Nurse Practice Act, s. 772.102(1)(a), F.S., relating to definition of "criminal activity" with respect to the Civil Remedies for Criminal Practices Act, and s. 895.02(1)(a), F.S., relating to definition of "racketeering activity," to provide for incorporation of said new section in references to ch. 817, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 817.568, Florida Statutes, is created to read:

817.568 Criminal use of personal identification information.—

(1) As used in this section:

(a) "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 that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.

(b) "Authorization" means empowerment, permission, or competence to act.

(c) "Harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. "Harass" does not mean to use personal identification information for accepted commercial purposes. The term does not include constitutionally protected conduct such as organized protests or the use of personal identification information for accepted commercial purposes.

(d) "Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

(e) "Person" means a "person" as defined in s. 1.01(3).

(f) "Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

1. Name, social security number, date of birth, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, or Medicaid or food stamp account number;

2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

3. Unique electronic identification number, address, or routing code; or

4. Telecommunication identifying information or access device.

(2) 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, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) 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, punishable as provided in s. 775.082 or s. 775.083.

(4) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of this state or any of its political subdivisions, of any other state or its political subdivisions, or of the Federal Government or its political subdivisions.

(5)(a) In sentencing a defendant convicted of an offense under this section, the court may order that the defendant make restitution pursuant to s. 775.089 to any victim of the offense. In addition to the victim's out-of-pocket costs, such restitution may include payment of any other costs, including attorney's fees incurred by the victim in clearing the victim's credit history or credit rating, or any costs incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as the result of the actions of the defendant.

(5)(b) The sentencing court may issue such orders as are necessary to correct any public record that contains false information given in violation of this section.

(6) Prosecutions for violations of this section may be brought on behalf of the state by any state attorney or by the statewide prosecutor.

Section 2. For the purpose of incorporating section 817.568, Florida Statutes, as created by this act, in references thereto, the following sections or subdivisions of Florida Statutes or Florida Statutes, 1998 Supplement, are reenacted to read:

464.018 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(d) Being found guilty, regardless of adjudication, of any of the following offenses:

1. A forcible felony as defined in chapter 776.
2. A violation of chapter 812, relating to theft, robbery, and related crimes.
3. A violation of chapter 817, relating to fraudulent practices.
4. A violation of chapter 800, relating to lewdness and indecent exposure.
5. A violation of chapter 784, relating to assault, battery, and culpable negligence.
6. A violation of chapter 827, relating to child abuse.
7. A violation of chapter 415, relating to protection from abuse, neglect, and exploitation.
8. A violation of chapter 39, relating to child abuse, abandonment, and neglect.

772.102 Definitions.—As used in this chapter, the term:

(1) “Criminal activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 414.39, relating to public assistance fraud.
3. Section 440.105 or s. 440.106, relating to workers’ compensation.
4. Part IV of chapter 501, relating to telemarketing.
5. Chapter 517, relating to securities transactions.
6. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
7. Chapter 550, relating to jai alai frontons.

8. Chapter 552, relating to the manufacture, distribution, and use of explosives.
9. Chapter 562, relating to beverage law enforcement.
10. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
11. Chapter 687, relating to interest and usurious practices.
12. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.
13. Chapter 782, relating to homicide.
14. Chapter 784, relating to assault and battery.
15. Chapter 787, relating to kidnapping.
16. Chapter 790, relating to weapons and firearms.
17. Section 796.01, s. 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
18. Chapter 806, relating to arson.
19. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
20. Chapter 812, relating to theft, robbery, and related crimes.
21. Chapter 815, relating to computer-related crimes.
22. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
23. Section 827.071, relating to commercial sexual exploitation of children.
24. Chapter 831, relating to forgery and counterfeiting.
25. Chapter 832, relating to issuance of worthless checks and drafts.
26. Section 836.05, relating to extortion.
27. Chapter 837, relating to perjury.
28. Chapter 838, relating to bribery and misuse of public office.
29. Chapter 843, relating to obstruction of justice.
30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
32. Chapter 893, relating to drug abuse prevention and control.
33. Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.
34. Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) “Racketeering activity” means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime which is chargeable by indictment or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.
2. Section 403.727(3)(b), relating to environmental control.
3. Section 414.39, relating to public assistance fraud.
4. Section 409.920, relating to Medicaid provider fraud.
5. Section 440.105 or s. 440.106, relating to workers’ compensation.
6. Part IV of chapter 501, relating to telemarketing.
7. Chapter 517, relating to sale of securities and investor protection.
8. Section 550.235, s. 550.3551, or s. 550.3605, relating to dogracing and horseracing.
9. Chapter 550, relating to jai alai frontons.
10. Chapter 552, relating to the manufacture, distribution, and use of explosives.
11. Chapter 562, relating to beverage law enforcement.
12. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
13. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
14. Chapter 687, relating to interest and usurious practices.
15. Section 721.08, s. 721.09, or s. 721.13, relating to real estate time-share plans.

16. Chapter 782, relating to homicide.
17. Chapter 784, relating to assault and battery.
18. Chapter 787, relating to kidnapping.
19. Chapter 790, relating to weapons and firearms.
20. Section 796.03, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
21. Chapter 806, relating to arson.
22. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.
23. Chapter 812, relating to theft, robbery, and related crimes.
24. Chapter 815, relating to computer-related crimes.
25. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.
26. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.
27. Section 827.071, relating to commercial sexual exploitation of children.
28. Chapter 831, relating to forgery and counterfeiting.
29. Chapter 832, relating to issuance of worthless checks and drafts.
30. Section 836.05, relating to extortion.
31. Chapter 837, relating to perjury.
32. Chapter 838, relating to bribery and misuse of public office.
33. Chapter 843, relating to obstruction of justice.
34. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.
35. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.
36. Chapter 874, relating to criminal street gangs.
37. Chapter 893, relating to drug abuse prevention and control.
38. Chapter 896, relating to offenses related to financial transactions.
39. Sections 914.22 and 914.23, relating to tampering with a witness, victim, or informant, and retaliation against a witness, victim, or informant.

40. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 3. This act shall take effect July 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.