

**SUBJECT:** Prohibiting re-identification of certain de-identified information

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 6 ayes — Oliveira, Simmons, Collier, Rinaldi, Romero, Villalba  
0 nays  
1 absent — Fletcher

**SENATE VOTE:** On final passage, April 20 — 30-0

**WITNESSES:** For —Deborah Peel, Patient Privacy Rights; Matthew Henry  
Against — None

**BACKGROUND:** Business and Commerce Code, sec. 521.002 defines personal identifying information as information that alone or in conjunction with other information identifies an individual, including an individual's:

- name, mother's maiden name, Social Security number, date of birth, or ID number;
- unique biometric data, including fingerprint, voice print and retina or iris image;
- unique electronic ID number, address, or routing code; and
- credit card number, bank account number, PIN, or electronic serial number.

**DIGEST:** SB 1213 would prohibit re-identification or attempted re-identification of de-identified personal identifying information that is released by state agencies.

The bill would define de-identified information as information whose holder has made a good faith effort to remove all personal identifying information or other information that may be used by itself or in

combination with other information to identify the subject of the information, including:

- aggregate statistics;
- redacted information;
- use of random or fictitious names or other information; and
- encrypted information.

The bill also would prohibit disclosure or release of re-identified personal identifying information. Violation of this prohibition would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would provide a private cause of action for any individual whose personal identifying information was re-identified, disclosed or released. Statutory damages would be between \$25 and \$500 for each violation up to \$150,000.

Any person who violates the prohibition on re-identification also would be liable to the state for a civil penalty between \$25 and \$500 for each violation up to \$150,000. The attorney general would be authorized to bring an action to recover this civil penalty and also would be entitled to recover expenses and attorney's fees.

The bill would provide a defense to civil action or prosecution if a person was re-identifying the information for the purpose of a study or other scholarly research, as long as the person did not release or publish the identifying information.

The bill also would require any state agency that releases de-identified information and any person who sells de-identified information that came from a state agency to provide written notice that the information is de-identified to the person to whom the information was released or sold.

This bill would take effect September 1, 2015, and would apply to conduct that occurs on or after that date.

**SUPPORTERS  
SAY:**

CSSB 1213 is necessary to ensure that private personal information gathered by state agencies is protected. Many state entities collect data from the public that can be used to analyze consumer habits, health trends, and other information. When state entities release this data, they run it through a de-identification process to anonymize personal identification information, such as names and Social Security numbers. Bad actors sometimes re-identify the data, meaning they match the data with its true owner by cross referencing it with other available data, for illicit purposes such as identity theft and blackmail. As information becomes increasingly available via technology, it is important to ensure that personal information that is collected by the state remains safe and secure.

**OPPONENTS  
SAY:**

This bill does not sufficiently define what constitutes “re-identification.” This ambiguity could cause issues for prosecutors and civil courts that handle these cases. Judges will be asked to interpret a new concept without statutory guidance.

The bill also could create a double jeopardy issue because the government could be a party to both a criminal suit and a civil cause of action. This issue could lead to underprosecution of serious cases of re-identification.