

Amendment No. CA26

First Conference Committee Amendment to (BDR 15-1334)
Assembly Bill No. 428 Second Reprint

Proposed by: First Conference Committee

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

RBL



Date: 6/3/2007

A.B. No. 428—Makes various changes relating to crimes involving the unlawful use of personal identifying information of another person.
(BDR 15-1334)



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 ~~and~~ **crimes related to postal matters.** (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;~~ **crimes**; 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~~ **for crimes related to postal matters** under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits the use of the personal identifying information of another to harm that person or to obtain credit, a good, a service or anything of value in the name of that other person. (NRS 205.4617, 205.463, 205.464, 205.465) **Section 1** of this bill provides that personal identifying information includes, without limitation, any information that can be used to identify the actions, communications or other activities or transactions of a person. (NRS 205.4617) **Section 2** of this bill provides that a person who uses the personal identifying information of another, with the intent to commit an unlawful act, to: (1) 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, or (2) 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 is guilty of a category B felony. (NRS 205.463)

Sections 2, 3 and 4 of the bill also: (1) increase the penalties for using the personal identifying information of another person if the violation involves the personal identifying

information of five or more persons or if the violation causes the victim to suffer a financial loss of \$3,000 or more; and (2) create a rebuttable inference of the intent to use the personal identifying information of another person unlawfully if a person possesses the personal identifying information of five or more persons not in the ordinary course of his business or pursuant to a financial transaction entered into with an authorized user of a payment card.

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

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

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

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

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

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

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

(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.

1 **Sec. 2.** NRS 205.463 is hereby amended to read as follows:
2 205.463 1. Except as otherwise provided in subsections 2 and 3, a person
3 who knowingly:
4 (a) Obtains any personal identifying information of another person; and
5 (b) ~~Uses~~ *With the intent to commit an unlawful act, uses* the personal
6 identifying information ~~to~~ *:*
7 (1) *To harm that other person ;*
8 (2) *To represent or impersonate that other person to obtain access to any*
9 *personal identifying information of that other person without the prior express*
10 *consent of that other person;*
11 (3) *To obtain access to any nonpublic record of the actions taken,*
12 *communications made or received by, or other activities or transactions of that*
13 *other person without the prior express consent of that other person; or* ~~to~~
14 (4) *For any other* unlawful purpose, including, without limitation, to
15 obtain credit, a good, a service or anything of value in the name of that *other*
16 person,
17 ~~is~~ is guilty of a category B felony and shall be punished by imprisonment in the
18 state prison for a minimum term of not less than 1 year and a maximum term of not
19 more than 20 years, and may be further punished by a fine of not more than
20 \$100,000.
21 2. Except as otherwise provided in subsection 3, a person who knowingly:
22 (a) Obtains any personal identifying information of another person; and
23 (b) Uses the personal identifying information to avoid or delay being
24 prosecuted for an unlawful act,
25 ~~is~~ is guilty of a category C felony and shall be punished as provided in
26 NRS 193.130.
27 3. A person who violates:
28 (a) Subsection 1 or 2 by obtaining and using the personal identifying
29 information of an older person or a vulnerable person; ~~to~~
30 (b) Subsection *1 or 2 by obtaining and using the personal identifying*
31 *information of five or more persons;*
32 (c) *Subsection 1 or 2 by causing another person to suffer a financial loss or*
33 *injury of \$3,000 or more as a result of the violation; or*
34 (d) *Subsection 2 to avoid or delay being prosecuted for an unlawful act that is*
35 *punishable as a category A felony or category B felony,*
36 ~~is~~ is guilty of a category B felony and shall be punished by imprisonment in the
37 state prison for a minimum term of not less than 3 years and a maximum term of
38 not more than 20 years, and may be further punished by a fine of not more than
39 \$100,000.
40 4. In addition to any other penalty, the court shall order a person convicted of
41 violating subsection 1 to pay restitution, including, without limitation, any
42 attorney's fees and costs incurred to:
43 (a) Repair the credit history or rating of the person whose personal identifying
44 information he obtained and used in violation of subsection 1; and
45 (b) Satisfy a debt, lien or other obligation incurred by the person whose
46 personal identifying information he obtained and used in violation of subsection 1.
47 5. *Proof of possession of the personal identifying information of five or*
48 *more persons in a manner not set forth in NRS 205.4655 permits a rebuttable*
49 *inference that the possessor intended to use such information in violation of this*
50 *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,

☛ 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 5 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.

2. A public officer or public employee who violates subsection 1 by ~~{obtaining}~~:

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

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

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

☛ 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 7 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.

3. Except as otherwise provided in subsection 4, 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) Possesses, sells or transfers the personal identifying information for the purpose of establishing a false status, occupation, membership, license or identity for himself or any other person,

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

4. A public officer or public employee who violates subsection 3 by ~~{obtaining}~~:

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

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

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

☛ 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.

5. Except as otherwise provided in subsection 6, a public officer or public employee who knowingly aids another public officer or public employee to commit

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

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

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

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

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

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

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

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

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

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

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

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

35 205.465 1. It is unlawful for a person to possess, sell or transfer any
36 document or personal identifying information for the purpose of establishing a false
37 status, occupation, membership, license or identity for himself or any other person.

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

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

41 (b) Possesses any such document or personal identifying information in
42 violation of subsection 1 to commit any of the crimes set forth in NRS 205.085 to
43 205.217, inclusive, 205.473 to 205.513, inclusive, or 205.610 to 205.810, inclusive,

44 *is* is guilty of a category C felony and shall be punished as provided in
45 NRS 193.130.

46 3. A person who violates subsection 2 by ~~[selling]~~ :

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

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

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

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

5 4. Except as otherwise provided in this subsection and subsections 2 and 3, a
6 person who possesses any such document or personal identifying information in
7 violation of subsection 1 is guilty of a category E felony and shall be punished as
8 provided in NRS 193.130. If a person possesses any such document or personal
9 identifying information in violation of subsection 1 for the sole purpose of
10 establishing false proof of age, including, without limitation, establishing false
11 proof of age to game, purchase alcoholic beverages or purchase cigarettes or other
12 tobacco products, the person is guilty of a misdemeanor.

13 5. Subsection 1 does not:

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

16 (b) Prohibit the possession or use of any such document or personal identifying
17 information by officers of local police, sheriff and metropolitan police departments
18 and by agents of the Investigation Division of the Department of Public Safety
19 while engaged in undercover investigations related to the lawful discharge of their
20 duties.

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

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

27 1. A postal inspector of the United States Postal Inspection Service may ~~§~~
28 make an arrest in obedience to a warrant delivered to him, or may, without a
29 warrant, arrest a person:

30 ~~§~~ (a) For a public offense related to postal matters committed or attempted
31 in his presence.

32 ~~§~~ (b) When the person arrested has committed a felony or gross
33 misdemeanor ~~§~~ related to postal matters, although not in his presence.

34 ~~§~~ (c) When a felony or gross misdemeanor related to postal matters has in
35 fact been committed, and he has reasonable cause for believing the person
36 arrested to have committed it.

37 ~~§~~ (d) On a charge made, upon a reasonable cause, of the commission of a
38 felony or gross misdemeanor related to postal matters by the person arrested.

39 ~~§~~ (e) When a warrant has in fact been issued in this State for the arrest of
40 a named or described person for a public offense ~~§~~ related to postal matters, and
41 he has reasonable cause to believe that the person arrested is the person so
42 named or described.

43 2. As used in this section, "postal matters" means any act related to mail
44 service, including, without limitation, delivering and collecting mail, mail theft
45 and mail fraud.