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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-391, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
FINAL ANALYSIS**

BILL #: CS/HB 21-E (SIMILAR PROVISIONS PASSED IN SB 24-E)
RELATING TO: Public-Records/ID Info/Military
SPONSOR(S): Committee on State Administration, Representative(s) Paul and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

On May 5, 2002, CS/HB 21-E, was laid on the table and SB 24-E, 2nd Engrossed, was substituted for the house bill. SB 24-E, 2nd Engrossed, became law on May 30, 2002, as Chapter 2002-391, Laws of Florida (act). The effective date of the act is "upon becoming a law", which was May 30, 2002. This analysis, with certain exceptions, is of Chapter 2002-391, Laws of Florida. The exceptions are those sections that address the House bill, which are clearly identified.

This act allows any veteran of the United States Armed forces or his or her widow or widower, attorney, personal representative, executor, or court appointed guardian to request that the Clerk of the Circuit Court (Clerk) remove from the official records certain military separation forms, including the DD-214. When the request is made, the Clerk must provide a written notice to the requesting party stating that the removal of the document from the official records is permanent and that no further record of the document exists in the official records.

In addition, this act amends certain provisions of two bills that passed both houses during the 2002 regular session, both of which were signed into law by the Governor on May 13, 2002. CS/HB 1673 created a public records exemption for social security numbers (SSNs), and HB 1675 created a public records exemption for bank account, debit, charge, and credit card numbers. This act repeals the provision in CS/HB 1673 that requires that any SSN, contained in a final judgment, court order, or docket sheet, be placed on a separate sheet of paper, which was not to be recorded with the Clerk, and which was not to be made available for public disclosure. Accordingly, SSNs can be included in final judgments, court orders, and docket sheets; can be recorded with the Clerk; and are available to the public. However, SSNs, bank account, debit, charge, and credit card numbers, included in a court record or any official record, may be redacted if the "holder" of that number makes a written request. Beginning January 1, 2006, the Clerks must keep all such numbers confidential and exempt from public disclosure regardless of whether a request has been made to redact such numbers or not.

Lastly, this act reiterates that no fee may be charged by the Clerk for the removal of a SSN, or a bank account, debit, charge, or credit card number from a court or official record.

Please see the "Fiscal Comments" section for discussion of the potential fiscal impact of this act.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Military Separation Forms

The Department of Defense issues a military separation form when an individual retires or separates from the military. The most common military separation form is the DD-214¹. The DD-214 includes various information on the retiring or separating individual such as his or her social security number (SSN), date of birth, home of record at time of entry, and nearest relative.² The DD-214 is issued to those individuals who have retired or separated from the military since 1951. A corrected DD-214 is known as a DD-215. The following military separation forms were issued prior to 1951: WD AGO 53, WD AGO 55, NAVMC 78 – PD, and NAVPERS 553.³

There is no federal law that requires an individual to record his or her military separation form as an official record. However, the Department of Defense has historically advised individuals to record their DD-214 with their local county courthouse for safekeeping.⁴ As more public records are being placed on the Internet, and are therefore becoming more accessible by the general public, the Department of Defense is now advising individuals to safeguard their personal information in order to protect against identify theft.⁵ To help guard against identify theft, military transition centers⁶ are

¹ DD means Department of Defense.

² The DD-214 also includes the following information on the retiring or separating individual: sex; department, component or branch; grade, rate, or rank; pay grade; place of entry into active duty; last duty assignment and major command; station where separated; command to which transferred; station where separated; primary specialty; record of service; decorations, medals, or badges; military education; mailing address after separation; and the type of separation. Information provided by the Florida Association of Court Clerks and Comptrollers by facsimile transmission on April 29, 2002.

³WD AGO = War Department Adjutant General Office; NAVMC 78 - PD = Navy Medical Command – Personnel Division; NAVPERS = Navy Personnel. Information provided by the Department of Military Affairs' Office of Legislative Affairs, April 30, 2002.

⁴ In Florida, retiring or separating individuals were traditionally advised to file their military separation forms with their local clerk of the court.

⁵ ArmyLINK News, *Scams target veterans for identity theft*, by Staff Sgt. Marcia Triggs, February 23, 2002, received online at <http://www.dtic.mil/armylink/news/Jan2002/a20020122dd214.html>

⁶ Each branch of the military has transition centers to assist individuals who are retiring or separating from military service. Information provided by the Department of Military Affairs' Office of Legislative Services, April 30, 2002.

no longer placing SSNs on discharge and retirement certificates.⁷ In addition, transition centers are recommending to persons leaving the military to “safeguard the form as you would any vital papers such as a will, marriage license or insurance papers . . . A safe deposit box would be a good investment.”⁸ Therefore, many individuals retiring or separating from the military are being discouraged from recording their military separation forms.⁹

Clerks of the Circuit Court

Article V, Section 16, of the Florida Constitution establishes as constitutional officers the Clerks of the Circuit Courts (Clerks). Chapter 28, F.S., sets forth the duties and responsibilities of a Clerk. Section 28.222, F.S., states that the Clerk “shall be the recorder of all instruments¹⁰ that he or she may be required or authorized by law to record in the county where he or she is Clerk.” The Clerk is to record all instruments in one general series called “official records.”¹¹

Section 28.2221, F.S., requires Clerks, by January 1, 2002, to provide, on a publicly available Internet website, a current index of documents recorded in the official records of the county beginning with those documents filed on or after January 1, 1990. To date, approximately 56 of the 67 Clerks¹² have provided electronic access to this index.¹³ By January 1, 2006, the Clerks are required to make available, “on the county’s official records website”, images of those official records that are indexed electronically. To date, approximately 20 of the 67 Clerks have made images of official records available on their county websites.¹⁴ Images of military separation forms are among those official records that are being made electronically available.

The electronic availability of certain official records has increased concerns regarding the collection and dissemination of personal identification information. The Legislature addressed the electronic

⁷ *Id.*

⁸ *Id.*

⁹ Pursuant to a telephone conversation with the Department of Military Affairs’ Office of Legislative Affairs, April 29, 2002.

¹⁰ Section 28.222(3), F.S., provides that instruments are:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions;
- Other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it;
- Extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens;
- Powers of attorney relating to any of the instruments;
- Notices of lis pendens;
- Judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments;
- That portion of a certificate of discharge, separation, or service which indicates the character of discharge, separation, or service of any citizen of this state with respect to the military, air, or naval forces of the United States;
- Notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens, in accordance with the laws of the United States;
- Certified copies of petitions, with schedules omitted, commencing proceedings under the Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings; and
- Certified copies of death certificates authorized for issuance by the Department of Health which exclude the information that is confidential under s. 382.008 [cause of death], and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008.

¹¹ Section 28.001, F.S., defines “official records” to mean “each instrument that the clerk of the circuit court is required or authorized to record in one general series called ‘Official Records’ as provided for in s. 28.222.”

¹² The statutory language references “county recorder”; the county recorders, in all but two instances are Clerks of Court, so for consistency, this analysis refers to the county recorder as the Clerk.

¹³ Provided by the Florida Association of Court Clerks and Comptrollers by e-mail on April 29, 2002.

¹⁴ *Id.*

display of certain official records as well as the collection and dissemination of specific personal identification information during the 2002 legislative session.

2002 Legislative Session

CS/HB 1679

The Legislature passed CS/HB 1679 during the 2002 legislative session. CS/HB 1679 was signed by the Governor and became law on June 5, 2002, as Chapter No. 2002-302, Laws of Florida. CS/HB 1679 prohibits any Clerk from placing *on a publicly available Internet website* an image or copy of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. Such records placed on the Internet prior to June 5, 2002, must be removed if the affected party so requests and identifies the document to be removed. In addition, the Clerks must provide and publish notice regarding an individual's right to request removal of such documents from the Internet. Furthermore, any affected person may petition the circuit court for an order directing compliance with this provision. However, CS/HB 1679 does not prohibit over the counter disclosure of such records nor does it prohibit disclosure of such records through other electronic means, such as a data dump.

Military discharge forms are synonymous with military separation forms.¹⁵ Therefore, CS/HB 1679 effectively prohibits any Clerk, on or after June 5, 2002, from placing military separation forms on the Internet for general public display. If an individual has already filed his or her military separation form with the Clerk prior to June 5, 2002, such individual may request the removal of this document from the Internet.

CS/HB 1673

The Legislature passed CS/HB 1673 during the 2002 legislative session. CS/HB 1673 was signed by the Governor and became law on May 13, 2002, as Chapter No. 2002-256, Laws of Florida. CS/HB 1673 creates a public records exemption for all SSNs held by an agency. In addition, CS/HB 1673:

- Provides that the exemption does not supersede any other exemption for SSNs;
- Provides exceptions to the exemption;
- Provides a public necessity statement as required by the Florida Constitution;
- Provides for retroactive application of the exemption;
- Provides for future review and repeal of the exemption;
- Creates penalties;
- Provides for petition of the court;
- Restricts agency collection of SSNs;
- Requires agencies collecting SSNs to provide individuals with a statement of the purposes for such collection;
- Requires agencies to file a yearly report regarding requests for SSNs made by commercial entities;
- Requires SSNs contained in final judgments, court orders, and docket sheets to be entered on a separate page;¹⁶
- Allows a person to request his or her SSN to be redacted from a court document or an official record contained on a county recorder's publicly available Internet website;

¹⁵ Department of Military Affairs' Office of Legislative Affairs, April 30, 2002.

¹⁶ Repealed by this act, SB 24-E, Ch. 2002-391, L.O.F.

- Instructs a person not to include SSNs in documents recorded with the county recorder unless required by law; and
- Requires county recorders to publish and post signs and notices regarding the public's right to request the redaction of SSNs from official records.

HB 1675

The Legislature passed HB 1675 during the 2002 legislative session. HB 1675 was signed by the Governor and became law on May 13, 2002, as Chapter No. 2002-257, Laws of Florida. HB 1675 creates a public records exemption for bank account numbers and debit, charge, and credit card numbers held by an agency.¹⁷ HB 1675 provides for retroactive application of the public records exemption and provides for future review and repeal.

C. EFFECT OF PROPOSED CHANGES:

This act provides any veteran of the United States Armed forces or his or her widow or widower, attorney, personal representative, executor, or court appointed guardian with the right to request that a county recorder remove from the official records any of the follow forms recorded before, on, or after the effective date of this act (May 30, 2002): DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553. The DD-214 and the DD-215 are military discharge forms issued to those individuals retiring or separating from the military since 1951. The remainder of the forms were utilized prior to 1951. The request must be in person with proper identification, and must specify the identification page number of the form to be removed. This act specifies that the clerk has no duty to inquire beyond the request to verify the identity of the person requesting the removal. No fee may be charged for the removal. *When the request is made, the clerk must provide a written notice to the requesting party that the removal of the document from the official records is permanent and no further record of the document will exist in the official records of the county.*

In addition, this act amends certain provisions of two bills that passed both houses during the 2002 regular session, both of which were signed into law by the Governor on May 13, 2002. CS/HB 1673 created a public records exemption for social security numbers (SSNs), and HB 1675 created a public records exemption for bank account, debit, charge, and credit card numbers. This act repeals the provision in CS/HB 1673 that requires that any SSN, contained in a final judgment, court order, or docket sheet, be placed on a separate sheet of paper, which was not to be recorded with the Clerk, and which was not to be made available for public disclosure. Accordingly, SSNs can be included in final judgments, court orders, and docket sheets; can be recorded with the Clerk; and are available to the public. However, SSNs, bank account, debit, charge, and credit card numbers, included in a court record or any official record may be redacted if the "holder" of that number makes a written request.¹⁸ Beginning January 1, 2006, the clerks must keep all such

¹⁷ The previously existing bank account and debit, charge, and credit card numbers exemption repealed on October 2, 2001. (Section 119.07(3)(z), F.S.) During the 2001 legislative session, both Senate and House bills were introduced which reenacted the exemption; however, the House bill died in the Senate Committee on Governmental Oversight and Productivity, and the Senate bill died in the Senate Committee on Rules and Calendar.

¹⁸ Agencies have been required for years to "redact" confidential or exempt information before releasing a record to the public. The practice has been to make a copy of the record and blacken out (redact) the confidential or exempt portion. The agency retains the original record intact. The Clerks, however, until recently have not redacted any confidential or exempt information. The Comptroller in Orange County was sued in 1997 (*Fraternal Order of Police vs. Martha O. Haynie*, Orange County Case No. CI 97-858) for disclosing exempt information regarding police officers. In settling the case, the Clerks agreed to remove the exempt information upon written request by any police officer identifying the record containing the exempt information. At present, the Clerks have varying practices regarding the redaction of confidential or exempt information contained in court records and official records. Official records are usually kept in electronic format and on microfilm in the Clerks' offices. When a request is made to

numbers confidential and exempt from public disclosure regardless of whether a request has been made to redact such numbers or not.

This act also provides that "subsection (3) and (4) of s. 119.072," as created by CS/HB 1673, Chapter No. 2002-256, Laws of Florida, "do not apply to the clerks of the court or the county recorder with respect to court records and official records." Subsection (3) provides that an agency may not deny a commercial entity access to SSNs, provided, in part, that the commercial entity makes a written request for such numbers and uses the SSNs only in the normal course of business for legitimate business purposes. Subsection (4) provides that any person who makes a false representation in order to obtain a SSN, or any person who willfully and knowingly violates the provisions of s. 119.072, F.S., commits a felony of the third degree. These subsections are not needed by the Clerks because this act provides that SSNs, included in a court record or any official record, are available to the public until January 1, 2006.¹⁹ Accordingly, a commercial entity as well as any other person has access to SSNs contained in any court record or any official record until January 1, 2006. Thus, there is no need for a commercial entity to make a written request to gain access to such numbers.²⁰

Lastly, the act reiterates that no fee may be charged by the Clerk for the removal of a SSN, or a bank account, debit, charge, or credit card number from a court or official record.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

redact confidential or exempt information from official records, some Clerks remove the confidential or exempt information so such information is no longer retrievable by anyone, but they do not remove the confidential or exempt information from the microfilm copy. Other Clerks not only electronically remove the confidential or exempt information, but also obliterate the confidential or exempt information from the microfilm. When such information is obliterated from the microfilm, it is usually obliterated from an "in-house" copy of the microfilm, and the original copy of the microfilm still exists at an off-site location. With regard to court records, some Clerks keep duplicate court records; one set contains a copy of the court record as filed, with the confidential or exempt information intact, and the other set has the confidential or exempt information redacted. The varying practices of the Clerks indicate that there is no consensus regarding how to redact confidential or exempt information from court records or official records. Issues arise when confidential or exempt information is permanently removed from the electronic and microfilm record in that the original document, as recorded or filed, containing all the information, is no longer retrievable. This could create conflict as to what was actually in the document, as originally filed, should legal concerns emerge. The Florida Association of Court Clerks state that by January 1, 2006, all Clerks will have the software capability of maintaining dual records - - the original version and the redacted version.

¹⁹ However, the "holder" of the number may make a written request that the SSN be redacted from any court record or any official record. There is no universal definition of the term "redact." Redaction is typically construed to mean that a copy of the record is made, and the confidential or exempt information is "blackened out" on the copy before it is released to the public.

²⁰ After January 1, 2006, SSNs must be held confidential and exempt from public disclosure, and no exception will be made for any commercial entity or any other person to access such numbers in court records or official records. The Florida Association of Court Clerks asserts that by January 1, 2006, all Clerks' offices will have the capabilities of keeping a duplicate set of court records and official records; one set will contain a copy of the court record or official record as recorded, with the SSNs, and the other set will be a copy of such records with the SSNs redacted.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There is a potential fiscal impact on the offices of the Clerks of the Court. This act requires the clerks to permanently remove, upon request, certain military-separation forms from the official records. This may have a fiscal impact on the clerks in terms of the time and manpower needed to meet such requests.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

This section refers to the bill as filed.

On May 1, 2002 , the Committee on State Administration heard HB 21-E and adopted one amendment. The amendment removes the public records exemption language by no longer requiring the clerks to keep certain personal identifying information contained in military-separation forms confidential and exempt. The amendment instead provides any veteran of the military or his or her widow or widower, attorney, personal representative, executor, or court appointed guardian with the right to request that a clerk permanently remove from the official records certain military-separation forms. Because the amendment eliminates the public records exemption from the bill, the review and repeal date as well as the public necessity statement are unnecessary. The bill, as amended, was reported favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran, M.S.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran, M.S.

Staff Director:

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