

## House Bill No. 1845

An act relating to the criminal use of personal information; amending s. 817.568, F.S.; providing that the willful and fraudulent use of personal identification information of another individual is a felony of the second degree if the value of the pecuniary benefit services received, payment sought to be avoided, or injury or fraud perpetrated is of a specified amount or more; providing for reclassification of certain offenses involving the criminal use of personal-identification information if the offense was facilitated by the use of a public record; requiring that such offense be prosecuted in the county where the victim resides or in a county where any element of the offense occurred; limiting the time within which a person who fraudulently uses personal-identification information must be prosecuted; amending s. 921.0022, F.S., relating to the offense severity ranking chart of the Criminal Punishment Code; ranking offenses relating to fraudulent use of personal identification information; providing an effective date.

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

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

817.568 Criminal use of personal identification information.—

(1) As used in this section, the term:

(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)(a) 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.

(b) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual without first obtaining that individual's consent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, 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 \$75,000 or more.

(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) If an offense prohibited under this section was facilitated or furthered by the use of a public record, as defined in s. 119.011, the offense is reclassified to the next higher degree as follows:

(a) A misdemeanor of the first degree is reclassified as a felony of the third degree.

(b) A felony of the third degree is reclassified as a felony of the second degree.

(c) A felony of the second degree is reclassified as a felony of the first degree.

For purposes of sentencing under chapter 921 and incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this

subsection is ranked one level above the ranking under s. 921.0022 of the felony offense committed, and a misdemeanor offense that is reclassified under this subsection is ranked in level 2 of the offense severity ranking chart in s. 921.0022.

(5)(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.

(6)(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.

(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.

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

(8) LEGISLATIVE FINDING. The Legislature finds that, in the absence of evidence to the contrary, the location where a victim gives or fails to give consent to the use of personal identification information is the county where the victim generally resides.

(9) Notwithstanding any other provision of law, venue for the prosecution and trial of violations of this section may be commenced and maintained in any county in which an element of the offense occurred, including the county where the victim generally resides.

(10) A prosecution of an offense prohibited under subsection (2) 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 a legal duty to represent the aggrieved party and who is not a party to the offense, if such prosecution is commenced within 5 years after the violation occurred.

Section 2. Paragraphs (d) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

| Florida Statute | Felony Degree | Description   |
|-----------------|---------------|---|
|                 |               | (d) LEVEL 4   |
| 316.1935(3)     | 2nd           | Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a marked patrol vehicle with siren and lights activated. |
| 784.07(2)(b)    | 3rd           | Battery of law enforcement officer, firefighter, intake officer, etc.   |
| 784.075         | 3rd           | Battery on detention or commitment facility staff.  |
| 784.08(2)(c)    | 3rd           | Battery on a person 65 years of age or older.   |
| 784.081(3)      | 3rd           | Battery on specified official or employee.  |
| 784.082(3)      | 3rd           | Battery by detained person on visitor or other detainee.  |
| 784.083(3)      | 3rd           | Battery on code inspector.  |
| 784.085         | 3rd           | Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.  |
| 787.03(1)       | 3rd           | Interference with custody; wrongly takes child from appointed guardian.   |
| 787.04(2)       | 3rd           | Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.   |
| 787.04(3)       | 3rd           | Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.  |
| 790.115(1)      | 3rd           | Exhibiting firearm or weapon within 1,000 feet of a school.   |
| 790.115(2)(b)   | 3rd           | Possessing electric weapon or device, destructive device, or other weapon on school property.   |
| 790.115(2)(c)   | 3rd           | Possessing firearm on school property.  |
| 800.04(7)(d)    | 3rd           | Lewd or lascivious exhibition; offender less than 18 years.   |
| 810.02(4)(a)    | 3rd           | Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.  |
| 810.02(4)(b)    | 3rd           | Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.   |

| Florida Statute         | Felony Degree | Description   |
|-------------------------|---------------|---|
| 810.06                  | 3rd           | Burglary; possession of tools.  |
| 810.08(2)(c)            | 3rd           | Trespass on property, armed with firearm or dangerous weapon.   |
| 812.014(2)(c)3.         | 3rd           | Grand theft, 3rd degree \$10,000 or more but less than \$20,000.  |
| 812.014<br>(2)(c)4.-10. | 3rd           | Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.  |
| 817.563(1)              | 3rd           | Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.              |
| <u>817.568(2)(a)</u>    | <u>3rd</u>    | <u>Fraudulent use of personal-identification information.</u>   |
| 828.125(1)              | 2nd           | Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.        |
| 837.02(1)               | 3rd           | Perjury in official proceedings.  |
| 837.021(1)              | 3rd           | Make contradictory statements in official proceedings.  |
| 843.021                 | 3rd           | Possession of a concealed handcuff key by a person in custody.  |
| 843.025                 | 3rd           | Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication. |
| 843.15(1)(a)            | 3rd           | Failure to appear while on bail for felony (bond estreatment or bond jumping).                                    |
| 874.05(1)               | 3rd           | Encouraging or recruiting another to join a criminal street gang.   |
| 893.13(2)(a)1.          | 2nd           | Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).                   |
| 914.14(2)               | 3rd           | Witnesses accepting bribes.   |
| 914.22(1)               | 3rd           | Force, threaten, etc., witness, victim, or informant.   |
| 914.23(2)               | 3rd           | Retaliation against a witness, victim, or informant, no bodily injury.  |
| 918.12                  | 3rd           | Tampering with jurors.  |
|                         |               | (e) LEVEL 5   |
| 316.027(1)(a)           | 3rd           | Accidents involving personal injuries, failure to stop; leaving scene.  |
| 316.1935(4)             | 2nd           | Aggravated fleeing or eluding.  |

| Florida Statute      | Felony Degree | Description   |
|----------------------|---------------|---|
| 322.34(6)            | 3rd           | Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.  |
| 327.30(5)            | 3rd           | Vessel accidents involving personal injury; leaving scene.  |
| 381.0041(11)(b)      | 3rd           | Donate blood, plasma, or organs knowing HIV positive.   |
| 790.01(2)            | 3rd           | Carrying a concealed firearm.   |
| 790.162              | 2nd           | Threat to throw or discharge destructive device.  |
| 790.163              | 2nd           | False report of deadly explosive.   |
| 790.165(2)           | 3rd           | Manufacture, sell, possess, or deliver hoax bomb.   |
| 790.221(1)           | 2nd           | Possession of short-barreled shotgun or machine gun.  |
| 790.23               | 2nd           | Felons in possession of firearms or electronic weapons or devices.  |
| 800.04(6)(c)         | 3rd           | Lewd or lascivious conduct; offender less than 18 years.  |
| 800.04(7)(c)         | 2nd           | Lewd or lascivious exhibition; offender 18 years or older.  |
| 806.111(1)           | 3rd           | Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.  |
| 812.019(1)           | 2nd           | Stolen property; dealing in or trafficking in.  |
| 812.131(2)(b)        | 3rd           | Robbery by sudden snatching.  |
| 812.16(2)            | 3rd           | Owning, operating, or conducting a chop shop.   |
| 817.034(4)(a)2.      | 2nd           | Communications fraud, value \$20,000 to \$50,000.   |
| <u>817.568(2)(b)</u> | <u>2nd</u>    | <u>Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.</u> |
| 825.1025(4)          | 3rd           | Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.   |
| 827.071(4)           | 2nd           | Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.   |

| Florida Statute | Felony Degree | Description  |
|-----------------|---------------|--|
| 843.01          | 3rd           | Resist officer with violence to person; resist arrest with violence.   |
| 874.05(2)       | 2nd           | Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.  |
| 893.13(1)(a)1.  | 2nd           | Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).   |
| 893.13(1)(c)2.  | 2nd           | Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility or school.   |
| 893.13(1)(d)1.  | 1st           | Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of university or public park.  |
| 893.13(1)(e)2.  | 2nd           | Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site. |
| 893.13(1)(f)1.  | 1st           | Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.   |
| 893.13(4)(b)    | 2nd           | Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).   |

Section 3. This act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.