

ASSEMBLY BILL NO. 428—ASSEMBLYMEN PARKS, ANDERSON, HORNE, COBB, LESLIE, ALLEN, ARBERRY, BUCKLEY, CONKLIN, DENIS, HOGAN, KIRKPATRICK, KOIVISTO, MANENDO, MCCLAIN, MORTENSON, OCEGUERA, OHRENSCHALL, PIERCE, SEGERBLOM, SETTELMAYER, SMITH AND WOMACK

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to crimes involving the unlawful use of personal identifying information of another person. (BDR 15-1334)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to personal identifying information; prohibiting the use of certain personal identifying information of another to obtain any other personal identifying information of that person without the prior express consent of the person; increasing the penalty for possessing, selling, transferring or obtaining and using the personal identifying information of another person under certain circumstances; creating a rebuttable inference of the intent to use the personal identifying information of another person unlawfully under certain circumstances; allowing a postal inspector of the United States Postal Inspection Service to make arrests without a warrant under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law prohibits the use of the personal identifying information of another
- 2 to harm that person or to obtain credit, a good, a service or anything of value in the
- 3 name of that other person. (NRS 205.4617, 205.463, 205.464, 205.465) **Section 1**
- 4 of this bill provides that personal identifying information includes, without
- 5 limitation, any information that can be used to identify the actions, communications
- 6 or other activities or transactions of a person. (NRS 205.4617) **Section 2** of this bill



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7 provides that a person who uses the personal identifying information of another,
8 with the intent to commit an unlawful act, to: (1) represent or impersonate that
9 other person to obtain access to any personal identifying information of that other
10 person without the prior express consent of that other person, or (2) obtain access to
11 any nonpublic record of the actions taken, communications made or received by, or
12 other activities or transactions of that other person without the prior express consent
13 of that other person is guilty of a category B felony. (NRS 205.463)

14 **Sections 2, 3 and 4** of the bill also: (1) increase the penalties for using the
15 personal identifying information of another person if the violation involves the
16 personal identifying information of five or more persons or if the violation causes
17 the victim to suffer a financial loss of \$3,000 or more; and (2) create a rebuttable
18 inference of the intent to use the personal identifying information of another person
19 unlawfully if a person possesses the personal identifying information of five or
20 more persons not in the ordinary course of his business or pursuant to a financial
21 transaction entered into with an authorized user of a payment card.

22 Under existing law, arrests without a warrant may be made under certain
23 circumstances by peace officers, officers of the Drug Enforcement Administration,
24 agents of the Federal Bureau of Investigation or the Secret Service, officers of the
25 Bureau of Indian Affairs or persons employed as police officers by an Indian tribe.
26 (NRS 171.124, 171.1245, 171.1255) **Section 5** of this bill allows a postal inspector
27 of the United States Postal Inspection Service to also make arrests without a
28 warrant under certain circumstances.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 205.4617 is hereby amended to read as
2 follows:

3 205.4617 1. Except as otherwise provided in subsection 2,
4 “personal identifying information” means any information designed,
5 commonly used or capable of being used, alone or in conjunction
6 with any other information, to identify a living or deceased person
7 ~~or to identify the actions taken, communications made or~~
8 ~~received by, or other activities or transactions of a living or~~
9 ~~deceased person,~~ including, without limitation:

10 (a) The current or former name, driver’s license number,
11 identification card number, social security number, checking
12 account number, savings account number, credit card number, debit
13 card number, financial services account number, date of birth, place
14 of employment and maiden name of the mother of a person.

15 (b) The unique biometric data of a person, including, without
16 limitation, the fingerprints, facial scan identifiers, voiceprint, retina
17 image and iris image of a person.

18 (c) The electronic signature, unique electronic identification
19 number, address or routing code, telecommunication identifying
20 information or access device of a person.

21 (d) The personal identification number or password of a person.



(e) The alien registration number, government passport number, employer identification number, taxpayer identification number, Medicaid account number, food stamp account number, medical identification number or health insurance identification number of a person.

(f) The number of any professional, occupational, recreational or governmental license, certificate, permit or membership of a person.

(g) The number, code or other identifying information of a person who receives medical treatment as part of a confidential clinical trial or study, who participates in a confidential clinical trial or study involving the use of prescription drugs or who participates in any other confidential medical, psychological or behavioral experiment, study or trial.

(h) The utility account number of a person.

2. To the extent that any information listed in subsection 1 is designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify an artificial person, "personal identifying information" includes information pertaining to an artificial person.

Sec. 2. NRS 205.463 is hereby amended to read as follows:

205.463 1. Except as otherwise provided in subsections 2 and 3, a person who knowingly:

(a) Obtains any personal identifying information of another person; and

(b) ~~Uses~~ *With the intent to commit an unlawful act, uses* the personal identifying information ~~for~~ :

(1) To harm that other person ;

(2) To represent or impersonate that other person to obtain access to any personal identifying information of that other person without the prior express consent of that other person;

(3) To obtain access to any nonpublic record of the actions taken, communications made or received by, or other activities or transactions of that other person without the prior express consent of that other person; or ~~for~~

(4) For any other unlawful purpose, including, without limitation, to obtain credit, a good, a service or anything of value in the name of that *other* person,

↪ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$100,000.

2. Except as otherwise provided in subsection 3, a person who knowingly:

(a) Obtains any personal identifying information of another person; and



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(b) Uses the personal identifying information to avoid or delay being prosecuted for an unlawful act,
➔ is guilty of a category C felony and shall be punished as provided in NRS 193.130.

3. A person who violates:

(a) Subsection 1 or 2 by obtaining and using the personal identifying information of an older person or a vulnerable person;
~~for~~

(b) Subsection *1 or 2 by obtaining and using the personal identifying information of five or more persons;*

(c) *Subsection 1 or 2 by causing another person to suffer a financial loss or injury of \$3,000 or more as a result of the violation; or*

(d) *Subsection* 2 to avoid or delay being prosecuted for an unlawful act that is punishable as a category A felony or category B felony,

➔ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$100,000.

4. In addition to any other penalty, the court shall order a person convicted of violating subsection 1 to pay restitution, including, without limitation, any attorney's fees and costs incurred to:

(a) Repair the credit history or rating of the person whose personal identifying information he obtained and used in violation of subsection 1; and

(b) Satisfy a debt, lien or other obligation incurred by the person whose personal identifying information he obtained and used in violation of subsection 1.

5. Proof of possession of the personal identifying information of five or more persons in a manner not set forth in NRS 205.4655 permits a rebuttable inference that the possessor intended to use such information in violation of this section.

Sec. 3. NRS 205.464 is hereby amended to read as follows:

205.464 1. Except as otherwise provided in subsection 2, a public officer or public employee who knowingly:

(a) Obtains any personal identifying information of another person from any document, file, database, source or process used by a public body to collect, store, maintain, transfer, reproduce, manage or administer personal identifying information; and

(b) Uses the personal identifying information to harm that other person or for any unlawful purpose, including, without limitation, to obtain credit, a good, a service or anything of value in the name of that person,



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1 ➔ is guilty of a category B felony and shall be punished by
2 imprisonment in the state prison for a minimum term of not less
3 than 5 years and a maximum term of not more than 20 years, and
4 may be further punished by a fine of not more than \$100,000.

5 2. A public officer or public employee who violates subsection
6 1 by ~~obtaining~~ :

7 (a) *Obtaining* and using the personal identifying information of
8 an older person or a vulnerable person ;

9 (b) *Obtaining and using the personal identifying information*
10 *of five or more persons; or*

11 (c) *Causing another person to suffer a financial loss or injury*
12 *of \$3,000 or more as a result of the violation,*

13 ➔ is guilty of a category B felony and shall be punished by
14 imprisonment in the state prison for a minimum term of not less
15 than 7 years and a maximum term of not more than 20 years, and
16 may be further punished by a fine of not more than \$100,000.

17 3. Except as otherwise provided in subsection 4, a public
18 officer or public employee who knowingly:

19 (a) Obtains any personal identifying information of another
20 person from any document, file, database, source or process used by
21 a public body to collect, store, maintain, transfer, reproduce, manage
22 or administer personal identifying information; and

23 (b) Possesses, sells or transfers the personal identifying
24 information for the purpose of establishing a false status,
25 occupation, membership, license or identity for himself or any other
26 person,

27 ➔ is guilty of a category C felony and shall be punished as provided
28 in NRS 193.130.

29 4. A public officer or public employee who violates subsection
30 3 by ~~obtaining~~ :

31 (a) *Obtaining* and possessing, selling or transferring the
32 personal identifying information of an older person or a vulnerable
33 person ;

34 (b) *Obtaining and possessing, selling or transferring the*
35 *personal identifying information of five or more persons; or*

36 (c) *Causing another person to suffer a financial loss or injury*
37 *of \$3,000 or more as a result of the violation,*

38 ➔ is guilty of a category B felony and shall be punished by
39 imprisonment in the state prison for a minimum term of not less
40 than 1 year and a maximum term of not more than 20 years, and
41 may be further punished by a fine of not more than \$100,000.

42 5. Except as otherwise provided in subsection 6, a public
43 officer or public employee who knowingly aids another public
44 officer or public employee to commit a violation of any provision of



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1 this section is guilty of a category C felony and shall be punished as
2 provided in NRS 193.130.

3 6. A public officer or public employee who violates subsection
4 5 by knowingly aiding another public officer or public employee in
5 committing a violation of this section by ~~obtaining~~ :

6 (a) **Obtaining** the personal identifying information of an older
7 person or a vulnerable person ;

8 (b) **Obtaining the personal identifying information of five or**
9 **more persons; or**

10 (c) **Causing another person to suffer a financial loss or injury**
11 **of \$3,000 or more as a result of the violation,**

12 ↳ is guilty of a category B felony and shall be punished by
13 imprisonment in the state prison for a minimum term of not less
14 than 1 year and a maximum term of not more than 20 years, and
15 may be further punished by a fine of not more than \$100,000.

16 7. The provisions of this section do not prohibit the possession
17 or use of any personal identifying information by officers of local
18 police, sheriff and metropolitan police departments and by agents of
19 the Investigation Division of the Department of Public Safety while
20 engaged in undercover investigations related to the lawful discharge
21 of their duties.

22 8. In addition to any other penalty, the court shall order a
23 public officer or public employee convicted of violating any
24 provision of this section to pay restitution, including, without
25 limitation, any attorney's fees and costs incurred, to:

26 (a) Repair the credit history or rating of the person whose
27 personal identifying information the public officer or public
28 employee obtained and used in violation of subsection 1; and

29 (b) Satisfy a debt, lien or other obligation incurred by the person
30 whose personal identifying information the public officer or public
31 employee obtained and used in violation of this section.

32 9. **Proof of possession of the personal identifying information**
33 **of five or more persons in a manner not set forth in NRS 205.4655**
34 **permits a rebuttable inference that the possessor intended to use**
35 **such information in violation of this section.**

36 **Sec. 4.** NRS 205.465 is hereby amended to read as follows:

37 205.465 1. It is unlawful for a person to possess, sell or
38 transfer any document or personal identifying information for the
39 purpose of establishing a false status, occupation, membership,
40 license or identity for himself or any other person.

41 2. Except as otherwise provided in subsection 3, a person who:

42 (a) Sells or transfers any such document or personal identifying
43 information in violation of subsection 1; or

44 (b) Possesses any such document or personal identifying
45 information in violation of subsection 1 to commit any of the crimes



1 set forth in NRS 205.085 to 205.217, inclusive, 205.473 to 205.513,
2 inclusive, or 205.610 to 205.810, inclusive,
3 ➔ is guilty of a category C felony and shall be punished as provided
4 in NRS 193.130.

5 3. A person who violates subsection 2 by ~~selling~~ :

6 (a) ***Selling*** or transferring the personal identifying information
7 of an older person or a vulnerable person ;

8 (b) ***Selling or transferring the personal identifying information***
9 ***of five or more persons; or***

10 (c) ***Causing another person to suffer a financial loss or injury***
11 ***of \$3,000 or more as a result of the violation,***

12 ➔ is guilty of a category B felony and shall be punished by
13 imprisonment in the state prison for a minimum term of not less
14 than 1 year and a maximum term of not more than 20 years, and
15 may be further punished by a fine of not more than \$100,000.

16 4. Except as otherwise provided in this subsection and
17 subsections 2 and 3, a person who possesses any such document or
18 personal identifying information in violation of subsection 1 is
19 guilty of a category E felony and shall be punished as provided in
20 NRS 193.130. If a person possesses any such document or personal
21 identifying information in violation of subsection 1 for the sole
22 purpose of establishing false proof of age, including, without
23 limitation, establishing false proof of age to game, purchase
24 alcoholic beverages or purchase cigarettes or other tobacco
25 products, the person is guilty of a misdemeanor.

26 5. Subsection 1 does not:

27 (a) Preclude the adoption by a city or county of an ordinance
28 prohibiting the possession of any such document or personal
29 identifying information; or

30 (b) Prohibit the possession or use of any such document or
31 personal identifying information by officers of local police, sheriff
32 and metropolitan police departments and by agents of the
33 Investigation Division of the Department of Public Safety while
34 engaged in undercover investigations related to the lawful discharge
35 of their duties.

36 6. ***Proof of possession of the personal identifying information***
37 ***of five or more persons in a manner not set forth in NRS 205.4655***
38 ***permits a rebuttable inference that the possessor intended to use***
39 ***such information in violation of this section.***

40 **Sec. 5.** Chapter 171 of NRS is hereby amended by adding
41 thereto a new section to read as follows:

42 ***A postal inspector of the United States Postal Inspection***
43 ***Service may, without a warrant, arrest a person:***

44 1. ***For a public offense committed or attempted in his***
45 ***presence.***



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1 2. When the person arrested has committed a felony or gross
2 misdemeanor, although not in his presence.

3 3. When a felony or gross misdemeanor has in fact been
4 committed, and he has reasonable cause for believing the person
5 arrested to have committed it.

6 4. On a charge made, upon a reasonable cause, of the
7 commission of a felony or gross misdemeanor by the person
8 arrested.

9 5. When a warrant has in fact been issued in this State for the
10 arrest of a named or described person for a public offense, and he
11 has reasonable cause to believe that the person arrested is the
12 person so named or described.

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