

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 1218

SPONSOR: Governmental Oversight & Productivity Committee, Judiciary Committee, Education Committee, and Senators Aronberg and Bullard

SUBJECT: Student Social Security Numbers/Public Postsecondary Institutions

DATE: March 30, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Matthews/Cibula</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute for committee substitute for committee substitute prohibits state universities, community colleges, and public postsecondary technical centers from requiring a student to transmit his or her social security number over the Internet unless the connection is secure and the social security number is encrypted. Further, it prohibits a student to use his or her social security number to access an Internet website unless a password or unique personal identification number or other authentication device is also required to access the Internet website.

The bill requires each state university, community college, and public postsecondary technical center to review its policies and procedure relating to social security numbers and other student identifying information and submit a plan that minimizes the opportunity for student identity theft. The plan must be submitted to the Governor and the Legislature, among others, by February 1, 2005, and shall implement the plan no later than July 1, 2005.

A report must be filed annually that documents compliance with the provisions of ss. 119.0721 and 1002.22, F.S.

Under the bill, beginning on December 1, 2005, an affected student may petition a circuit court for an order directing a state university, community college, or public post secondary technical center cease the improper use of a social security number or to implement a plan to prevent the improper use of a social security number.

This bill creates s. 1004.09, Florida Statutes.

II. Present Situation:

State universities and community colleges often use a student's social security number as a student's primary identifier in order to locate records on that student. According to a survey conducted by the House Committee on State Administration, in conjunction with the House Committee on Information Technology, state universities and community colleges collect social security numbers for various purposes. Survey responses indicated that the state universities and community colleges disclosed social security numbers for a variety of legitimate student purposes such as to collection agencies, health insurance companies, and other contractors. The survey indicated that state universities and community colleges do not disclose a student's social security number for commercial purposes or pecuniary gain.

However, the use of a student's social security number and the potential for its public dissemination makes it more likely that an individual could use a student's social security number to obtain personal and private information, including financial and health information, for improper purposes. Improper use of personal identification information is becoming a state and national problem. In 2000, Governor Bush appointed a statewide Task Force on Privacy and Technology (Task Force) pursuant to s. 282.3095, F.S. According to the Task Force, identity theft is one of the fastest growing crimes in the U.S., affecting nearly half a million people in 1998. Florida accounts for the third most reported complaints of identity theft to the Federal Trade Commission.¹

As a result, the 2002 Legislature created s. 119.0721, F.S., which established a public records exemption for social security numbers in the possession of state agencies, its agents, employees, or contractors.² Under the provisions of s. 119.011(2), F.S., a university, community college and public postsecondary technical center would meet the definition of "agency" and so they should be in compliance with the requirement that social security numbers be kept confidential and exempt. Pursuant to subsection (4) of s. 119.0721, F.S., any public officer who violates any provision of the section is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. Chapter 119, F.S., also provides other penalties for violating provisions of the chapter.

¹ The Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

² As of October 1, 2002, all social security numbers held by an agency or its agents, employees, or contractors were made confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. *See* s. 119.0721, F.S. Social security numbers may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

However, until January 1, 2006, if a social security number, made confidential and exempt pursuant to s. 119.0721, created pursuant to s. 1, ch. 2002-256, passed during the 2002 regular legislative session, or a complete bank account, debit, charge, or credit card number made exempt pursuant to paragraph (dd), created pursuant to s. 1, ch. 2002-257, passed during the 2002 regular legislative session, *is or has been included in a court file*, such number as part of the court record may be publicly inspected and copied unless the holder (or holder's attorney or guardian) requests in writing that the number be redacted. The request has to specify the case name, the case number, document heading and page number of the court document. *See* s. 119.07(3)(ff), F.S. On January 1, 2006, and thereafter, the clerk of the court and the county recorder must keep complete bank account, debit, charge, and credit card numbers exempt as provided for in paragraph (dd), and must keep social security numbers confidential and exempt as provided for in s. 119.0721, F.S. without any person having to request redaction.

In recognition of the potential for fraud, some state universities and community colleges, such as the Florida International University, the University of Florida, and the University of North Florida, have begun moving away from using the social security number as a student identification number. The University of Florida reported that its process took more than a year. However, not all state universities and community colleges have begun or completed the move from the use of social security numbers.

Other States

Several states have passed laws restricting the use of student social security numbers including the following:

- Arizona – Requires a state university or community college to assign an individual identification number to students that may not be the student’s social security number. A university or community college may not display the student’s social security number or any four or more consecutive numbers contained in the social security number on any internet site maintained by the university or community college or other publicly accessible document for any purpose. However, this provision does not exempt any institution from a duty of compliance with federal law that may regulate the institution’s use or collection of social security numbers or protect the privacy rights of students. In addition, the provision does not bar the electronic transfer of student transcripts between educational institutions.³
- Virginia – Prohibits a university or community college from displaying the social security number on a student identification card.⁴
- Washington – Prohibits institutions of higher education from using the social security number of any student for identification except for purposes of employment, financial aid, research, assessment, accountability, transcripts, or as otherwise required by state or federal law. Each institution must develop a system of personal identifiers to be used for grading and other administrative purposes. The personal identifiers may not be social security numbers.⁵
- West Virginia – Prohibits a university from displaying a student’s social security number to identify students for posting or public listing of grades, class rosters, or other lists provided to teachers; on student identification cards; in student directories or other listings; or unless otherwise provided by law for any public identification purpose. The provision does not bar a university from using a student’s social security number for internal record keeping purposes or studies.⁶

III. Effect of Proposed Changes:

This committee substitute for committee substitute for committee substitute prohibits state universities, community colleges, and public postsecondary technical centers from:

- Requiring a student to transmit his or her social security number over the Internet unless the connection is secure and the number is encrypted; or

³ A.R.S. s. 15-1823

⁴ Va. Code Ann. s. 2.2-3800

⁵ WA ST 28B.10.042

⁶ W. Va. Code, s. 18-2-5f

- Requiring a student to use his or her social security number to access an Internet website unless a password or unique personal identification number or other authentication device is also required to access the Internet website.

The bill requires each state university, community college, and public postsecondary technical center to develop a plan to review its policies and procedures relating to social security numbers and other student identifying information and submit a plan that minimizes the opportunity for student identity theft. The plan must include provisions for educating staff regarding the proper uses of social security numbers and other student identifying information. Each university must submit the plan to the Governor, the Board of Governors, President of the Senate and Speaker of the House of Representatives by February 1, 2005. Each community college and public postsecondary technical center shall submit a plan to the Governor, the State Board of Education, President of the Senate and Speaker of the House of Representatives by February 1, 2005, and shall implement the plan no later than July 1, 2005.

Annual compliance reports are required by the bill.

The committee substitute for committee substitute authorizes, beginning December 1, 2005, a student to petition a circuit court for an order directing compliance with the act.

The committee substitute takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.0721, F.S., currently makes social security numbers held by an agency confidential and exempt. The term "agency" is defined by s. 119.011(2), F.S., to mean

. . . any state, county district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Universities, community colleges and technical vocational centers are required to comply with open records and meetings requirements. Furthermore, as the exemption for social security numbers applies to agencies, it also applies to these entities. As such, the entities covered by this bill are already covered by s. 119.0721, F.S., and should be complying with the exemption. It should also be noted that the Public Records Act provides penalties for violating the provisions of ch. 119, F.S.

As currently drafted, the CS/CS/SB 1218, however, appears to create an additional exemption for social security numbers held by universities, community colleges and technical vocational centers. For example, on page 1, lines 20-30, “[n]o state university, community college, or public postsecondary technical center shall . . .

(a) use a social security number as an identification number to public identify a student. For purposes of employment, financial aid, research. . . . a state university, community college, or . . . technical center may collect, use and report . . . a social security number, *as long as the social security number is not publicly disclosed.*

(b) *Publicly post or publicly display in any manner student’s social security number. “Publicly post” or “publicly display” means to intentionally communicate or otherwise make available to the general public*

Given the manner in which these provisions are written, it appears that another exemption is being created for social security numbers in violation of the provisions of Article 1, s. 24 of the State Constitution because these prohibitions on access are not created in a separate bill. This issue could be resolved, however, by specifically referencing the existing exemption, instead of establishing additional prohibitions on public release of this information.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 119.0721, F.S., provides numerous exceptions to that exemption for legitimate businesses to obtain access to social security numbers.

To the extent a student can afford the time and resources to petition the circuit court for an order of compliance, a student has civil recourse to seek enforcement of the law. Effective July 1, 2004, a student will have to pay a maximum filing fee cap of \$250 (up from the existing maximum service charge cap of \$65.50 for one plaintiff), to initiate an action in circuit court, as a result of the statutory implementation of Revision 7 to Article V of the Florida Constitution. *See* s.32 of ch. 2003-402, L.O.F.; s. 28.241, F.S.

C. Government Sector Impact:

Costs associated with requiring each state university, community college, and public postsecondary technical center to avoid using the student’s social security number as an identification number by the time certain provided in the committee substitute. The extent of that cost is indeterminate at this time. By way of example, Florida Gulf Coast

University is estimating approximately \$355,000 in direct costs associated with complying with the committee substitute for committee substitute.

The state universities, community colleges, and public postsecondary technical centers that have not implemented a procedure to use an alternative identification number may face exposure for failure to meet the deadlines.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
