



Justice Appropriations Subcommittee

Meeting Packet

**March 3, 2015
4:30 p.m. – 6:30 p.m.
Morris Hall**



The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli
Speaker

Larry Metz
Chair

MEETING AGENDA

Morris Hall

March 3, 2015

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - HB 117 - False Personation by Rep. Watson, B.
 - CS/HB 133 - Sexual Offenses by Civil Justice Subcommittee, and Rep. Plasencia
 - CS/HB 157 - Fraud by Criminal Justice Subcommittee and Rep. Passidomo
 - CS/HB 465 - Human Trafficking by Criminal Justice Subcommittee and Reps. Spano and Kerner
- IV.** Closing Remarks
- V.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 False Personation
SPONSOR(S): Watson, B.
TIED BILLS: None IDEN./SIM. BILLS: None

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Criminal Justice Subcommittee, Justice Appropriations Subcommittee, and Judiciary Committee.

SUMMARY ANALYSIS

Section 843.08, F.S., makes it a third degree felony for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.

Section 843.085, F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner by words or insignia that could deceive a reasonable person into believing the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.

The bill amends s. 843.08, F.S., to add "firefighter" and "investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer" to the list of officers that may not be falsely personated.

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses a 2005 Florida Supreme Court decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

The Criminal Justice Impact Conference (CJIC) met February 27, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

False Personation of an Officer or Others

Section 843.08, F.S., makes it a third degree felony¹ for a person to falsely assume or pretend to be a specified officer and take it upon himself or herself to act as such officer, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such an officer.² This section applies to the false personation of the following:

- A sheriff or deputy sheriff;
- Officers of the Florida Highway Patrol;
- Officers of the Fish and Wildlife Conservation Commission;
- Officers of the Department of Transportation;
- Officers of the Department of Financial Services;
- Officers of the Department of Corrections;
- Correctional probation officers;
- State Attorneys, assistant state attorneys, and state attorney investigators;
- The Statewide Prosecutor and assistant statewide prosecutors;
- Coroners;
- Police officers;
- Lottery special agents and lottery investigators;
- Beverage enforcement agents;
- Watchman;
- Members of the Parole Commission and any administrative aid or supervisor employed by the Parole Commission;
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE); and
- Federal law enforcement officers as defined in s. 901.1505, F.S.

If a person falsely personates any of the above listed officers during the commission of a felony, the offense is reclassified to a second degree felony.³ If the commission of a felony results in the death or injury of another person, the offense is reclassified to a first degree felony.⁴

Currently, the term “watchman” is not defined.

Effect of the Bill

The bill amends s. 843.08, F.S., to add “firefighter” and “investigator with the Bureau of Fire and Arson Investigations within the office of the Chief Financial Officer” to the list of officers described above, and defines the term “watchman” as a security officer licensed under ch. 493, F.S.⁵ The bill also removes the reference to “officer of the Department of Transportation” since these officers were consolidated with the Florida Highway Patrol.

The bill amends the title of this offense to “false personation” and makes conforming changes in s. 921.0022, F.S., to reflect this title change.

¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² Section 843.08, F.S.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 493.6101(19), F.S., defines a “security officer” as any individual who, for consideration:

- Advertises as providing or performs bodyguard services or otherwise guards persons or property;
- Attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or
- Attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof.

Unlawful Use of Police Badges or Other Indicia of Authority

Unlawful use of Police Badges

Section 843.085(1), F.S., makes it a first degree misdemeanor,⁶ for a person, unless authorized by the appropriate agency, to wear or display any authorized indicia of authority including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof of a law enforcement agency which could deceive a reasonable person into believing that such item is authorized by the agency for use by the person displaying or wearing it.

The subsection also prohibits a person from wearing or displaying any item which displays the word "police," "patrolman," "agent," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol Officer," "state attorney," "public defender," "marshal," "constable," or "bailiff" and which could deceive a reasonable person into believing that such item is authorized by the law enforcement agency for use by the person displaying or wearing it.

Operating a Vehicle Marked as a Law Enforcement Vehicle

Section 843.085(2), F.S., makes it a first degree misdemeanor for a person to own or operate a motor vehicle marked or identified in any manner or combination (marked vehicle) by words or insignia which could deceive a reasonable person into believing that the vehicle is authorized by a law enforcement agency for use by the person operating the vehicle.⁷ The prohibited words and insignia include:

- The word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff;" or
- Any lettering, marking, or insignia or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the marked vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency.⁸

Section 843.085(2), F.S., does not apply if:

- The marked vehicle is owned or operated by the appropriate agency and its use is authorized by such agency;
- The local law enforcement agency authorizes the use of the marked vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S.⁹

An exception is also provided to allow fraternal, benevolent, or labor organizations or associations (fraternal association), to use any of the following words in the official name of the organization or association:

- "Police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," or "bailiff."¹⁰

Selling Badges

Currently, s. 843.085(3), F.S., makes it a first degree misdemeanor to sell, transfer, or give away the authorized badge, or colorable imitation thereof of any criminal justice agency or bearing words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "Wildlife Officer," "Marine Patrol

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 843.085(2), F.S.

⁸ Section 943.045, F.S., defines the term "criminal justice agency" as a court, FDLE, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Family Services, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

⁹ Chapter 354, F.S., requires the Governor to appoint one or more persons who have met specified law enforcement qualifications and training requirements as special officers for the protection and safety of railroads and common carriers; their passengers and employees; and the property of such carriers, passengers, and employees.

¹⁰ Section 843.085(4), F.S.

Officer," "marshal," "constable," "agent," "state attorney," "public defender," or "bailiff," which could deceive a reasonable person into believing that such item is authorized by the agency.¹¹

Sult v. State¹²

In *Sult v. State*,¹³ the Florida Supreme Court held that s. 843.085, F.S., was unconstitutionally overbroad and vague. The court found the statute unconstitutional because it did not require that the offender had a specific intent to deceive and it made no distinction between innocent wearing of law enforcement items and wearing of these items in order to deceive the public into believing the wearer was a member of the law enforcement agency. The court found:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The could deceive a reasonable person element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus...[the section] is overbroad because it reaches a substantial amount of constitutionally protected conduct.¹⁴

Effect of the Bill

The bill expands the application of s. 843.085, F.S., to prohibit a person from:

- Wearing or displaying the word "fire department" on any authorized indicia of authority, including any badge, insignia, emblem, identification card, or uniform, or any colorable imitation thereof;
- Marking or identifying a vehicle by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof; and
- Selling, transferring, or giving away the authorized badge, or colorable imitation thereof, including miniatures which bear the word "fire department."

The bill addresses the *Sult v. State* decision by requiring proof that the offender had the intent to mislead or cause another person to believe (rather than requiring proof that a reasonable person could be deceived) that the:

- Person is a member of that agency or is authorized to wear or display such item; or
- Vehicle is an official vehicle of that agency and is authorized to be used by that agency.

B. SECTION DIRECTORY:

Section 1. Amends s. 843.08, F.S., relating to falsely personating officer, etc.

Section 2. Amends s. 843.085, F.S., relating to unlawful use of police badges or other indicia of authority.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Provides an effective date of October 1, 2015.

¹¹ The bill provides an exception for "agency purchases or upon the presentation and recordation of both a driver's license and other identification showing any transferee to actually be a member of such criminal justice agency or unless the person is appointed by the Governor pursuant to chapter 354." A transferor of an item covered by this subsection is required to maintain for 2 years a written record of the transaction, including records showing compliance with this subsection, and if such transferor is a business, it must make such records available during normal business hours for inspection by any law enforcement agency having jurisdiction in the area where the business is located. Violation of this provision is a first degree misdemeanor. The bill does not change this provision.

¹² 906 So.2d 1013 (Fla. 2005).

¹³ *Id.*

¹⁴ *Id.* at 1021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. False personation under s. 843.08 F.S., is a 3rd degree felony ranked in level two of the Criminal Punishment Code ranking chart. In Fiscal Year 2013-14, 29 offenders were sentenced for this offense with three receiving a prison sentence. The average prison sentence for this offense is 24 months with an incarceration rate of 10 percent per offenders sentenced.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may also have a negative jail bed impact on local governments because it expands the application of s. 843.085, F.S., a first degree misdemeanor, to include vehicles marked or identified by the word "fire department," or any lettering, marking, insignia, or colorable imitation thereof.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to false personation; amending s.
 3 843.08, F.S.; revising the list of officials who are
 4 prohibited from being falsely personated; revising
 5 terminology; amending s. 843.085, F.S.; prohibiting
 6 the sale or transfer of specified badges bearing in
 7 any manner or combination the words "fire department"
 8 and the ownership or operation of vehicles marked or
 9 identified by the words "fire department"; requiring
 10 specified intent for certain offenses; providing an
 11 exception; amending s. 921.0022, F.S.; conforming
 12 provisions to changes made by the act; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 843.08, Florida Statutes, is amended to
 18 read:

19 843.08 False personation ~~Falsely personating officer,~~
 20 ~~etc.~~—A person who falsely assumes or pretends to be a
 21 firefighter, sheriff, officer of the Florida Highway Patrol,
 22 officer of the Fish and Wildlife Conservation Commission, a fire
 23 or arson investigator of the Department of Financial Services,
 24 ~~officer of the Department of Transportation,~~ officer of the
 25 Department of Financial Services, officer of the Department of
 26 Corrections, correctional probation officer, deputy sheriff,

CODING: Words stricken are deletions; words underlined are additions.

27 | state attorney or assistant state attorney, statewide prosecutor
 28 | or assistant statewide prosecutor, state attorney investigator,
 29 | coroner, police officer, lottery special agent or lottery
 30 | investigator, beverage enforcement agent, or watchman, or any
 31 | member of the Florida Commission on Offender Review and any
 32 | administrative aide or supervisor employed by the commission, or
 33 | any personnel or representative of the Department of Law
 34 | Enforcement, or a federal law enforcement officer as defined in
 35 | s. 901.1505, and takes upon himself or herself to act as such,
 36 | or to require any other person to aid or assist him or her in a
 37 | matter pertaining to the duty of any such officer, commits a
 38 | felony of the third degree, punishable as provided in s.
 39 | 775.082, s. 775.083, or s. 775.084. However, a person who
 40 | falsely personates any such officer during the course of the
 41 | commission of a felony commits a felony of the second degree,
 42 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 43 | If the commission of the felony results in the death or personal
 44 | injury of another human being, the person commits a felony of
 45 | the first degree, punishable as provided in s. 775.082, s.
 46 | 775.083, or s. 775.084. The term "watchman" means a security
 47 | officer licensed under chapter 493.

48 | Section 2. Section 843.085, Florida Statutes, is amended
 49 | to read:

50 | 843.085 Unlawful use of ~~police~~ badges or other indicia of
 51 | authority. ~~It is unlawful for any person:~~

52 | (1) It is unlawful for any person, unless appointed by the

53 Governor pursuant to chapter 354, authorized by the appropriate
 54 agency, or displayed in a closed or mounted case as a collection
 55 or exhibit, to wear or display any authorized indicia of
 56 authority, including any badge, insignia, emblem, identification
 57 card, or uniform, or any colorable imitation thereof, of any
 58 federal, state, county, or municipal law enforcement agency, or
 59 other criminal justice agency as now or hereafter defined in s.
 60 943.045, with the intent to mislead or cause another person to
 61 believe that he or she is a member of that agency or is
 62 authorized to display or wear such item, or to wear or display
 63 any item that ~~which could deceive a reasonable person into~~
 64 ~~believing that such item is authorized by any of the agencies~~
 65 ~~described above for use by the person displaying or wearing it,~~
 66 ~~or which~~ displays in any manner or combination the word or words
 67 "police," "patrolman," "agent," "sheriff," "deputy," "trooper,"
 68 "highway patrol," "commission officer," "Wildlife Officer,"
 69 "Marine Patrol Officer," "state attorney," "public defender,"
 70 "marshal," "constable," ~~or~~ "bailiff," or "fire department," with
 71 the intent to mislead or cause another person to believe that he
 72 or she is a member of that agency or is authorized to wear or
 73 display such item ~~which could deceive a reasonable person into~~
 74 ~~believing that such item is authorized by any of the agencies~~
 75 ~~described above for use by the person displaying or wearing it.~~
 76 (2) It is unlawful for a person to own or operate a motor
 77 vehicle marked or identified in any manner or combination by the
 78 word or words "police," "patrolman," "sheriff," "deputy,"

79 "trooper," "highway patrol," "commission officer," "Wildlife
 80 Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~
 81 "bailiff," or "fire department," or by any lettering, marking,
 82 or insignia, or colorable imitation thereof, including, but not
 83 limited to, stars, badges, or shields, officially used to
 84 identify the vehicle as a federal, state, county, or municipal
 85 law enforcement vehicle or a vehicle used by a criminal justice
 86 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 87 used by a fire department with the intent to mislead or cause
 88 another person to believe that such vehicle is an official
 89 vehicle of that agency and is authorized to be used by that
 90 agency ~~which could deceive a reasonable person into believing~~
 91 ~~that such vehicle is authorized by any of the agencies described~~
 92 ~~above for use by the person operating the motor vehicle,~~ unless
 93 such vehicle is owned or operated by the appropriate agency and
 94 its use is authorized by such agency, or the local law
 95 enforcement agency or fire department authorizes the use of such
 96 vehicle, ~~or unless~~ the person is appointed by the Governor
 97 pursuant to chapter 354.

98 (3) It is unlawful for a person to sell, transfer, or give
 99 away the authorized badge, or colorable imitation thereof,
 100 including miniatures, of any criminal justice agency as ~~now or~~
 101 ~~hereafter~~ defined in s. 943.045, or bearing in any manner or
 102 combination the word or words "police," "patrolman," "sheriff,"
 103 "deputy," "trooper," "highway patrol," "commission officer,"
 104 "Wildlife Officer," "Marine Patrol Officer," "marshal,"

105 "constable," "agent," "state attorney," "public defender," ~~or~~
 106 "bailiff," or "fire department," with the intent to mislead or
 107 cause another person to believe that he or she is a member of
 108 that agency or is authorized to wear or display such item ~~which~~
 109 ~~could deceive a reasonable person into believing that such item~~
 110 ~~is authorized by any of the agencies described above,~~ except for
 111 agency purchases or upon the presentation and recordation of
 112 both a driver license and other identification showing any
 113 transferee to actually be a member of such criminal justice
 114 agency or unless the person is appointed by the Governor
 115 pursuant to chapter 354. A transferor of an item covered by this
 116 subsection is required to maintain for 2 years a written record
 117 of such transaction, including records showing compliance with
 118 this subsection, and if such transferor is a business, it shall
 119 make such records available during normal business hours for
 120 inspection by any law enforcement agency having jurisdiction in
 121 the area where the business is located.

122 (4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a
 123 fraternal, benevolent, or labor organization or association, or
 124 their chapters or subsidiaries, from using the following words,
 125 in any manner or in any combination, if those words appear in
 126 the official name of the organization or association: "police,"
 127 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 128 "commission officer," "Wildlife Officer," "Marine Patrol
 129 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 130 department."

131 (5) Violation of any provision of this section is a
 132 misdemeanor of the first degree, punishable as provided in s.
 133 775.082 or s. 775.083. This section is cumulative to any law now
 134 in force in the state.

135 Section 3. Paragraph (b) of subsection (3) of section
 136 921.0022, Florida Statutes, is amended to read:

137 921.0022 Criminal Punishment Code; offense severity
 138 ranking chart.—

139 (3) OFFENSE SEVERITY RANKING CHART
 140 (b) LEVEL 2
 141

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding

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			500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
145	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
146	590.28(1)	3rd	Intentional burning of lands.
147	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
148	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
149	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
150	810.061(2)	3rd	Impairing or impeding telephone

			or power to a dwelling; facilitating or furthering burglary.
151	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
152	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
153	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
154	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
155	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
156	817.481(3)(a)	3rd	Obtain credit or purchase with

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			false, expired, counterfeit, etc., credit card, value over \$300.
157	817.52(3)	3rd	Failure to redeliver hired vehicle.
158	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
159	817.60(5)	3rd	Dealing in credit cards of another.
160	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
161	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
162	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
163			

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164	831.01	3rd	Forgery.
165	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
166	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
167	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
168	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
169	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
170	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
	843.08	3rd	<u>False personation</u> False

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~~impersonating an officer.~~

171

893.13(2)(a)2. 3rd Purchase of any 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
other than cannabis.

172

893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.


173

174

Section 4. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 133 Sexual Offenses
SPONSOR(S): Civil Justice Subcommittee; Plasencia
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Malcolm	Bond
2) Justice Appropriations Subcommittee		Schrader	Lloyd
3) Judiciary Committee		JSS	

SUMMARY ANALYSIS

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Some statutes of limitations related to felony sexual battery offenses are currently 4 years. The bill extends those statutes of limitations for sexual battery from 4 years to 10 years.

The Criminal Justice Impact Conference met February 27, 2015 and determined this bill will have an indeterminate impact on state prison beds. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. The date is commonly based on the time that has elapsed since the action giving rise to the case occurred. Laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended).

The prohibition on ex post facto laws in the state and federal constitutions¹ applies to laws that extend a statute of limitations. A law that extends a statute of limitations may only delay the conclusion of the limitations period, it cannot revive a previously time-barred action. Accordingly, if the limitations period on a case has already expired, any extension created by this bill will not serve to revive the action.²

The title of the bill, the "43 Days Initiative Act," comes from a Florida resident who was the victim of a sexual battery. Unaware of the four-year criminal statute of limitations, the victim did not report the crime to law enforcement until four years and 43 days after the crime, which meant that no charges could be brought against the offender.³

Criminal Statutes of Limitation Applicable to Sexual Battery

Section 794.011, F.S., identifies numerous sexual battery⁴ crimes, commonly referred to as rape.⁵ Section 775.15, F.S., sets forth the statutes of limitation applicable to criminal prosecutions for sexual battery and provides that the time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity in the course of conduct is terminated.⁶

Under current law, there is no statute of limitations for first-degree felony sexual battery crimes where the victim is a minor.⁷ Nor is there a statute of limitations for any sexual battery crime where the victim is under 16 years old.⁸ Only two sexual battery offenses where the victim is a minor aged 16 or 17 years have an applicable three-year statute of limitations under current law: sexual battery without the use physical force and violence likely to cause serious personal injury - a second-degree felony;⁹ and solicitation of sexual battery by a person in a position of familial or custodial authority to a person less than 18 years of age - a third-degree felony.¹⁰ As to these two offenses, the applicable statute of limitations does not commence until the earlier of the date that the minor reaches 18 years of age or the crime is reported to law enforcement.¹¹ Moreover, if the sexual battery is a first- or second-degree felony and is reported to law enforcement within 72 hours after the commission of the crime, there is no statute of limitations.¹²

¹ Article I, s. 9, U.S.Const.; Article I, s. 10, Fla.Const.

² *Stogner v. California*, 539 U.S. 607, 632-33 (2003)

³ 43 Days Initiative, My Story, <http://www.43daysinitiative.org/#!/mystory/c1Inf> (last accessed Feb. 4, 2015).

⁴ Section 794.011(1)(h), F.S., defines sexual battery as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose."

⁵ See Note 7 for definition of sexual battery.

⁶ Section 775.15(3), F.S.

⁷ *Id.* at (13)(b).

⁸ *Id.* at (13)(c).

⁹ Section 794.011(5)(c), F.S.

¹⁰ Section 794.011(8)(a), F.S.

¹¹ Section 775.15(13)(a), F.S.

¹² *Id.*

In cases of sexual battery crimes against victims 18 years of age or older, current law provides that if the offense is reported to law enforcement within 72 hours of the offense, there is no statute of limitations.¹³ If the offense is not reported within 72 hours, the statute of limitations is either four years for first-degree felony sexual battery or three years for second-degree felony sexual battery.¹⁴

In addition to the time periods for minors and adults stated above, an offender may be prosecuted within one year after the date on which the identity of the offender is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence, if a sufficient portion of the evidence collected at the time of the original investigation and tested for DNA is preserved and available for testing by the accused.¹⁵

Effect of Bill

This bill amends the statute of limitations applicable to sexual battery criminal cases, s. 775.15, F.S., to provide that the statute of limitations for first- or second-degree sexual battery committed against a victim 16 years of age or older is extended to 10 years from the date of the crime, except as otherwise provided in current law. The provision providing for no statute of limitations when the crime is reported within 72 hours of its commission is retained in law.

This change applies to any such offense except one already time-barred on or before July 1, 2015. This provision makes the change retroactive to previously committed offenses, provided that the statute of limitations did not run out of time prior to July 1, 2015.

B. SECTION DIRECTORY:

Section 1 provides a name for the act.

Section 2 amends s. 775.15, F.S., regarding the statute of limitations for criminal actions.

Section 3 provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met February 27, 2015 and determined this bill will have an indeterminate impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

¹³ *Id.* at (14).

¹⁴ First-degree felony sexual battery is defined in s. 794.011(4)(b), F.S., as non-consensual sexual battery under a list of enumerated circumstances, including, when the victim is physically helpless to resist, the victim is threatened, the victim is physically or mentally incapacitated, and the offender is a law enforcement officer. Second-degree felony sexual battery is defined in s. 794.011(5)(b), F.S., as non-consensual sexual battery without the use of physical force or violence likely to cause serious personal injury.

¹⁵ Section 775.15(8), F.S.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The statute of limitations in effect at the time the crime is committed controls.¹⁶ However, the legislature can amend statutes of limitation to apply retroactively without running afoul of the constitutional ex post facto prohibition if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply retroactively to cases pending when it becomes effective.¹⁷

The bill appears to express an intent that it apply retroactively to cases pending on the effective date.

A prosecution pursuant to this bill may raise due process concerns if there is a long delay between the commission of the crime and the prosecution of the case. In *United States v. Lovasco*,¹⁸ the United States Supreme Court explained that criminal statutes of limitations provide the "primary guarantee" against bringing "stale" criminal charges and said that the Due Process Clause has a "limited role" in protecting against oppressive delay. The court said that it could "not determine in the abstract the circumstances in which preaccusation delay would require dismissing prosecutions."¹⁹ In considering whether a delay violates due process, other states have considered factors such as the length of the delay, the prejudice to the accused, and the reason for the delay.²⁰

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁶ *State v. Wadsworth*, 293 So.2d 345, 347 (Fla. 1974).

¹⁷ *E.g., Scharfschwerdt v. Kanarek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989) (recognizing extended statute of limitations regarding lewd and lascivious assault upon a child and sexual battery); *State v. Calderon*, 951 So. 2d 1031, 1035 (Fla. 3d DCA 2007); *Reino v. State*, 352 So.2d 853 (Fla. 1977) receded from on other grounds, *Perez v. State*, 545 So.2d 1357 (Fla. 1989).

¹⁸ 431 U.S. 783, 789 (1977).

¹⁹ *Id.* at 796.

²⁰ *See State v. Gray*, 917 S.W. 668 (Tenn. 1996) (holding a 42 year delay between commission of a sex crime and prosecution violated the due process clause).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 10, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the section of the bill that would have extended from 4 years to 10 years the statutes of limitation applicable to civil action involving sexual battery where the victim is 16 years old or older; and
- Expands the extension of the criminal statute of limitations for sexual battery to include cases where the victim is 16 years of age or older.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to sexual offenses; providing a short
 3 title; amending s. 775.15, F.S.; revising time
 4 limitations for the criminal prosecution of specified
 5 sexual battery offenses if the victim is 16 years of
 6 age or older; providing applicability; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. This act may be cited as the "43 Days
 12 Initiative Act."

13 Section 2. Subsection (14) of section 775.15, Florida
 14 Statutes, is amended to read:

15 775.15 Time limitations; general time limitations;
 16 exceptions.—

17 (13)

18 (b) If the offense is a first degree felony violation of
 19 s. 794.011 and the victim was under 18 years of age at the time
 20 the offense was committed, a prosecution of the offense may be
 21 commenced at any time. This paragraph applies to any such
 22 offense except an offense the prosecution of which would have
 23 been barred by subsection (2) on or before October 1, 2003.

24 (14) (a) A prosecution for a first or second degree felony
 25 violation of s. 794.011, if the victim is 16 ~~18~~ years of age or
 26 older at the time of the offense and the offense is reported to

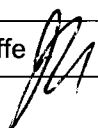
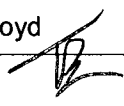
27 a law enforcement agency within 72 hours after commission of the
 28 offense, may be commenced at any time. ~~If the offense is not~~
 29 ~~reported within 72 hours after the commission of the offense,~~
 30 ~~the prosecution must be commenced within the time periods~~
 31 ~~prescribed in subsection (2).~~

32 (b) Except as provided in paragraph (a) or paragraph
 33 (13) (b), a prosecution for a first or second degree felony
 34 violation of s. 794.011, if the victim is 16 years of age or
 35 older at the time of the offense, must be commenced within 10
 36 years after the violation is committed. This paragraph applies
 37 to any such offense except an offense the prosecution of which
 38 would have been barred by subsection (2) on or before July 1,
 39 2015.

40 Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 157 Fraud
SPONSOR(S): Criminal Justice Subcommittee; Passidomo and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. Specifically, the bill:

- Makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use;
- Requires a business entity to release documents related to an identity theft incident to a victim after specified requirements are satisfied and provides protections to such business entities who release such information in good faith;
- Expands the application of s. 817.568, F.S., to include those who unlawfully use the personal identification information of a business entity (rather than an individual) or a dissolved business entity.
- Defines "business entity" and replaces the terms "corporation" and "firm," with the term "business entity," thereby ensuring that all entities legally conducting business in Florida receive the protections of ch. 817, F.S.;
- Adds advertisements published electronically to the definition of misleading advertisements;
- Prohibits a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured;
- Prohibits specified persons from fraudulently issuing, transferring, or fraudulently signing an indicia of membership interest with a limited liability company with the intent that the interest be issued or transferred by himself, herself, or another person;
- Prohibits a person from knowingly providing false information that becomes part of a public record; and
- Makes a violation of s. 817.50, F.S., a third degree felony rather than a second degree misdemeanor.

The Criminal Justice Impact Conference met February 27, 2015 and determined this bill will have an indeterminate impact on state prison beds. This bill expands the application of certain offenses to include business entities, and the number of new potential victims cannot be determined. Additionally, to the extent that more defendants will be required to pay the \$1,001 surcharge imposed by s. 817.568, F.S., the bill will likely result in an indeterminate positive fiscal impact on the Florida Department of Law Enforcement, State Attorneys, and Public Defenders. The bill expands the application of several misdemeanor offenses found in ch. 817, F.S. To the extent that this increases the number of defendants subject to misdemeanor penalties, the bill will likely result in an indeterminate negative fiscal impact on county jails.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Identity Theft Against Individual Consumers

Identity theft is the criminal act of taking a victim's identity for the purpose of obtaining credit, credit cards, money from a victim's accounts, loans, automobiles and residences, and even obtaining employment.¹ A person needs very little information to commit identity theft, such as a victim's social security number, birth date, address, and phone number.²

The Consumer Sentinel Network (CSN) is a secure online database of millions of consumer complaints available only to law enforcement. In addition to storing complaints received by the Federal Trade Commission, CSN also includes complaints filed with state law enforcement organizations.³ During the 2013 calendar year, CSN received over one million fraud-related complaints.⁴ Florida is cited as the state with the highest per capita rate of both fraud (157,383) and identity theft (37,720) complaints.⁵

Chapter 817, F.S., contains a variety of statutes relating to fraudulent practices against individuals, corporations, and governments. The bill amends many of these statutes to afford businesses throughout Florida broader protection against fraud and business identity theft, and to enable individuals to more easily identify when identity theft has occurred and restore their identity and credit afterwards. A detailed description of these changes follows.

Obtaining Property by False Personation

Section 817.02, F.S., makes it unlawful for a person to falsely personate or represent another person if, while doing so, he or she receives any property intended to be delivered to the party so personated, with intent to convert the property to his or her own use.⁶

Effect of the Bill

The bill amends s. 817.02, F.S., to make it unlawful for a person to falsely personate or represent another person if, while doing so, he or she damages the credit history or rating of, or otherwise causes harm to, the person whose identity has been assumed through the taking of property.⁷

Additionally, the bill amends s. 817.02, F.S., to:

- Authorize the court to issue any orders necessary to correct a public record that contains false information given in violation of s. 817.02, F.S.;
- Authorize the court to order restitution for:
 - The victim's out-of-pocket expenses, including attorney fees and fees associated with services provided by certified public accountants licensed under ch. 473, F.S., incurred by the victim in clearing the victim's credit history or credit rating; or
 - Costs incurred in connection with a civil or administrative proceeding to satisfy a debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.⁸

¹ *About Identity Theft Crimes*, Attorney General Pam Bondi website, <http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument> (last visited January 27, 2015).

² *Id.*

³ CSN Data book for January – December 2013, <http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf> (last visited January 27, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ Persons who violate s. 817.02, F.S., are punished as if they had been convicted of larceny. Prohibited acts previously referred to as larceny are currently prosecuted under the general theft statute, s. 812.014, F.S., which provides punishments primarily based upon the dollar value of the stolen property.

⁷ This provision is limited to instances that are not subject to s. 817.568, F.S., which establishes a variety of crimes related to the fraudulent use of personal identification information.

- Create a civil cause of action, as provided in s. 772.11, F.S.,⁹ for victims¹⁰ of persons who violate s. 817.02, F.S.

Information Available to Identity Theft Victims

Florida law does not currently require business entities to provide identity theft victims or law enforcement agencies with documents associated with the fraudulent use of a person's identity. The lack of such requirements can make the process of restoring one's identity more difficult for a victim.

Effect of the Bill

The bill creates s. 817.032, F.S., which establishes a process in which identity theft victims¹¹ can make a formal request to a business entity¹² for documents related to the identity theft incident when the business entity has provided credit to; provided for consideration products, goods, or services to; accepted payment from; or otherwise entered into a commercial transaction for consideration with, a person who has allegedly used the identity of the victim unlawfully.

This process starts when a victim makes a request. The request must:

- Be in writing;
- Be mailed or delivered to an address specified by the business entity, if any; and
- If asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft, including, if known by the victim or readily obtainable by the victim:
 - The date of the application or transaction; or
 - Any other identifying information such as an account number or transaction number.

Before providing any records, the business entity must verify the identity of the victim and the veracity of the identity theft claim.¹³ As proof of positive identification, the business entity may request from the victim a:

- A government-issued identification card;
- Personal identifying information of the same type as provided to the business entity by the unauthorized person; or
- Personal identifying information that the business entity typically requests from new applicants or for new transactions.

As proof of a claim of identity theft, the business entity may request from the victim a:

- Copy of a police report evidencing the claim of the victim of identity theft; or
- Properly completed affidavit of fact that is acceptable to the business entity.

Within 30 days of receiving a request (and subject to verification), the business entity must provide, free of charge, a copy of the application and business transaction records in the control of the business entity¹⁴ evidencing any transaction alleged to be a result of identity theft to:

- The victim;

⁸ This may be ordered in addition to any restitution that may be ordered pursuant to s. 775.089, F.S., which requires a judge to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode.

⁹ Section 772.11, F.S., creates a civil remedy for any person who is the victim of theft or exploitation.

¹⁰ For purposes of this provision, "victim" includes a person whose identity was falsely personated or who suffers a loss of property as a result of the false personation.

¹¹ The bill defines "victim" for purposes of s. 817.032, F.S., as "a person whose means of identification or financial information is used or transferred or is alleged to be used or transferred without the authority of that person with the intent to commit or to aid or abet an identity theft or a similar crime."

¹² The bill defines "business entity" for purposes of all of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

¹³ Unless the business entity has a high degree of confidence that it knows the identity of the victim.

¹⁴ Whether maintained by the business entity or by another person on behalf of the business entity.

- A federal, state, or local government law enforcement agency or officer specified by the victim in the request; or
- A law enforcement agency investigating the identity theft and authorized by the victim to take receipt of the records.

A business entity may decline to provide information the above-listed information if, in the exercise of good faith, the business entity determines:

- Disclosure is not required under s. 817.032, F.S.;
- After reviewing the identifying information provided pursuant to subsection (3), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;
- The request for the information is based on a misrepresentation of fact by the individual requesting the information; or
- The information requested is Internet navigational data or similar information about a person's visit to a website or online service.

The bill provides that a business entity cannot be held civilly liable for disclosure made in good faith pursuant to s. 817.032, F.S., and that an obligation is not created on the part of a business entity to maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

The bill creates an affirmative defense for any civil action brought to enforce s. 817.032, F.S., providing that a business entity may file an affidavit or answer stating that the business entity has made a reasonable diligent search of its available business records and the records requested under this section do not exist or are not reasonably available. The affirmative defense must be established by a preponderance of the evidence.

Identity Theft Against Businesses

Business identity theft is essentially the same as personal identity theft, except the identity stolen is that of a company or other business entity, and the damage is usually much more severe.¹⁵ All information necessary to take a business' identity, such as the company name or Federal Employee Identification Number, is readily available on the website for the Florida Department of State, Division of Corporations.¹⁶ The Florida Department of State estimates that 60% of businesses that fall victim to business identity theft will fail within one year of the incident.¹⁷ The National Association of Secretaries of State (NASS) has authored a white paper on the increasing trend of business identity theft and the role that Secretaries of States are playing in thieves obtaining the information needed to complete the fraud.¹⁸ NASS reports identity theft thieves also target businesses that are no longer in operation, often referred to as "dormant" or "dissolved entities." These entities are vulnerable because their owners are less likely to be monitoring state-held business registration information.¹⁹

Criminal Use of Personal Identification Information

Section 817.568, F.S., relates to the criminal of use of personal identification information (PII).

"Personal identification information" is defined 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

¹⁵ Kellian, Mark, *Business Identity Theft is on the Rise*, The Florida Bar News (January 15, 2013)(hereinafter cited as Florida Bar News).

¹⁶ www.sunbiz.org

¹⁷ Florida Bar News.

¹⁸ *Developing State Solutions to Business Identity Theft, Assistance, Prevention, and Detection Efforts by Secretary of State Offices*, National Association of Secretaries of State, <http://www.nass.org/nass-initiatives/business-id-theft/> (last visited January 27, 2015)(hereinafter cited as NASS Report).

¹⁹ Florida Bar News and NASS Report.

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.²⁰

Section 817.568(2), F.S., makes it a third degree felony²¹ for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, PII concerning an individual without first obtaining that individual's consent. A person who fraudulently uses PII:

- Commits a second degree felony,²² punishable by a three-year minimum mandatory sentence, 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 PII of 10 or more individuals, but fewer than 20 individuals, without their consent,²³
- Commits a first degree felony,²⁴ punishable by a five-year minimum mandatory sentence, 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 \$50,000 or more, or if the person fraudulently used the PII of 20 or more but fewer than 30 individuals,²⁵ or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, 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 \$100,000 or more, or if the person fraudulently used the PII of 30 or more individuals.²⁶

Section 817.568(4), F.S., makes it a first degree misdemeanor²⁷ for any person to willfully and without authorization possess, use, or attempt to use the PII of an individual without first obtaining that individual's consent, provided such use is done for the purpose of harassing such individual.

Section 817.568(9), F.S., makes it a third degree felony for any person to willfully and fraudulently create or use, or possess with intent to fraudulently use, counterfeit or fictitious PII concerning a fictitious individual, or concerning a real individual without first obtaining that real individual's consent, with intent to use such counterfeit or fictitious PII for the purpose of committing or facilitating the commission of a fraud on another person.

Section 817.568(8), F.S., makes it a second degree felony for a person to fraudulently use, or possess with the intent to fraudulently use, the PII of a deceased individual. A person who fraudulently uses PII:

- Commits a second degree felony, punishable by a three-year minimum mandatory sentence, 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 PII of 10 or more individuals, but fewer than 20 deceased individuals,²⁸
- Commits a first degree felony, punishable by a five-year minimum mandatory sentence, if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the

²⁰ Section 817.568(1)(f), F.S.

²¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²³ Section 817.568(2)(b), F.S.

²⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²⁵ Section 817.568(2)(c), F.S.

²⁶ Section 817.568(2)(c), F.S.

²⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁸ Section 817.568(8)(b), F.S.

amount of the injury or fraud perpetrated is \$50,000 or more, or if the person fraudulently used the PII of 20 or more but fewer than 30 deceased individuals;²⁹ or

- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence, 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 \$100,000 or more, or if the person fraudulently used the PII of 30 or more deceased individuals.³⁰

Section 817.568(8), F.S., does not address the fraudulent use of PII of a dissolved business entity.

Effect of the Bill

As noted above, subsections (2), (4), and (9), of s. 817.568, F.S., currently use the term “individual.” An “individual” is defined as “a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.”³¹ Thus, if a person uses the PII of a business entity, such person will not be subject to the criminal penalties found in any of these provisions.

The bill amends subsections (2), (4), and (9) of s. 817.568, F.S., to exchange the term “individual” with “person.” Section 817.568(1)(e), F.S., defines “person” to “include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”³² This change expands the application of these offenses to include those who unlawfully use the PII of a business entity.

The bill also amends s. 817.568(8), F.S., to include “dissolved business entities.” This subjects a person to the criminal penalties of this provision if they fraudulently use, or possess with the intent to fraudulently use, the PII of both deceased individuals and dissolved business entities.

Lastly, the bill amends s. 921.0022, F.S., the Criminal Punishment Code,³³ offenses severity ranking chart, to reflect the title changes in this statute.

Fraud Protections for Corporations

Section 817.15, F.S., makes it a third degree felony for any:

- Officer, agent, clerk, or servant of a corporation to make a false entry in the corporation’s books with the intent to defraud; or
- Person who has the duty to record in the corporation’s books the transfer of stock, issuing and cancelling of certificates, or the amount of stock issued by the corporation to omit such entry with the intent to defraud.

Section 817.39, F.S., makes it a second degree misdemeanor³⁴ for any person, firm, or corporation to print, for the purpose of sale, distribution, or use in Florida, or to circulate, publish, use, or offer for sale, documents that:

- Simulate a form of court or legal process, such as a letter, paper, document, or notice of intent to bring suit or demand; or
- Simulate the seal of the state, or the stationary of a state agency or fictitious state agency.

²⁹ Section 817.568(8)(c), F.S.

³⁰ *Id.*

³¹ Section 817.568(1)(d), F.S.

³² Section 1.01(3), F.S.

³³ Section 921.002, F.S., provides that the Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. A defendant’s sentence is calculated based on points assigned for factors (e.g., the offense for which the defendant is being sentenced and injury to the victim). The points are added in order to determine the “lowest permissible sentence” for the offense.

³⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

Section 817.411, F.S., prohibits a person, firm, or corporation from knowingly publishing, disseminating, circulating, or placing (publish) before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, or statement (advertisement) containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

The above-described statutes address businesses, rather than individuals. The term currently used in these sections is "corporation," which is defined as "a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the Florida Business Corporation Act, or ch. 607, F.S."³⁵ Businesses operating in Florida often set up as entities such as limited-liability companies, partnerships, etc., which are not captured by the term "corporation." As a result, these other entities legally conducting business in Florida are not afforded the protections of ch. 817, F.S.

Effect of the Bill

The bill creates s. 817.011, F.S., defining "business entity" for purposes of ch. 817, F.S., as "any corporation, partnership, limited partnership, company, limited liability company, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

The bill amends ss. 817.15, 817.39, and 817.411, F.S., to replace the terms "corporation" and "firm" with the term "business entity." This will ensure that all business entities legally conducting business in Florida will be protected under ch. 817, F.S.

Dissemination of Misleading Information in Advertisements

Several sections within ch. 817, F.S., provide protections to consumers against the dissemination of false, deceptive, or misleading advertisements. Currently, s. 817.40(5), F.S., defines "misleading advertising" to include:

Any statements made, or disseminated, in oral, written, or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained, to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling or disposing of real or personal property, services of any nature whatever, professional or otherwise, or to induce the public to enter into any obligation relating to such property or services."

The definition of misleading advertising does not currently address advertisements that are published electronically.

As noted above, 817.411, F.S., prohibits a person, firm, etc., from knowingly publishing before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement containing a statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance if such insurance is nonexistent.

Section 817.412, F.S., makes it a first degree misdemeanor for a seller involved in a transaction involving goods with a purchase price of more than \$100 to misrepresent orally, in writing, or by omission that the goods are new or original when the goods are:

- Used;
- Repossessed; or
- Have been used for sales demonstrations.

³⁵ Section 607.01401(5), F.S.

Effect of the Bill

The bill amends the definition of "misleading advertising" in s. 817.40, F.S., so that advertisements which are published through electronic means now meet the definition of misleading advertisements, provided all other components apply.

The bill amends s. 817.411, F.S., to prohibit a business entity from knowingly publishing a false advertisement by electronic means. Similarly, the bill amends s. 817.412, F.S., to prohibit a seller from misrepresenting the used status of goods by electronic means.

Prohibiting the Use of City Name or Markings

Section 817.17, F.S., prohibits a person engaged in manufacturing in this state from printing, stamping, marking, engraving, or branding, upon any of the articles manufactured by them, or on any of the boxes, packages, or bands containing such manufactured articles, the name of any city in the state, other than for the city in which said articles are manufactured.³⁶ Currently, there is not a criminal penalty associated with violating this provision.

Section 817.18, F.S., makes it a second degree misdemeanor for a person to knowingly sell or offer for sale, within the state, any manufactured articles which have printed, stamped, marked, engraved, or branded upon them, or upon the boxes, packages, or bands containing said manufactured articles, the name of any city in the state, other than the city in which such articles were manufactured.³⁷

Neither ss. 817.17 or 817.18, F.S., address instances in which a person knowingly prints, stamps, etc., the wrong county or political subdivision on manufactured articles.

Effect of the Bill

The bill amends ss. 817.17 and 817.18, F.S., to include the terms "county" and "other political subdivision." This expands the application of these statutes by prohibiting a person from manufacturing articles that have the name of a city, county, or political subdivision, that is not the same city, county, or other political subdivision name than the one in which said items are manufactured.

Additionally, the bill makes a violation of s. 817.17, F.S., a second degree misdemeanor.

Fraudulent Use of Certificate or Stock of Corporation

Section 817.19, F.S., makes it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person, to fraudulently:

- Issue or transfer a certificate of stock of a corporation to any person not entitled thereto; or
- Sign such certificate, in blank or otherwise, with the intent that it be issued or transferred by himself or herself or any other person.

Effect of the Bill

The bill amends s. 817.19, F.S., to also make it a third degree felony for any officer, agent, clerk or servant of a corporation, or any other person to fraudulently issue or transfer, or fraudulently sign an *indicia of membership interest with a limited liability company* with the intent that the interest be issued or transferred by himself or herself or another person.

³⁶ This section does not prohibit any person from offering for sale any goods having marked thereon the name of any city in Florida other than that in which said goods were manufactured, if there be no manufactory of similar goods in the city the name of which is used.

³⁷ This section does not prohibit any person from offering for sale any goods, having marked thereon the name of any city in Florida, other than that in which said goods are manufactured, if there be no manufactory of similar goods in the city the name of which is used.

Fraudulently Obtaining Goods or Services from a Health Care Provider

Section 817.50, F.S., makes it a second degree misdemeanor for any person to willfully and with intent to defraud, obtain or attempt to obtain goods, products, merchandise, or services from any health care provider³⁸ in this state. It is prima facie evidence of the intent to defraud a health care provider if a person:

- Provides the provider with a false or fictitious name;
- Provides the provider with a false or fictitious address; or
- Assigns to the provider the proceeds of any health maintenance contract or insurance contract knowing that such contract is not currently valid for any reason.³⁹

Effect of the Bill

The bill amends s. 817.50, F.S., to reclassify the offense from a second degree misdemeanor to a third degree felony.

Criminal Use of a Public Record or Public Records Information

Section 817.569, F.S., makes it a first degree misdemeanor for a person to knowingly use any public record⁴⁰ or information obtainable only through such public record to facilitate or further the commission of a first degree misdemeanor. If a person uses the public record to facilitate or further the commission of a felony, the offense is reclassified as a third degree felony.

Effect of the Bill

The bill amends s. 817.569, F.S., to also prohibit a person from knowingly providing false information that becomes part of a public record. If the false information that becomes part of the public record is provided with the purpose of facilitating or furthering the commission of a first degree misdemeanor, the offense is a first degree misdemeanor. The offense is a third degree felony if it is committed to further or facilitate the commission of a felony.

The bill amends s. 921.0022, F.S., the Criminal Punishment Code, offenses severity ranking chart, to reflect the new title.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.011, F.S., relating to definitions.

Section 2. Amends s. 817.02, F.S., relating to obtaining property by false personation.

Section 3. Creates s. 817.032, F.S., relating to information available to identity theft victims.

Section 4. Amends s. 817.11, F.S., relating to obtaining property by fraudulent promise to furnish inside information; and transfers and renumbers ss. 817.12 and 817.13, F.S., as subsections (2) and (3) of s. 817.11, F.S.

Section 5. Amends s. 817.14, F.S., relating to procuring assignments of produce upon false representations.

Section 6. Amends s. 817.15, F.S., relating to making false entries, etc., on books of corporation.

Section 7. Amends s. 817.17, F.S., relating to wrongful use of city name.

³⁸ Section 641.19(14), F.S., defines "provider" to mean "any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in the state."

³⁹ Section 817.50, F.S., provides an exception that it does not apply to investigative actions taken by law enforcement officers for law enforcement purposes.

⁴⁰ Section 119.011, F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Section 8. Amends s. 817.18, F.S., relating to wrongful stamping, marking, etc.; penalty.

Section 9. Amends s. 817.19, F.S., relating to fraudulent issue of certificate of stock of corporation.

Section 10. Amends s. 817.39, F.S., relating to simulated forms of court or legal process, or official seal or stationery; publication, sale or circulation unlawful; penalty.

Section 11. Amends s. 817.40, F.S., relating to false, misleading and deceptive advertising and sales; definitions.

Section 12. Amends s. 817.411, F.S., relating to false information; advertising.

Section 13. Amends s. 817.412, F.S., relating to sale of used goods as new; penalty.

Section 14. Amends s. 817.481, F.S., relating to credit cards; obtaining goods by use of false, expired, etc.; penalty.

Section 15. Amends s. 817.50, F.S., relating to fraudulently obtaining goods, services, etc., from a health care provider.

Section 16. Amends s. 817.568, F.S., relating to criminal use of personal identification information.

Section 17. Amends s. 817.569, F.S., relating to criminal use of a public record or public records information; penalties.

Section 18. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 19. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expands the language of s. 817.568, F.S., from “individual” to “person,” and thus may increase the number of defendants subject to the criminal penalties and \$1,001 surcharge required by s. 817.568, F.S.⁴¹ This will likely result in an indeterminate positive fiscal impact on the parties that receive deposits from this surcharge, specifically the Florida Department of Law Enforcement, State Attorneys, and Public Defenders.⁴²

⁴¹ In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 817.568, F.S., the court must impose a surcharge of \$1,001, to be deposited as follows:

- \$500 into the Department of Law Enforcement Operating Trust Fund for FDLE to provide grants to local law enforcement agencies to investigate offenses related to the criminal use of PII as provided in s. 943.0412, F.S.;
- \$250 into the State Attorneys Revenue Trust Fund for the purpose of funding prosecutions of offenses relating to the criminal use of PII; and
- \$250 into the Public Defenders Revenue Trust Fund for the purposes of indigent criminal defense related to the criminal use of PII.⁴¹

⁴² Florida Department of Law Enforcement, Agency Bill Analysis (on file with the Criminal Justice Subcommittee).

2. Expenditures:

The Criminal Justice Impact Conference met February 27, 2015 and determined this bill will have an indeterminate impact on state prison beds. This bill expands the application of certain offenses to include business entities, and the number of new potential victims cannot be determined.

In Fiscal Year 2013-14, 307 offenders were sentenced to prison for fraudulently using personal identification information (s. 817.568) and three offenders were sentenced to prison for fraudulent usage of a certificate or stock (817.19). There were no prison sentences for criminal use of public records information (817.569) or making a false entry into a corporation's books with the intent to defraud (817.15).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the application of the misdemeanor offenses found in ss. 817.17, 817.18, 817.39, and 817.412, F.S. This will likely have a negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses throughout Florida will now be afforded broader protection against all types of fraud and business identity theft. Additionally, individuals will be able to more easily identify when identity theft has occurred and restore their identity and credit after a case of identity theft.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allows a victim of identity theft to recover fees paid to certified public accountants licensed by ch. 473, F.S., expended in the process of clearing the victim's credit history;
- Clarifies that both individuals and businesses may request documents evidencing identity theft from business entities; and
- Removes duplicative, non-substantive language.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to fraud; creating s. 817.011, F.S.;
3 defining the term "business entity"; amending s.
4 817.02, F.S.; providing for restitution to victims for
5 certain victim out-of-pocket costs; providing for a
6 civil cause of action for certain victims; creating s.
7 817.032, F.S.; defining the term "victim"; requiring
8 business entities to provide copies of business
9 records of fraudulent transactions involving identity
10 theft to victims and law enforcement agencies in
11 certain circumstances; providing for verification of a
12 victim's identity and claim; providing procedures for
13 claims; requiring that certain information be provided
14 to victims without charge; specifying circumstances in
15 which business entities may decline to provide
16 information; providing a limitation on civil liability
17 for business entities that provide information;
18 specifying that no new record retention is required;
19 providing an affirmative defense to business entities
20 in actions seeking enforcement of provisions; amending
21 s. 817.11, F.S.; making editorial changes; amending
22 and renumbering ss. 817.12 and 817.13, F.S.; combining
23 offense, penalty, and evidence provisions and
24 transferring such provisions to s. 817.11, F.S.;
25 amending s. 817.14, F.S.; clarifying provisions;
26 amending s. 817.15, F.S.; substituting the term

27 "business entity" for the term "corporation"; amending
 28 ss. 817.17 and 817.18, F.S.; including counties and
 29 other political subdivisions in provisions prohibiting
 30 the false marking of goods or packaging with a
 31 location of origin; reorganizing penalty provisions;
 32 amending s. 817.19, F.S.; prohibiting fraudulent
 33 issuance of indicia of membership interest in a
 34 limited liability company; amending s. 817.39, F.S.;

35 substituting the term "business entity" for the term
 36 "corporation"; amending s. 817.40, F.S.; specifying
 37 that the term "misleading advertising" includes
 38 electronic forms of dissemination; amending s.
 39 817.411, F.S.; substituting the term "business entity"
 40 for the term "corporation"; specifying that certain
 41 false statements made through electronic means are
 42 prohibited; amending s. 817.412, F.S.; specifying that
 43 electronic statements are included in provisions
 44 prohibiting false representations of used goods as
 45 new; amending s. 817.481, F.S.; clarifying provisions;
 46 amending s. 817.50, F.S.; revising criminal penalties
 47 for fraudulently obtaining goods or services from a
 48 health care provider; amending s. 817.568, F.S.;

49 expanding specified identity theft offenses to include
 50 all persons rather than being limited to natural
 51 persons; including dissolved business entities within
 52 certain offenses involving fraudulent use of personal

53 identification information of deceased persons;
 54 amending s. 817.569, F.S.; prohibiting a person from
 55 knowingly providing false information that becomes
 56 part of a public record to facilitate or further the
 57 commission of certain offenses; providing criminal
 58 penalties; amending s. 921.0022, F.S.; conforming
 59 provisions to changes made by the act; providing an
 60 effective date.

61

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

63

64 Section 1. Section 817.011, Florida Statutes, is created
 65 to read:

66 817.011 Definition.—As used in this chapter, the term
 67 "business entity" means any corporation, partnership, limited
 68 partnership, company, limited liability company, proprietorship,
 69 firm, enterprise, franchise, association, self-employed
 70 individual, or trust, whether fictitiously named or not, doing
 71 business in this state.

72 Section 2. Section 817.02, Florida Statutes, is amended to
 73 read:

74 817.02 Obtaining property by false personation.—

75 (1) Whoever falsely personates or represents another
 76 person, and in such assumed character:

77 (a) Receives any property intended to be delivered to that
 78 person ~~the party so personated,~~ with intent to convert the same

79 | to his or her own use; or

80 | (b) To the extent not subject to s. 817.568, damages the
 81 | credit history or rating of, or otherwise causes harm to, the
 82 | person whose identity has been assumed through the taking of
 83 | property from any person,

84 |
 85 | shall be punished as if he or she had been convicted of larceny.

86 | (2) (a) In sentencing a defendant convicted of a violation
 87 | of this section, in addition to restitution to the victim under
 88 | s. 775.089, the court may order restitution for the victim's
 89 | out-of-pocket costs, including attorney fees and fees associated
 90 | with services provided by certified public accountants licensed
 91 | under chapter 473, incurred by the victim in clearing the
 92 | victim's credit history or credit rating, or costs incurred in
 93 | connection with a civil or administrative proceeding to satisfy
 94 | a debt, lien, or other obligation of the victim arising as a
 95 | result of the actions of the defendant.

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

99 | (3) (a) A victim of the conduct subject to this section
 100 | shall have a civil cause of action against a person who has
 101 | engaged in the conduct prohibited by this section as provided in
 102 | s. 772.11.

103 | (b) For purposes of this subsection, the term "victim"
 104 | includes, to the extent not already included within s. 817.568,

105 a person whose identity was falsely personated or who suffers a
 106 loss of property as a result of the false personation.

107 Section 3. Section 817.032, Florida Statutes, is created
 108 to read:

109 817.032 Information available to identity theft victims.-

110 (1) DEFINITION.-As used in this section, the term "victim"
 111 means a person whose means of identification or financial
 112 information is used or transferred or is alleged to be used or
 113 transferred without the authority of that person with the intent
 114 to commit or to aid or abet an identity theft or a similar
 115 crime.

116 (2) GENERALLY.-For the purpose of documenting fraudulent
 117 transactions resulting from identity theft, within 30 days after
 118 the date of receipt of a request from a victim in accordance
 119 with subsection (4), and subject to verification of the identity
 120 of the victim and the claim of identity theft in accordance with
 121 subsection (3), a business entity that has provided credit to;
 122 provided for consideration products, goods, or services to;
 123 accepted payment from; or otherwise entered into a commercial
 124 transaction for consideration with, a person who has allegedly
 125 made unauthorized use of the means of identification of the
 126 victim, shall provide a copy of the application and business
 127 transaction records in the control of the business entity,
 128 whether maintained by the business entity or by another person
 129 on behalf of the business entity, evidencing any transaction
 130 alleged to be a result of identity theft to:

131 (a) The victim;
 132 (b) A federal, state, or local government law enforcement
 133 agency, or officer specified by the victim in such a request; or
 134 (c) A law enforcement agency investigating the identity
 135 theft and authorized by the victim to take receipt of records
 136 provided under this section.
 137 (3) VERIFICATION OF IDENTITY AND CLAIM.—Before a business
 138 entity provides any information under subsection (2), unless the
 139 business entity, at its discretion, otherwise has a high degree
 140 of confidence that it knows the identity of the victim making a
 141 request under subsection (2), the victim shall provide to the
 142 business entity:
 143 (a) As proof of positive identification of the victim, at
 144 the election of the business entity:
 145 1. The presentation of a government-issued identification
 146 card;
 147 2. Personal identifying information of the same type as
 148 provided to the business entity by the unauthorized person; or
 149 3. Personal identifying information that the business
 150 entity typically requests from new applicants or for new
 151 transactions, at the time of the victim's request for
 152 information, including any documentation described in
 153 subparagraphs 1. and 2.
 154 (b) As proof of a claim of identity theft, at the election
 155 of the business entity:
 156 1. A copy of a police report evidencing the claim of the

157 | victim of identity theft; or
 158 | 2. A properly completed affidavit of fact that is
 159 | acceptable to the business entity for that purpose.
 160 | (4) PROCEDURES.—The request of a victim under subsection
 161 | (2) shall:
 162 | (a) Be in writing;
 163 | (b) Be mailed or delivered to an address specified by the
 164 | business entity, if any.
 165 | (c) If asked by the business entity, include relevant
 166 | information about any transaction alleged to be a result of
 167 | identity theft to facilitate compliance with this section,
 168 | including:
 169 | 1. If known by the victim or readily obtainable by the
 170 | victim, the date of the application or transaction.
 171 | 2. If known by the victim or readily obtainable by the
 172 | victim, any other identifying information such as an account
 173 | number or transaction number.
 174 | (5) NO CHARGE TO VICTIM.—Information required to be
 175 | provided under subsection (2) shall be provided without charge.
 176 | (6) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A
 177 | business entity may decline to provide information under
 178 | subsection (2) if, in the exercise of good faith, the business
 179 | entity determines that:
 180 | (a) This section does not require disclosure of the
 181 | information;
 182 | (b) After reviewing the information provided pursuant to

183 subsection (3), the business entity does not have a high degree
 184 of confidence in knowing the true identity of the individual
 185 requesting the information;

186 (c) The request for the information is based on a
 187 misrepresentation of fact by the individual requesting the
 188 information; or

189 (d) The information requested is Internet navigational
 190 data or similar information about a person's visit to a website
 191 or online service.

192 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
 193 not be held civilly liable in this state for disclosure made in
 194 good faith pursuant to this section.

195 (8) NO NEW RECORDKEEPING OBLIGATION.—This section does not
 196 create an obligation on the part of a business entity to obtain,
 197 retain, or maintain information or records that are not
 198 otherwise required to be obtained, retained, or maintained in
 199 the ordinary course of its business or under other applicable
 200 law.

201 (9) AFFIRMATIVE DEFENSE.—In any civil action brought to
 202 enforce this section, it is an affirmative defense, which the
 203 defendant must establish by a preponderance of the evidence, for
 204 a business entity to file an affidavit or answer stating that:

205 (a) The business entity has made a reasonably diligent
 206 search of its available business records.

207 (b) The records requested under this section do not exist
 208 or are not reasonably available.

209 Section 4. Section 817.11, Florida Statutes, is amended,
 210 and sections 817.12 and 817.13, Florida Statutes, are
 211 transferred, renumbered as subsections (2) and (3),
 212 respectively, of section 817.11, Florida Statutes, and amended,
 213 to read:

214 817.11 Obtaining property by fraudulent promise to furnish
 215 inside information.—

216 (1) A ~~no~~ person may not ~~shall~~ defraud or attempt to
 217 defraud any individual out of anything ~~any thing~~ of value by
 218 assuming to have or be able to obtain any secret, advance or
 219 inside information regarding any person, transaction, act or
 220 thing, whether such person, transaction, act or thing exists or
 221 not.

222 (2) ~~817.12~~ A person who violates this section commits
 223 ~~Penalty for violation of s. 817.11. Any person guilty of~~
 224 ~~violating the provisions of s. 817.11 shall be deemed guilty of~~
 225 a felony of the third degree, punishable as provided in s.
 226 775.082, s. 775.083, or s. 775.084.

227 (3) ~~817.13 Paraphernalia as evidence of violation of s.~~
 228 ~~817.11.—~~All paraphernalia of whatsoever kind in possession of
 229 any person and used in defrauding or attempting to defraud as
 230 specified in this section ~~s. 817.11~~ shall be held and accepted
 231 by any court of competent jurisdiction in this state as prima
 232 facie evidence of guilt.

233 Section 5. Section 817.14, Florida Statutes, is amended to
 234 read:

235 817.14 Procuring assignments of produce upon false
 236 representations.—~~A~~ Any person acting for himself or herself or
 237 another person, who shall procure any consignment of produce
 238 grown in this state, to himself or herself or such other, for
 239 sale on commission or for other compensation by any knowingly
 240 false representation as to the prevailing market price at such
 241 time for such produce at the point to which it is consigned, or
 242 as to the price which such person for whom he or she is acting
 243 is at said time paying to other consignors for like produce at
 244 said place, or as to the condition of the market for such
 245 produce at such time and place, and any such person acting for
 246 another who shall procure any consignment for sale as aforesaid
 247 by false representation of authority to him or her by such other
 248 to make a guaranteed price to the consignor, commits ~~shall be~~
 249 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 250 provided in s. 775.082 or s. 775.083.

251 Section 6. Section 817.15, Florida Statutes, is amended to
 252 read:

253 817.15 ~~Making~~ False entries ~~in, etc., on~~ books of business
 254 entity corporation.—Any officer, agent, clerk or servant of a
 255 business entity corporation who makes a false entry in the books
 256 thereof, with intent to defraud, and any person whose duty it is
 257 to make in such books a record or entry of the transfer of
 258 stock, or of the issuing and canceling of certificates thereof,
 259 or of the amount of stock issued by such business entity
 260 ~~corporation~~, who omits to make a true record or entry thereof,

261 with intent to defraud, commits ~~shall be guilty of~~ a felony of
 262 the third degree, punishable as provided in s. 775.082, s.
 263 775.083, or s. 775.084.

264 Section 7. Section 817.17, Florida Statutes, is amended to
 265 read:

266 817.17 Wrongful use of city, county, or other political
 267 subdivision name.-

268 (1) A ~~no~~ person or persons engaged in manufacturing in
 269 this state, may not ~~shall~~ cause to be printed, stamped, marked,
 270 engraved or branded, upon any of the articles manufactured by
 271 them, or on any of the boxes, packages, or bands containing such
 272 manufactured articles, the name of any city, county, or other
 273 political subdivision of ~~in~~ the state, other than that in which
 274 said articles are manufactured; provided, that ~~nothing in~~ this
 275 section does not ~~shall~~ prohibit any person from offering for
 276 sale any goods having marked thereon the name of any city,
 277 county, or other political subdivision of the state ~~in Florida~~
 278 other than that in which said goods were manufactured, if there
 279 be no manufactory of similar goods in the city, county, or other
 280 political subdivision the name of which is used.

281 (2) A person violating this section commits a misdemeanor
 282 of the second degree, punishable as provided in s. 775.083.

283 Section 8. Section 817.18, Florida Statutes, is amended to
 284 read:

285 817.18 Wrongful marking with a city, county, or other
 286 political subdivision name ~~stamping, marking, etc.,~~ penalty.-

287 (1) A ~~No~~ person may not ~~shall~~ knowingly sell or offer for
 288 sale, within the state, any manufactured articles which shall
 289 have printed, stamped, marked, engraved, or branded upon them,
 290 or upon the boxes, packages, or bands containing said
 291 manufactured articles, the name of any city, county, or other
 292 political subdivision of ~~in~~ the state, other than that in which
 293 such articles were manufactured; provided, that ~~nothing in~~ this
 294 section does not ~~shall~~ prohibit any person from offering for
 295 sale any goods, having marked thereon the name of any city,
 296 county, or other political subdivision of the state ~~in Florida,~~
 297 other than that in which said goods are manufactured, if there
 298 be no manufactory of similar goods in the city, county, or other
 299 political subdivision the name of which is used.

300 (2) A ~~Any~~ person violating ~~the provisions of this or the~~
 301 ~~preceding~~ section commits ~~shall be guilty of~~ a misdemeanor of
 302 the second degree, punishable as provided in s. 775.083.

303 Section 9. Section 817.19, Florida Statutes, is amended to
 304 read:

305 817.19 Fraudulent issue of stock certificate or indicia of
 306 membership interest ~~of stock of corporation.~~—Any officer, agent,
 307 clerk or servant of a corporation, or any other person, who
 308 fraudulently issues or transfers a certificate of stock of a
 309 corporation or indicia of a membership interest in a limited
 310 liability company to any person not entitled thereto, or
 311 fraudulently signs such certificate or other indicia of
 312 membership interest, in blank or otherwise, with the intent that

313 it shall be so issued or transferred by himself or herself or
 314 any other person, commits ~~shall be guilty of~~ a felony of the
 315 third degree, punishable as provided in s. 775.082, s. 775.083,
 316 or s. 775.084.

317 Section 10. Subsections (1) and (3) of section 817.39,
 318 Florida Statutes, are amended to read:

319 817.39 Simulated forms of court or legal process, or
 320 official seal or stationery; publication, sale or circulation
 321 unlawful; penalty.-

322 (1) Any person, ~~firm,~~ or business entity ~~corporation~~ who
 323 prints ~~shall print,~~ for the purpose of sale or distribution and
 324 for use in the state, or who circulates, publishes, or offers
 325 ~~shall circulate, publish, or offer~~ for sale any letter, paper,
 326 document, notice of intent to bring suit, or other notice or
 327 demand, which simulates a form of court or legal process, or any
 328 person who without authority of the state prints ~~shall print,~~
 329 for the purpose of sale or distribution for use in the state, or
 330 who without authority of the state circulates, publishes, or
 331 offers ~~shall circulate, publish, use, or offer~~ for sale any
 332 letters, papers, or documents which simulate the seal of the
 333 state, or the stationery of a state agency or fictitious state
 334 agency commits ~~is guilty of~~ a misdemeanor of the second degree,
 335 punishable as provided in s. 775.082 or s. 775.083.

336 (3) ~~Nothing in~~ This section does not ~~shall~~ prevent the
 337 printing, publication, sale, or distribution of genuine legal
 338 forms for the use of attorneys or clerks of courts.

339 Section 11. Subsection (5) of section 817.40, Florida
 340 Statutes, is amended to read:

341 817.40 False, misleading and deceptive advertising and
 342 sales; definitions.—When construing ss. 817.40, 817.41, 817.43-
 343 817.47, and each and every word, phrase or part thereof, where
 344 the context will permit:

345 (5) The phrase "misleading advertising" includes any
 346 statements made, or disseminated, in oral, written, electronic,
 347 or printed form or otherwise, to or before the public, or any
 348 portion thereof, which are known, or through the exercise of
 349 reasonable care or investigation could or might have been
 350 ascertained, to be untrue or misleading, and which are or were
 351 so made or disseminated with the intent or purpose, either
 352 directly or indirectly, of selling or disposing of real or
 353 personal property, services of any nature whatever, professional
 354 or otherwise, or to induce the public to enter into any
 355 obligation relating to such property or services.

356 Section 12. Section 817.411, Florida Statutes, is amended
 357 to read:

358 817.411 False information; advertising.—~~A No person, firm~~
 359 or business entity may not ~~corporation shall~~ knowingly publish,
 360 disseminate, circulate, or place before the public, or cause
 361 directly or indirectly, to be made, published, disseminated,
 362 circulated, or placed before the public, in a newspaper,
 363 magazine or other publication, or in the form of a notice,
 364 circular, pamphlet, letter or poster, or over any radio or

365 television station, electronically, or in any other way, any
 366 advertisement, announcement, or statement containing any
 367 assertion, representation, or statement that commodities,
 368 mortgages, promissory notes, securities, or other things of
 369 value offered for sale are covered by insurance guaranties where
 370 such insurance is nonexistent or does not in fact insure against
 371 the risks covered.

372 Section 13. Section 817.412, Florida Statutes, is amended
 373 to read:

374 817.412 Sale of used goods as new; penalty.-

375 (1) It is unlawful for a seller in a transaction where the
 376 purchase price of goods exceeds \$100 to misrepresent orally, in
 377 writing, electronically, or by failure to speak that the goods
 378 are new or original when they are used or repossessed or where
 379 they have been used for sales demonstration.

380 (2) A person who violates ~~the provisions of~~ this section
 381 commits a misdemeanor of the first degree, punishable as
 382 provided in s. 775.082 or s. 775.083.

383 Section 14. Subsection (1) of section 817.481, Florida
 384 Statutes, is amended to read:

385 817.481 Credit or purchases ~~cards~~; obtaining illicitly
 386 ~~goods by use of false, expired, etc.~~; penalty.-

387 (1) It shall be unlawful for any person knowingly to
 388 obtain or attempt to obtain credit, or to purchase or attempt to
 389 purchase any goods, property, or service, by the use of any
 390 false, fictitious, counterfeit, or expired credit card,

391 telephone number, credit number, or other credit device, or by
 392 the use of any credit card, telephone number, credit number, or
 393 other credit device of another person without the authority of
 394 the person to whom such card, number or device was issued, or by
 395 the use of any credit card, telephone number, credit number, or
 396 other credit device in any case where such card, number or
 397 device has been revoked and notice of revocation has been given
 398 to the person to whom issued.

399 Section 15. Section 817.50, Florida Statutes, is amended
 400 to read:

401 817.50 Fraudulently obtaining goods or ~~services, etc.~~
 402 from a health care provider.-

403 (1) Whoever shall, willfully and with intent to defraud,
 404 obtain or attempt to obtain goods, products, merchandise, or
 405 services from any health care provider in this state, as defined
 406 in s. 641.19(14), commits a felony ~~misdemeanor~~ of the third
 407 ~~second~~ degree, punishable as provided in s. 775.082, ~~or~~ s.
 408 775.083, or s. 775.084.

409 (2) If any person gives to any health care provider in
 410 this state a false or fictitious name or a false or fictitious
 411 address or assigns to any health care provider the proceeds of
 412 any health maintenance contract or insurance contract, then
 413 knowing that such contract is no longer in force, is invalid, or
 414 is void for any reason, such action shall be prima facie
 415 evidence of the intent of such person to defraud the health care
 416 provider. However, this subsection does not apply to

417 | investigative actions taken by law enforcement officers for law
 418 | enforcement purposes in the course of their official duties.

419 | Section 16. Paragraph (f) of subsection (1) and
 420 | subsections (2), (4), (8), and (9) of section 817.568, Florida
 421 | Statutes, are amended to read:

422 | 817.568 Criminal use of personal identification
 423 | information.—

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

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

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

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

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

- 443 4. Medical records;
- 444 5. Telecommunication identifying information or access
- 445 device; or
- 446 6. Other number or information that can be used to access
- 447 a person's financial resources.

448 (2)(a) Any person who willfully and without authorization

449 fraudulently uses, or possesses with intent to fraudulently use,

450 personal identification information concerning another person ~~an~~

451 ~~individual~~ without first obtaining that person's ~~individual's~~

452 consent, commits the offense of fraudulent use of personal

453 identification information, which is a felony of the third

454 degree, punishable as provided in s. 775.082, s. 775.083, or s.

455 775.084.

456 (b) Any person who willfully and without authorization

457 fraudulently uses personal identification information concerning

458 a person ~~an individual~~ without first obtaining that person's

459 ~~individual's~~ consent commits a felony of the second degree,

460 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,

461 if the pecuniary benefit, the value of the services received,

462 the payment sought to be avoided, or the amount of the injury or

463 fraud perpetrated is \$5,000 or more or if the person

464 fraudulently uses the personal identification information of 10

465 or more persons ~~individuals~~, but fewer than 20 persons

466 ~~individuals~~, without their consent. Notwithstanding any other

467 provision of law, the court shall sentence any person convicted

468 of committing the offense described in this paragraph to a

469 mandatory minimum sentence of 3 years' imprisonment.

470 (c) Any person who willfully and without authorization

471 fraudulently uses personal identification information concerning

472 a person ~~an individual~~ without first obtaining that person's

473 ~~individual's~~ consent commits a felony of the first degree,

474 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,

475 if the pecuniary benefit, the value of the services received,

476 the payment sought to be avoided, or the amount of the injury or

477 fraud perpetrated is \$50,000 or more or if the person

478 fraudulently uses the personal identification information of 20

479 or more persons ~~individuals~~, but fewer than 30 persons

480 ~~individuals~~, without their consent. Notwithstanding any other

481 provision of law, the court shall sentence any person convicted

482 of committing the offense described in this paragraph to a

483 mandatory minimum sentence of 5 years' imprisonment. If the

484 pecuniary benefit, the value of the services received, the

485 payment sought to be avoided, or the amount of the injury or

486 fraud perpetrated is \$100,000 or more, or if the person

487 fraudulently uses the personal identification information of 30

488 or more persons ~~individuals~~ without their consent,

489 notwithstanding any other provision of law, the court shall

490 sentence any person convicted of committing the offense

491 described in this paragraph to a mandatory minimum sentence of

492 10 years' imprisonment.

493 (4) Any person who willfully and without authorization

494 possesses, uses, or attempts to use personal identification

495 information concerning a person ~~an individual~~ without first
 496 obtaining that person's ~~individual's~~ consent, and who does so
 497 for the purpose of harassing that person ~~individual~~, commits the
 498 offense of harassment by use of personal identification
 499 information, which is a misdemeanor of the first degree,
 500 punishable as provided in s. 775.082 or s. 775.083.

501 (8) (a) Any person who willfully and fraudulently uses, or
 502 possesses with intent to fraudulently use, personal
 503 identification information concerning a deceased individual or
 504 dissolved business entity commits the offense of fraudulent use
 505 or possession with intent to use personal identification
 506 information of a deceased individual or dissolved business
 507 entity, a felony of the third degree, punishable as provided in
 508 s. 775.082, s. 775.083, or s. 775.084.

509 (b) Any person who willfully and fraudulently uses
 510 personal identification information concerning a deceased
 511 individual or dissolved business entity commits a felony of the
 512 second degree, punishable as provided in s. 775.082, s. 775.083,
 513 or s. 775.084, if the pecuniary benefit, the value of the
 514 services received, the payment sought to be avoided, or the
 515 amount of injury or fraud perpetrated is \$5,000 or more, or if
 516 the person fraudulently uses the personal identification
 517 information of 10 or more but fewer than 20 deceased individuals
 518 or dissolved business entities. Notwithstanding any other
 519 provision of law, the court shall sentence any person convicted
 520 of committing the offense described in this paragraph to a

521 | mandatory minimum sentence of 3 years' imprisonment.

522 | (c) Any person who willfully and fraudulently uses
 523 | personal identification information concerning a deceased
 524 | individual or dissolved business entity commits the offense of
 525 | aggravated fraudulent use of the personal identification
 526 | information of multiple deceased individuals or dissolved
 527 | business entities, a felony of the first degree, punishable as
 528 | provided in s. 775.082, s. 775.083, or s. 775.084, if the
 529 | pecuniary benefit, the value of the services received, the
 530 | payment sought to be avoided, or the amount of injury or fraud
 531 | perpetrated is \$50,000 or more, or if the person fraudulently
 532 | uses the personal identification information of 20 or more but
 533 | fewer than 30 deceased individuals or dissolved business
 534 | entities. Notwithstanding any other provision of law, the court
 535 | shall sentence any person convicted of the offense described in
 536 | this paragraph to a minimum mandatory sentence of 5 years'
 537 | imprisonment. If the pecuniary benefit, the value of the
 538 | services received, the payment sought to be avoided, or the
 539 | amount of the injury or fraud perpetrated is \$100,000 or more,
 540 | or if the person fraudulently uses the personal identification
 541 | information of 30 or more deceased individuals or dissolved
 542 | business entities, notwithstanding any other provision of law,
 543 | the court shall sentence any person convicted of an offense
 544 | described in this paragraph to a mandatory minimum sentence of
 545 | 10 years' imprisonment.

546 | (9) Any person who willfully and fraudulently creates or

547 uses, or possesses with intent to fraudulently use, counterfeit
 548 or fictitious personal identification information concerning a
 549 fictitious person ~~individual~~, or concerning a real person
 550 ~~individual~~ without first obtaining that real person's
 551 ~~individual's~~ consent, with intent to use such counterfeit or
 552 fictitious personal identification information for the purpose
 553 of committing or facilitating the commission of a fraud on
 554 another person, commits the offense of fraudulent creation or
 555 use, or possession with intent to fraudulently use, counterfeit
 556 or fictitious personal identification information, a felony of
 557 the third degree, punishable as provided in s. 775.082, s.
 558 775.083, or s. 775.084.

559 Section 17. Section 817.569, Florida Statutes, is amended
 560 to read:

561 817.569 Criminal use of a public record or public records
 562 information; providing false information; penalties.—A person
 563 who knowingly uses any public record, as defined in s. 119.011,
 564 ~~or~~ who knowingly uses information obtainable only through such
 565 public record, or who knowingly provides false information that
 566 becomes part of a public record to facilitate or further the
 567 commission of:

568 (1) A misdemeanor of the first degree, commits a
 569 misdemeanor of the first degree, punishable as provided in s.
 570 775.082 or s. 775.083.

571 (2) A felony, commits a felony of the third degree,
 572 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

573 Section 18. Paragraphs (a) and (e) of subsection (3) of
 574 section 921.0022, Florida Statutes, are amended to read:
 575 921.0022 Criminal Punishment Code; offense severity
 576 ranking chart.—

577 (3) OFFENSE SEVERITY RANKING CHART

578 (a) LEVEL 1

579

Florida	Felony	Description
Statute	Degree	
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or

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585			identification number plate.
586	319.35 (1) (a)	3rd	Tamper, adjust, change, etc., an odometer.
587	320.26 (1) (a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
588	322.212 (1) (a) - (c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
589	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
590	322.212 (5) (a)	3rd	False application for driver license or identification card.
	414.39 (2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.

591	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
592	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
593	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
594	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
595	562.27(1)	3rd	Possess still or still apparatus.
596	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
597			

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598	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
599	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
600	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
601	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
602	817.569(2)	3rd	Use of public record or public records information <u>or</u> <u>providing false information</u> to facilitate commission of a felony.
603	826.01	3rd	Bigamy.
604	828.122(3)	3rd	Fighting or baiting animals.
	831.04(1)	3rd	Any erasure, alteration, etc.,

			of any replacement deed, map, plat, or other document listed in s. 92.28.
605	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
606	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
607	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
608	838.15(2)	3rd	Commercial bribe receiving.
609	838.16	3rd	Commercial bribery.
610	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
611	847.011(1)(a)	3rd	Sell, distribute, etc.,

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			obscene, lewd, etc., material (2nd conviction).
612	849.01	3rd	Keeping gambling house.
613	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
614	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
615	849.25(2)	3rd	Engaging in bookmaking.
616	860.08	3rd	Interfere with a railroad signal.
617	860.13(1)(a)	3rd	Operate aircraft while under the influence.
618	893.13(2)(a)2.	3rd	Purchase of cannabis.
619	893.13(6)(a)	3rd	Possession of cannabis (more

620			than 20 grams).
621	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
622	(e) LEVEL 5		
623	Florida Statute	Felony Degree	Description
624	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
625	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
626	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
627	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
628			

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629	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
630	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
631	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
632	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
633	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
634	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

635	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
636	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
637	790.01(2)	3rd	Carrying a concealed firearm.
638	790.162	2nd	Threat to throw or discharge destructive device.
639	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
640	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
641	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.

642	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
643	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
644	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
645	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
646	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
647	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
648	812.131(2)(b)	3rd	Robbery by sudden snatching.

649

812.16(2) 3rd Owning, operating, or
conducting a chop shop.

650

817.034(4)(a)2. 2nd Communications fraud, value
\$20,000 to \$50,000.

651

817.234(11)(b) 2nd Insurance fraud; property value
\$20,000 or more but less than
\$100,000.

652

817.2341(1), 3rd Filing false financial
(2)(a) & statements, making false
(3)(a) entries of material fact or
false statements regarding
property values relating to the
solvency of an insuring entity.

653

817.568(2)(b) 2nd Fraudulent use of personal
identification information;
value of benefit, services
received, payment avoided, or
amount of injury or fraud,
\$5,000 or more or use of
personal identification
information of 10 or more

654	817.625(2)(b)	2nd	<p><u>persons</u> individuals. Second or subsequent fraudulent use of scanning device or reencoder.</p>
655	825.1025(4)	3rd	<p>Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.</p>
656	827.071(4)	2nd	<p>Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.</p>
657	827.071(5)	3rd	<p>Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.</p>
658	839.13(2)(b)	2nd	<p>Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or</p>

			death.
659	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
660	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
661	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
662	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
663	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
664	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
665			

666	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).
667	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, school, or state, county, or municipal park or publicly owned recreational facility or community center.
668	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 1,000 feet of university.

669	893.13(1)(e)2.	2nd	<p>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.</p>
670	893.13(1)(f)1.	1st	<p>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 1,000 feet of public housing facility.</p>
671	893.13(4)(b)	2nd	<p>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).</p>
	893.1351(1)	3rd	<p>Ownership, lease, or rental for</p>

trafficking in or manufacturing
of controlled substance.

672

673

Section 19. This act shall take effect October 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee
3 Representative Passidomo offered the following:
4

Amendment (with title amendment)

6 Remove lines 116-136 and insert:

7 (2) GENERALLY.-

8 (a) For the purpose of documenting fraudulent transactions
9 resulting from identity theft, within 30 days after the date of
10 receipt of a request from a victim in accordance with subsection
11 (4), and subject to verification of the identity of the victim
12 and the claim of identity theft in accordance with subsection
13 (3), a business entity that has provided credit to; provided for
14 consideration products, goods, or services to; accepted payment
15 from; or otherwise entered into a commercial transaction for
16 consideration with, a person who has allegedly made unauthorized
17 use of the means of identification of the victim, shall provide

Amendment No. 1

18 | a copy of the application and business transaction records in
19 | the control of the business entity, whether maintained by the
20 | business entity or by another person on behalf of the business
21 | entity, evidencing any transaction alleged to be a result of
22 | identity theft to:

23 | 1. The victim;

24 | 2. A federal, state, or local government law enforcement
25 | agency, or officer specified by the victim in such a request; or

26 | 3. A law enforcement agency investigating the identity
27 | theft and authorized by the victim to take receipt of records
28 | provided under this section.

29 | (b) This subsection does not apply to a third-party
30 | providing a service to effect, administer, facilitate, process,
31 | or enforce a financial transaction initiated by an individual.

32 |

33 | -----

34 | **T I T L E A M E N D M E N T**

35 | Remove line 11 and insert:

36 | certain circumstances; providing an exception;

37 | providing for verification of a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 157 (2015)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee
3 Representative Passidomo offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 188-194 and insert:

7 information;

8 (d) The information requested is Internet navigational
9 data or similar information about a person's visit to a website
10 or online service; or

11 (e) The disclosure is otherwise prohibited by state or
12 federal law.

13 (7) LIMITATION ON CIVIL LIABILITY.—A business entity may
14 not be held civilly liable in this state for a disclosure made
15 in good faith pursuant to this section or a decision to decline
16 to provide information as provided in subsection (6).
17

Amendment No. 2

18

19

T I T L E A M E N D M E N T

20

Remove line 17 and insert:

21

for business entities that provide or decline to

22

provide information in certain circumstances;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 157 (2015)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Passidomo offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 382 and 383, insert:

7 Section 14. Section 817.414, Florida Statutes, is created
8 to read:

9 817.414 Sale of counterfeit security signs and decals.—A
10 person who willfully and knowingly sells or attempts to sell a
11 counterfeit sign or decal in this state with the name or logo of
12 a security company without the express written consent of the
13 company commits:

14 (1) For the first offense, a misdemeanor of the second
15 degree, punishable as provided in s. 775.082 or s. 775.083.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 157 (2015)

Amendment No. 3

16 (2) For a second or subsequent offense, a misdemeanor of
17 the first degree, punishable as provided in s. 775.082 or s.
18 775.083.

19

20

21

T I T L E A M E N D M E N T

22

Remove line 45 and insert:

23

new; creating s. 817.414, F.S.; prohibiting the sale

24

of counterfeit security company signs or decals;

25

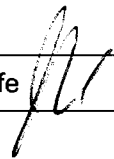

providing criminal penalties; amending s. 817.481,

26

F.S.; clarifying provisions;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 465 Human Trafficking
SPONSOR(S): Criminal Justice Subcommittee; Spano; Kerner and others
TIED BILLS: HB 467, HB 469 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Aziz	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The greatest driver of human trafficking in Florida is prostitution.

Currently, the penalty for soliciting another for prostitution is a second degree misdemeanor for the first offense, a first degree misdemeanor for the second offense, and a third degree felony for a third or subsequent offense. Anyone who is convicted, pleads guilty or pleads nolo contendere for solicitation for prostitution is subject to a \$5,000 fine.

The bill increases the criminal penalties for soliciting, inducing, enticing, or procuring another to commit prostitution. The penalties are increased as follows:

- First offense is a first degree misdemeanor;
- Second offense is a third degree felony; and
- Third, or subsequent, offense is a second degree felony.

The bill requires a judge to sentence a person convicted of solicitation to 10 days in jail if it is their second or subsequent conviction for solicitation.

The bill also requires the court to order a person convicted of solicitation to perform 100 hours of community service and complete an educational program about the negative effects of prostitution and human trafficking. The bill also authorizes a judge to impound or immobilize the car of a person convicted of solicitation for up to 60 days.

The bill authorizes a circuit court in the circuit in which a victim of human trafficking was arrested to grant a human trafficking expunction. The bill allows an advocate to be present with a victim of human trafficking during any human trafficking expunction court proceeding.

The Criminal Justice Impact Conference (CJIC) met February 27, 2015 and determined this bill will have a positive insignificant impact on state prison beds due to the low volume of offenses. This means CJIC estimates that this bill may increase the department's prison population by less than 10 inmates annually. See Fiscal Impact section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, and are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

Prostitution

Human trafficking in Florida proliferates through illegal industries such as prostitution.⁸ This illegal industry is thriving because of the demand of men soliciting prostitution.⁹ Chapter 796, F.S., defines

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on February 3, 2015).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on February 3, 2015).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpfacts_humantrafficking.html (last visited February 3, 2015).

⁵ Tamar R. Birckhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

⁶ *Id.*

⁷ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on February 3, 2015).

⁸ Florida State University Center for the Advancement of Human Rights, "Florida Responds to Human Trafficking" Fall 2003 available at http://www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf (last visited January 29, 2015).

⁹ Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 299 (2012).

prostitution as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.”¹⁰ Currently, a person who solicits, induces, entices, or procures another to commit prostitution, lewdness or assignation (solicits) commits a second degree misdemeanor.¹¹ However, a second offense is a first degree misdemeanor,¹² and a third or subsequent offense is a third degree felony.^{13, 14}

In addition to the criminal penalties, a civil penalty must be assessed against individuals that solicit prostitution.¹⁵ Prior to 2012, the civil penalty was \$500. In 2012, in an attempt to reduce instances of solicitation, the Legislature increased the civil penalty to \$5,000.¹⁶ In May of 2014, a Manatee County judge declared the \$5,000 civil penalty unconstitutional as an excessive fine in violation with both the state and federal constitution.¹⁷ The judge found the required \$5,000 fine excessive since the first offense for soliciting another to commit prostitution is a second degree misdemeanor, which is generally subject to a \$500 fine. The judge’s order is currently on appeal before Florida’s Third Circuit Court of Appeals.

Sexual Violence Education Programs

Several states require a person convicted of soliciting prostitution to attend an educational program on sexual violence. For example, in Kansas, a judge may order a person convicted of buying sexual relations to complete an educational program on commercial sexual exploitation.¹⁸ In Nebraska, as a term of one’s probation, a john must complete a mental health and substance abuse assessment by a licensed mental health professional.¹⁹ New Jersey has even created a “Prostitution Offender Program” for those convicted patrons of prostitutes, which includes information on the causes of prostitution and its relationship to human trafficking.²⁰

In Florida, the Department of Health’s Sexual Violence Prevention Program contracts with rape crisis centers, county health departments, and other community based organizations to provide presentations on consent, coercion, and primary prevention of sexual assault.²¹ However, there is no current requirement for anyone convicted of s.796.07, F.S., to attend such presentations.

Effect of the Bill

The bill increases the criminal penalties for solicitation as follows:

- First offense is increased from a second degree misdemeanor to a first degree misdemeanor;
- Second offense is increased from a first degree misdemeanor to a third degree felony; and
- Third or subsequent offenses are increased from a third degree felony to a second degree felony.²²

¹⁰ Section 796.07(1)(a), F.S. “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation. . .” Section 796.07(1)(d), F.S.

¹¹ A second degree misdemeanor is punishable by up to one year in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ Section 796.07(4), F.S.

¹⁵ Section 796.07(6), F.S. The civil penalty is imposed in any judicial disposition other than acquittal or dismissal.

¹⁶ Chapter 2012-105, L.O.F. The civil penalty is distributed with the first \$500 paid to the circuit court administrator and the remaining amount of the penalty deposited to the Operations and Maintenance trust fund at DCF for the purpose of funding safe houses.

¹⁷ *State v. Cotton*, Case No. 2013-MM-004788 (Fla. Manatee Cty. Ct. May 16, 2014). *See also* U.S. Const. VII and Fla. Const. art. 1, s. 17.

¹⁸ Kan. Stat. Ann. § 21-6421.

¹⁹ Neb. Rev. Stat. § 28-801.01.

²⁰ N.J. Stat. Ann. § 2C:34-1.2.

²¹ Florida Department of Health, *Sexual Abuse or Violence Prevention*, <http://www.floridahealth.gov/programs-and-services/prevention/sexual-abuse-or-violence-prevention/index.html> (last visited February 3, 2015).

²² A second degree felony is punishable by up to 15 year imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

The bill requires the court to sentence a person convicted of solicitation a second or subsequent time to serve a minimum of 10 days in jail.

By increasing the penalty for a first offense of solicitation from a second degree misdemeanor to a first degree misdemeanor, courts may be less-inclined to deem the \$5,000 fine excessive since the amount of the fine is not as "grossly disproportional to the defendant's offense."²³

The bill also requires the court to order a person convicted of solicitation to perform 100 hours of community service, and attend and pay for an educational program about the negative effects of prostitution and human trafficking.

The bill also allows a judge to impound or immobilize the vehicle of a person convicted of solicitation for up to 60 days if the vehicle was used in the course of the violation.²⁴ Within 7 business days of the judge's order, the clerk of court must send notice²⁵ of the order to the registered owner of the vehicle (if other than the defendant) and any one claiming a lien on the vehicle. The owner of the vehicle may request the court to dismiss the order. The court must dismiss the order, and the owner will incur no costs, if the owner alleges and the court finds to be true any of the following:

- The owner's family has no other private or public means of transportation;
- The vehicle was stolen at the time of the offense;
- The owner purchased the vehicle after the offense was committed, and the sale was not made to circumvent the order and allow the defendant continued access to the vehicle; or
- The vehicle is owned by the defendant but is operated solely by employees of the defendant or employees of a business owned by the defendant.

If not dismissed, the petitioner may request an evidentiary hearing. If, at the evidentiary hearing, the court finds any of the above circumstances to be true, the court must dismiss the order and the owner of the vehicle will incur no costs.

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of a criminal history record relating to an offense committed while he or she was a victim of human trafficking. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.²⁶

To receive the expunction, a victim of human trafficking must petition the court of original jurisdiction over the crime sought to be expunged.²⁷ A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.²⁸

The petition must include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim's status as a victim of human trafficking, if any exists.²⁹

At any hearing regarding the expunction, the petitioner or the petitioner's attorney may appear telephonically, via video conference, or by other electronic means.³⁰ The court's determination of the

²³ *United States v. Bajakajian*, 524 U.S. 321, 336 (1998).

²⁴ The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting all of the conditions of s. 316.193(13), F.S.

²⁵ The notice must be by certified mail, return receipt requested.

²⁶ Section 943.0583(1)(c), F.S.

²⁷ Section 943.0583(2), F.S.

²⁸ Section 943.0583(4), F.S.

²⁹ Section 943.0583(6), F.S.

petition must be by a preponderance of the evidence.³¹ A determination made without official documentation must be made by a showing of clear and convincing evidence.³² If a court grants an expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.³³ Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.³⁴

Effect of the Bill

The bill clarifies which court may grant an expunction by specifying that a circuit court in the circuit in which the petitioner was arrested may order the expunction. The bill also allows an advocate to be present with the petitioner during any human trafficking court proceedings. The advocate must be an advocate from a:

- State attorney's office;
- Law enforcement agency;
- Safe house³⁵ or safe foster home³⁶; or
- Residential facility offering services to adult victims of human trafficking.

B. SECTION DIRECTORY:

Section 1. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met February 27, 2015 and determined this bill will have a positive insignificant impact on state prison beds due to the low volume of offenses. This means CJIC estimates that this bill may increase the department's prison population by less than 10 inmates annually.

In Fiscal Year 2013-14, 336 offenders were convicted of a third degree felony for all offenses in s. 796.07, F.S. Of these offenders, 16 were sentenced to prison and 190 were sentenced to jail. It is not possible to separate those sentenced under, s. 796.07 (2)(f) F.S., from the other felony offenses

³⁰ Section 943.0583(7)(b), F.S.

³¹ Section 943.0583(3), F.S.

³² Section 943.0583(5), F.S.

³³ Section 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record must be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

³⁴ Section 943.0583(8)(b), F.S.

³⁵ A "safe house" means a group residential placement certified by the Department of Children and Families to care for sexually exploited children. Section 409.1678(1)(b), F.S.

³⁶ A "safe foster home" means a foster home certified by the Department of Children and Families to care for sexually exploited children Section 409.1678(1)(a), F.S.

in s. 796.07, F.S., but misdemeanor data was available and shows that 7.3% of 1st degree misdemeanor convictions were for violations of s. 796.07 (2)(f) F.S. Applying the same percentage to third degree felony sentences results in approximately one offender going to prison and 14 offenders going to jail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Because the bill increases misdemeanor penalties for solicitation to felonies, it will likely have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes a judge to impound or immobilize the car of a person convicted of solicitation for up to 60 days. The bill may have a positive fiscal impact on immobilization agencies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2015, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires a court to order a person convicted of solicitation to perform 100 hours of community service;
- Requires a court to sentence a person to 10 days in jail if it is the person's second or subsequent conviction for solicitation;
- Modifies the procedure for a court to dismiss an impoundment or immobilization order;
- Clarifies that a circuit court in the circuit in which the petitioner was arrested may grant a human trafficking expunction;

- Removes language allowing a judge to clear a court room during a human trafficking expunction hearing; and
- Allows an advocate to be present with the victim of human trafficking during any expunction court proceeding.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 796.07, F.S.; providing enhanced criminal penalties
 4 for soliciting another to commit prostitution and
 5 similar offenses; requiring persons convicted of such
 6 offenses to perform community service and pay for and
 7 attend an education program; requiring the court to
 8 impose minimum mandatory terms of incarceration for
 9 persons convicted two or more times of soliciting
 10 another to commit prostitution and similar offenses;
 11 providing for impoundment of a vehicle used in
 12 soliciting another to commit prostitution and similar
 13 offenses; providing an opportunity for owners to
 14 prevent the impoundment or immobilization in certain
 15 circumstances; amending s. 943.0583, F.S.; providing
 16 that a circuit court in the circuit in which the
 17 petitioner was arrested may expunge the criminal
 18 history record of a victim of human trafficking;
 19 requiring a judge to allow an advocate to be present
 20 with a human trafficking victim in an expunction
 21 hearing in certain circumstances; providing an
 22 effective date.
 23
 24 Be It Enacted by the Legislature of the State of Florida:
 25
 26 Section 1. Section 796.07, Florida Statutes, is amended to

27 read:

28 796.07 Prohibiting prostitution and related acts.—

29 (1) As used in this section:

30 (a) "Prostitution" means the giving or receiving of the
31 body for sexual activity for hire but excludes sexual activity
32 between spouses.

33 (b) "Lewdness" means any indecent or obscene act.

34 (c) "Assignment" means the making of any appointment or
35 engagement for prostitution or lewdness, or any act in
36 furtherance of such appointment or engagement.

37 (d) "Sexual activity" means oral, anal, or vaginal
38 penetration by, or union with, the sexual organ of another; anal
39 or vaginal penetration of another by any other object; or the
40 handling or fondling of the sexual organ of another for the
41 purpose of masturbation; however, the term does not include acts
42 done for bona fide medical purposes.

43 (2) It is unlawful:

44 (a) To own, establish, maintain, or operate any place,
45 structure, building, or conveyance for the purpose of lewdness,
46 assignation, or prostitution.

47 (b) To offer, or to offer or agree to secure, another for
48 the purpose of prostitution or for any other lewd or indecent
49 act.

50 (c) To receive, or to offer or agree to receive, any
51 person into any place, structure, building, or conveyance for
52 the purpose of prostitution, lewdness, or assignation, or to

53 | permit any person to remain there for such purpose.

54 | (d) To direct, take, or transport, or to offer or agree to
 55 | direct, take, or transport, any person to any place, structure,
 56 | or building, or to any other person, with knowledge or
 57 | reasonable cause to believe that the purpose of such directing,
 58 | taking, or transporting is prostitution, lewdness, or
 59 | assignation.

60 | (e) To offer to commit, or to commit, or to engage in,
 61 | prostitution, lewdness, or assignation.

62 | (f) To solicit, induce, entice, or procure another to
 63 | commit prostitution, lewdness, or assignation.

64 | (g) To reside in, enter, or remain in, any place,
 65 | structure, or building, or to enter or remain in any conveyance,
 66 | for the purpose of prostitution, lewdness, or assignation.

67 | (h) To aid, abet, or participate in any of the acts or
 68 | things enumerated in this subsection.

69 | (i) To purchase the services of any person engaged in
 70 | prostitution.

71 | (3)(a) In the trial of a person charged with a violation
 72 | of this section, testimony concerning the reputation of any
 73 | place, structure, building, or conveyance involved in the
 74 | charge, testimony concerning the reputation of any person
 75 | residing in, operating, or frequenting such place, structure,
 76 | building, or conveyance, and testimony concerning the reputation
 77 | of the defendant is admissible in evidence in support of the
 78 | charge.

79 (b) Notwithstanding any other provision of law, a police
 80 officer may testify as an offended party in an action regarding
 81 charges filed pursuant to this section.

82 (4) (a) A person who violates any provision of this
 83 section, other than paragraph (2)(f), commits:

84 1. ~~(a)~~ A misdemeanor of the second degree for a first
 85 violation, punishable as provided in s. 775.082 or s. 775.083.

86 2. ~~(b)~~ A misdemeanor of the first degree for a second
 87 violation, punishable as provided in s. 775.082 or s. 775.083.

88 3. ~~(c)~~ A felony of the third degree for a third or
 89 subsequent violation, punishable as provided in s. 775.082, s.
 90 775.083, or s. 775.084.

91 ~~(b) ~~(5)~~~~ A person who is charged with a third or subsequent
 92 violation of this section, other than paragraph (2)(f), shall be
 93 offered admission to a pretrial intervention program or a
 94 substance abuse treatment program as provided in s. 948.08.

95 (5) (a) A person who violates paragraph (2)(f) commits:

96 1. A misdemeanor of the first degree for a first
 97 violation, punishable as provided in s. 775.082 or s. 775.083.

98 2. A felony of the third degree for a second violation,
 99 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

100 3. A felony of the second degree for a third or subsequent
 101 violation, punishable as provided in s. 775.082, s. 775.083, or
 102 s. 775.084.

103 (b) In addition to any other penalty imposed, the court
 104 shall order a person convicted of a violation of paragraph

105 (2)(f) to:

- 106 1. Perform 100 hours of community service; and
- 107 2. Pay for and attend an educational program about the
- 108 negative effects of prostitution and human trafficking, such as
- 109 a sexual violence prevention education program, if such program
- 110 exists in the judicial circuit in which the offender is
- 111 sentenced.

112 (c) In addition to any other penalty imposed, the court

113 shall sentence a person convicted of a second or subsequent

114 violation of paragraph (2)(f) to a minimum mandatory period of

115 incarceration of 10 days.

116 (d)1. If a person who violates paragraph (2)(f) uses a

117 vehicle in the course of the violation, the judge, upon the

118 person's conviction, may issue an order for the impoundment or

119 immobilization of the vehicle for a period of up to 60 days. The

120 order of impoundment or immobilization must include the names

121 and telephone numbers of all immobilization agencies meeting all

122 of the conditions of s. 316.193(13). Within 7 business days

123 after the date that the court issues the order of impoundment or

124 immobilization, the clerk of the court must send notice by

125 certified mail, return receipt requested, to the registered

126 owner of the vehicle, if the registered owner is a person other

127 than the defendant, and to each person of record claiming a lien

128 against the vehicle.

129 2. The owner of the vehicle may request the court to

130 dismiss the order. The court must dismiss the order, and the

131 owner of the vehicle will incur no costs, if the owner of the
 132 vehicle alleges and the court finds to be true any of the
 133 following:

134 a. The owner's family has no other private or public means
 135 of transportation;

136 b. The vehicle was stolen at the time of the offense;

137 c. The owner purchased the vehicle after the offense was
 138 committed, and the sale was not made to circumvent the order and
 139 allow the defendant continued access to the vehicle; or

140 d. The vehicle is owned by the defendant but is operated
 141 solely by employees of the defendant or employees of a business
 142 owned by the defendant.

143 3. If the court denies the request to dismiss the order,
 144 the petitioner may request an evidentiary hearing. If, at the
 145 evidentiary hearing, the court finds to be true any of the
 146 circumstances described in sub-subparagraphs (d)2.a.-d., the
 147 court must dismiss the order and the owner of the vehicle will
 148 incur no costs.

149 (6) A person who violates paragraph (2)(f) shall be
 150 assessed a civil penalty of \$5,000 if the violation results in
 151 any judicial disposition other than acquittal or dismissal. Of
 152 the proceeds from each penalty assessed under this subsection,
 153 the first \$500 shall be paid to the circuit court administrator
 154 for the sole purpose of paying the administrative costs of
 155 treatment-based drug court programs provided under s. 397.334.
 156 The remainder of the penalty assessed shall be deposited in the

157 Operations and Maintenance Trust Fund of the Department of
 158 Children and Families for the sole purpose of funding safe
 159 houses and safe foster homes as provided in s. 409.1678.

160 Section 2. Subsections (2) and (7) and paragraph (a) of
 161 subsection (8) of section 943.0583, Florida Statutes, are
 162 amended to read:

163 943.0583 Human trafficking victim expunction.-

164 (2) Notwithstanding any other provision of law, a circuit
 165 court in the circuit in which the petitioner was arrested ~~the~~
 166 ~~court of original jurisdiction over the crime sought to be~~
 167 ~~expunged~~ may order a criminal justice agency to expunge the
 168 criminal history record of a victim of human trafficking who
 169 complies with the requirements of this section. This section
 170 does not confer any right to the expunction of any criminal
 171 history record, and any request for expunction of a criminal
 172 history record may be denied at the discretion of the court.

173 (7)(a) In judicial proceedings under this section, a copy
 174 of the completed petition to expunge shall be served upon the
 175 appropriate state attorney or the statewide prosecutor and upon
 176 the arresting agency; however, it is not necessary to make any
 177 agency other than the state a party. The appropriate state
 178 attorney or the statewide prosecutor and the arresting agency
 179 may respond to the court regarding the completed petition to
 180 expunge.

181 (b) The petitioner or the petitioner's attorney may appear
 182 at any hearing under this section telephonically, via video

183 conference, or by other electronic means.

184 (c) The court shall allow an advocate from a state
 185 attorney's office, law enforcement agency, safe house or safe
 186 foster home as defined in s. 409.1678(1), or a residential
 187 facility offering services to adult victims of human trafficking
 188 to be present with the petitioner during any court proceedings
 189 or hearings under this section, if the petitioner has made such
 190 a request and the advocate is able to be present.

191 (d)~~(e)~~ If relief is granted by the court, the clerk of the
 192 court shall certify copies of the order to the appropriate state
 193 attorney or the statewide prosecutor and the arresting agency.
 194 The arresting agency is responsible for forwarding the order to
 195 any other agency listed in the court order to which the
 196 arresting agency disseminated the criminal history record
 197 information to which the order pertains. The department shall
 198 forward the order to expunge to the Federal Bureau of
 199 Investigation. The clerk of the court shall certify a copy of
 200 the order to any other agency that the records of the court
 201 reflect has received the criminal history record from the court.

202 (8)(a) Any criminal history record of a minor or an adult
 203 that is ordered expunged ~~by the court of original jurisdiction~~
 204 ~~over the charges sought to be expunged~~ pursuant to this section
 205 must be physically destroyed or obliterated by any criminal
 206 justice agency having custody of such record, except that any
 207 criminal history record in the custody of the department must be
 208 retained in all cases.

209

Section 3. This act shall take effect October 1, 2015.

