

## Council Substitute for House Bill No. 7051

An act relating to a review under the Open Government Sunset Review Act for social security numbers; amending s. 119.071, F.S.; providing that social security numbers of current and former agency employees held by the employing agency are confidential and exempt from public records requirements; providing for future review and repeal of the exemption; requiring that an agency identify in writing the specific federal or state laws governing the collection, use, and release of social security numbers and ensure compliance therewith; requiring notice as to whether collection of a social security number is authorized or mandatory under federal or state law; clarifying that the public records exemption for social security numbers held by an agency does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for social security numbers; delineating conditions under which social security numbers held by an agency may be disclosed; redefining the term “commercial activity” for purposes of provisions authorizing the disclosure of a social security number under limited circumstances; eliminating agency reports of requests for social security numbers by commercial entities; reenacting ss. 119.0714(1)(i), (2)(e), and (3)(b) and 1007.35(8)(b), F.S., relating to social security numbers contained in records that are made part of a court file, a future requirement of court clerks to keep social security numbers confidential and exempt without a request for redaction and specified nonapplicability to court clerks with respect to court records, the availability of social security numbers as part of official records, a future requirement of county recorders to keep social security numbers confidential and exempt without a request for redaction and specified nonapplicability to county recorders with respect to official records, and access to specified information under the Florida Partnership for Minority and Underrepresented Student Achievement, respectively, for the purpose of incorporating the amendment to s. 119.071, F.S., in references thereto; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) and paragraph (a) of subsection (5) of section 119.071, Florida Statutes, are amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(a)~~1~~. The social security numbers of all current and former agency employees which numbers are held by the employing agency ~~contained in agency employment records~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

~~2.—An agency that is the custodian of a social security number specified in subparagraph 1. and that is not the employing agency shall maintain the exempt status of the social security number only if the employee or the employing agency of the employee submits a written request for confidentiality to the custodial agency. However, upon a request by a commercial entity as provided in sub-subparagraph (5)(a)7.b., the custodial agency shall release the last four digits of the exempt social security number, except that a social security number provided in a lien filed with the Department of State shall be released in its entirety. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(5) OTHER PERSONAL INFORMATION.—

(a)1.a. The Legislature acknowledges that the social security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. The Legislature is further aware that over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

b. The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual.

c. The Legislature intends to monitor the use of social security numbers held by agencies in order to maintain a balanced public policy.

2.a. An agency may not collect an individual's social security number unless the agency has stated in writing the purpose for its collection and unless it is:

(I) Specifically authorized by law to do so; or

(II) Imperative for the performance of that agency's duties and responsibilities as prescribed by law.

b. An agency shall identify in writing the specific federal or state law governing the collection, use, or release of social security numbers for each purpose for which the agency collects the social security number, including any authorized exceptions that apply to such collection, use, or release. Each agency shall ensure that the collection, use, or release of social security numbers complies with the specific applicable federal or state law.

~~c.b.~~ Social security numbers collected by an agency may not be used by that agency for any purpose other than the purpose provided in the written statement.

3. An agency collecting an individual's social security number shall provide that individual with a copy of the written statement required in subparagraph 2. The written statement also shall state whether collection of the individual's social security number is authorized or mandatory under federal or state law.

~~4.a.~~ Each agency shall review whether its collection of social security numbers is in compliance with subparagraph 2. If the agency determines that collection of a social security number is not in compliance with subparagraph 2., the agency shall immediately discontinue the collection of social security numbers for that purpose.

~~b.~~ ~~Each agency shall certify to the President of the Senate and the Speaker of the House of Representatives its compliance with this subparagraph no later than January 31, 2008.~~

5. Social security numbers held by an agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

6. Social security numbers held by an agency may be disclosed if any of the following apply: ~~to another agency or governmental entity if disclosure is necessary for the receiving agency or entity to perform its duties and responsibilities.~~

a. The disclosure of the social security number is expressly required by federal or state law or a court order.

b. The disclosure of the social security number is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.

c. The individual expressly consents in writing to the disclosure of his or her social security number.

d. The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224.

e. The disclosure of the social security number is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq., or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph.

f. The disclosure of the social security number is for the purpose of the administration of health benefits for an agency employee or his or her dependents.

g. The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.

h. The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

7.a. For purposes of this subsection, the term:

(I) “Commercial activity” means the permissible uses set forth in the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq., or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., or provision of a lawful product or service by a commercial entity. Commercial activity includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business, including identification or prevention of fraud or; use for insurance purposes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. It does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer that is not identifiable by the commercial entity.

(II) “Commercial entity” means any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

b. An agency may not deny a commercial entity engaged in the performance of a commercial activity access to social security numbers, provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers. The written request must:

(I) Be verified as provided in s. 92.525;

(II) Be legibly signed by an authorized officer, employee, or agent of the commercial entity;

(III) Contain the commercial entity’s name, business mailing and location addresses, and business telephone number; and

(IV) Contain a statement of the specific purposes for which it needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity, including the identification of any specific federal or state law that permits such use. ~~The aggregate of these requests shall serve as the basis for the agency report required in subparagraph 9.~~

c. An agency may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used.

8.a. Any person who makes a false representation in order to obtain a social security number pursuant to this paragraph, or any person who will-

fully and knowingly violates this paragraph, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

b. Any public officer who violates this paragraph commits a noncriminal infraction, punishable by a fine not exceeding \$500 per violation.

~~9.a. Every agency shall file a report with the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year.~~

~~b. The report required under sub-subparagraph a. shall list:~~

~~(I) The identity of all commercial entities that have requested social security numbers during the preceding calendar year; and~~

~~(II) The specific purpose or purposes stated by each commercial entity regarding its need for social security numbers.~~

~~e. If no disclosure requests were made, the agency shall so indicate.~~

9.10. Any affected person may petition the circuit court for an order directing compliance with this paragraph.

~~11. This paragraph does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter.~~

Section 2. For the purpose of incorporating the amendment made by this act to section 119.071, Florida Statutes, in references thereto, paragraph (i) of subsection (1), paragraph (e) of subsection (2), and paragraph (b) of subsection (3) of section 119.0714, Florida Statutes, are reenacted to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(i) Social security numbers as provided in s. 119.071(5)(a).

(2) COURT RECORDS.—

(e)1. On January 1, 2011, and thereafter, the clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(3) OFFICIAL RECORDS.—

(b)1. If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and

copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

2. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (h), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

3. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

Section 3. For the purpose of incorporating the amendment made by this act to section 119.071, Florida Statutes, in a reference thereto, paragraph (b) of subsection (8) of section 1007.35, Florida Statutes, is reenacted to read:

1007.35 Florida Partnership for Minority and Underrepresented Student Achievement.—

(8)

(b) The department shall contribute to the evaluation process by providing access, consistent with s. 119.071(5)(a), to student and teacher information necessary to match against databases containing teacher professional development data and databases containing assessment data for the PSAT/NMSQT, SAT, AP, and other appropriate measures. The department shall also provide student-level data on student progress from middle school through high school and into college and the workforce, if available, in order to support longitudinal studies. The partnership shall analyze and report student performance data in a manner that protects the rights of students and parents as required in 20 U.S.C. s. 1232g and s. 1002.22.

Section 4. The Legislature finds that it is a public necessity that agency employee social security numbers be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature notes that the lawful collection, use, or release of social security numbers requires knowledge of a variety of complex federal requirements that must be applied differently in various circumstances. Federal requirements for the collection, use, or release may differ from agency to agency depending upon the purpose or use for which the social security number is collected or the year in which the number was collected. The Legislature finds that compliance with applicable federal requirements regarding the collection, use, or release of social security numbers requires that agency employee social security numbers be made confidential and exempt.

Section 5. This act shall take effect October 1, 2009.

Approved by the Governor June 24, 2009.

Filed in Office Secretary of State June 24, 2009.