

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.)

Prepared By: Governmental Operations Committee

BILL: CS/SB 1468

INTRODUCER: Governmental Operations Committee and Governmental Operations Committee

SUBJECT: Public Records; Exemptions for Social Security Numbers and Financial Account Numbers

DATE: April 24, 2007

REVISED: 05/02/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u></u>	<u></u>	<u>RC</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

Currently, s. 119.071 (5)(a), F.S., makes social security numbers held by an agency confidential and exempt from public records requirements. It also provides a limited exception to the exemption, which requires a verification process that includes a penalty for perjury. The exemption, however, does not supersede any other applicable exemption and, in effect, fills a gap for numbers that are not protected by other, more specific exemptions.

Section 119.071(5)(b), F.S., makes bank account numbers and debit, charge, and credit card numbers held by an agency exempt from public records requirements. The sequential numbers covered by both exemptions are protected in court records and official records if redaction is requested. Both paragraphs were certified by the Division of Statutory Revision as being subject to open government sunset review and these exemptions will repeal without legislative action to save them.

This bill saves both exemptions from repeal. Further, it repeals a duplicative exemption for credit card numbers. In addition, the bill transfers s. 119.071(6), F.S., to a new section of law and co-locates those provisions in the exemptions under review that relate to court files and records and official records. It also extends from 2008 to 2011 the period in which redaction requests must be made for those records.

This bill amends the following sections of the Florida Statutes: 119.071(5)(a) and (b), 215.322.

This bill creates the following sections of the Florida Statutes: 119.0714.

II. Present Situation:

Public Records – The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in 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.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

⁵ Section 119.011(11), F.S.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act¹⁴ provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c) of the State Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

- the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires consideration of the following:

- (1) What specific records or meetings are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?
- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- (5) Is the record or meeting protected by another exemption?
- (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10(1)(a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. Any person who willfully and knowingly violates any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000.

¹⁵ Section 119.15(4)(b), F.S.

¹⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

Social Security Number Exemptions – The Social Security Act,¹⁷ which was signed into law in 1935, created a federal program designed to pay retired workers age 65 or older a continuing income after retirement. It also created programs for unemployment insurance, old-age assistance, aid to dependent children and grants to the states to provide various forms of medical care.¹⁸ The act also authorized the establishment of a record-keeping system to manage the social security program. As a result, the social security number (SSN) was created to assist in the administration of social security laws by tracking earnings to determine social security withholdings. Unique records are created for every person as a work and retirement benefit record.¹⁹

A SSN is a nine-digit number assigned by the Social Security Administration. A SSN is not just a series of random numbers, but actually can provide some information about the person assigned to the SSN. For example, the area numbers (the first three numbers of a SSN) reflect the state in which the number was issued. The group numbers (the middle two numbers) indicate the order in which the SSN was issued in each area. The serial numbers (the last four numbers) are randomly generated. As a result, a SSN may reveal the holder's place of origin and relative age.

While the original intended use of a SSN was limited, it has become the personal identifier of choice for governmental and private entities. SSNs are used to manage records and to facilitate data sharing, helping to improve administration. Government agencies use SSNs to ensure that benefit recipients do not receive multiple benefits, that tax registrants do not obtain multiple homestead tax exemptions, and so forth. Commercial entities use SSNs to identify individuals for credit bureaus, credit card companies, and mortgage companies, among other financial purposes. Additionally, SSNs are used extensively outside the financial services sector, for example, in the insurance industry and for medical services. Like public entities, private entities may share information with their contractors and sub-contractors.

While SSNs are personal identifiers, they are often available for inspection or copying, and even for sale. The Governmental Accountability Office (GAO), based on a survey of federal, state, and local governments, reported in 2004 that state agencies in 41 states and the District of Columbia were displaying SSNs in public records. The GAO report found that SSNs were most often found in court and property records.²⁰ One industry, information resellers or data aggregators, collects personal information about individuals from public and private sources for resale. An Internet search for SSNs shows that a SSN of an individual may be purchased for a small fee.²¹

There is no single law that comprehensively regulates SSN use. Federal and state legislative responses to privacy concerns and identity theft have been mostly piecemeal, often applying to specific industries but not across the board to all entities. These laws include the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transaction Act (FACTA), the

¹⁷ H.R. 7260 (1935).

¹⁸ *Historical Background and Development of Social Security*, Social Security Administration webpage, <http://www.ssa.gov/history/briefhistory3.html>.

¹⁹ See also, ch. 650, F.S., related to social security for public employees.

²⁰ GAO, *Social Security Numbers: Governments Could Do More To Reduce Display in Public Records and on Identity Cards*, GAO-05-59 (Washington, D.C.: November 9, 2004).

²¹ See, e.g., www.verifysocialsecuritynumber.org or www.usatrace.com or www.web-detective.com.

Gramm-Leach-Bliley Act (GLBA), the Drivers Privacy Protection Act (DPPA), the Health Insurance Portability and Accountability Act (HIPAA) and the Federal Privacy Act. The Privacy Act of 1974 was one of the first federal statutory responses to privacy concerns.²²

The Federal Privacy Act of 1974²³ prohibits any Federal, state or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number. This prohibition is inapplicable if disclosure:

- is required by Federal statute, or
- was required under statute or regulation adopted prior to January 1, 1975, by a Federal, State, or local agency maintaining a system of records in existence and operating prior to that date to verify the identity of an individual.

Under the Federal Privacy Act, any Federal, state, or local government agency which requests an individual to disclose his social security account number is required to inform that individual whether disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.²⁴

Other federal laws may provide additional exemptions to the Privacy Act. For example, the Tax Reform Act of 1976,²⁵ expressly exempts state agencies to the extent that social security numbers are used "in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction.

The Florida Statutes contain numerous requirements for the collection of SSNs. A few examples include the requirement that a SSN be included on: a death certificate;²⁶ a written judgment finding a defendant guilty of a felony;²⁷ an application for funeral-related personnel;²⁸ pleadings for dissolution of marriage;²⁹ an application for a fishing or hunting license;³⁰ a marriage license application;³¹ and a homestead exemption application.³²

While there are numerous statutory provisions authorizing or requiring collection of SSNs, there are numerous exemptions for SSNs also.³³ The exemption under review, which is found in

²² Pub L. No. 93-579, 88 Stat. 1896 (codified as amended at 5 U.S.C. s. 552a).

²³ Section 7 of Pub. L. 93-579.

²⁴ In the case *Florida Division of Workers' Compensation v. Cagnoli*, 914 So.2d 950 (Fla. 2005), the Florida Supreme Court (FSC) upheld a decision of a district court of appeal that declared invalid s. 440.192, F.S. That section requires a petition for workers' compensation benefits to include a social security number. The FSC held that s. 440.192, F.S., was not enacted until 1980 and, therefore, the provision did not fall within the exception to the Federal Privacy Act that grandfathered requirements for SSNs that were in existence before January 1, 1975.

²⁵ 42 U.S.C. s. 405(c)(2)(C)(i), (iv) (2000).

²⁶ Section 382.008, F.S.

²⁷ Section 921.241, F.S.

²⁸ Section 497.141, F.S.

²⁹ Section 61.052, F.S.

³⁰ Section 372.561, F.S.

³¹ Section 741.04, F.S.

³² Section 196.011, F.S.

³³ A few SSN exemptions include ss. 119.071(4)(a)&(d), 409.175, 717.117, 97.0585,

s. 119.071(5), F.S., is the general exemption for SSNs. This exemption does not supersede other SSN exemptions existing prior to May 13, 2002, or created thereafter.³⁴ The subsection contains a legislative acknowledgment of the historic purpose for the SSN but also notes that the SSN has become a unique numeric identifier. The provision recognizes that the SSN can be used to perpetuate fraud and to acquire sensitive personal, financial, medical and familial information, the release of which could cause great financial or personal harm to the individual. The exemption also expressly limits agency collection of SSNs, stating:

An agency shall not collect an individual's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security number collected by an agency must not be collected until and unless the need for social security numbers has been clearly documented.

Agency recordkeeping requirements for agencies using the SSN also are established in the subsection. An agency that collects SSNs must segregate them on a separate page from the rest of the record, or as otherwise appropriate, so that the SSN may be redacted easily. Further, an agency must provide a person with a statement of the purpose for which the SSN is being collected and used upon request, at the time of, or prior to, the actual collection. A SSN collected by an agency for a particular purpose may not be used by that agency for any purpose other than the purpose stated.

Under the provisions of s. 119.071(5)(a)3., F.S., all social security numbers held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. As such, an agency may not release a SSN except as provided in statute or pursuant to court order. The provision permits disclosure to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Further, disclosure of SSNs to a commercial entity engaged in the performance of a commercial activity as defined in s. 14.203, F.S.,³⁵ is authorized, provided the SSNs will be used only in the normal course of business for legitimate business purposes.³⁶ A verified, written request signed by an authorized officer, employee or agent of the commercial entity is required.³⁷

While there is a general exemption for SSNs, there are additional exemptions protecting them, as well. For example, s. 119.071(4)a.1, F.S., provides that the SSNs of all current and former agency employees which are contained in agency employment records are exempt. If the SSN is held by another agency that is not the employing agency, the agency is authorized to maintain

³⁴ Section 119.071(5)(a)10, F.S.

³⁵ Section 14.203(1)(a), F.S., defines "commercial activity" to mean an activity that provides a product or service that is available from a private source.

³⁶ A "legitimate business purpose" is defined to include verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.

³⁷ Section 92.525, F.S., provides for verification of written documents under penalty of perjury, which is a felony of the third degree. Sections 775.082 and 775.083, F.S., provide for a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000.

the exempt status only if the employee submits a written request for confidentiality. If a commercial entity makes a request, the custodial agency must release the last four digits of the SSN. The entire SSN must be released in a lien filed with the Department of State.³⁸ Additionally, s. 119.071(4)(d)1.-5., F.S., makes exempt the SSNs of specified agency employees when held by their employer.³⁹ The SSNs in this paragraph are not made confidential; however, agencies are not required to provide access to commercial entities under this paragraph.⁴⁰

The statement of public necessity for the exemption under review contains a legislative finding that the SSN is the only nationwide, unique numeric form of identification existing in the United States. Further, it finds that SSNs are of a sensitive personal nature and may be the link to an individual's personal, financial, medical, or familial records. As such, the Legislature found that disclosure of a SSN can be used to perpetrate fraud and cause great harm to a person or his or her family, as well as result in an unwarranted invasion into the life and personal privacy of a person. As such the harm from disclosing a SSN outweighs any public benefit that can be derived from widespread and unregulated public access. The public necessity statement, however, also notes that responsible commercial use of SSNs does not result in personal or financial harm but allows more complete identity verification, thereby enhancing the mutual benefits of the commercial relationship.

Financial Account Number Exemptions – Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt under s. 119.071(5)(b), F.S. The public necessity statement for the exemption notes that these account numbers are of a sensitive, personal nature and that “. . . disclosure would create the opportunity for theft or fraud, thereby jeopardizing the financial security of an individual.” Permitting access to these account numbers could also interfere with an individual's willingness to pay a financial debt owed to an agency or to otherwise provide such numbers to an agency for the furtherance of that agency's duties and responsibilities. As such, the effective and efficient administration of agency programs would be significantly impaired.

Other exemptions for account numbers are provided in Florida law. A few examples include, s. 624.23, F.S., which exempts all bank account numbers and debit, charge, and credit card numbers of a consumer held by the Department of Financial Services or the Office of Insurance Regulation; s. 717.117(8), F.S., which exempts financial account numbers contained in certain reports of the Department of Financial Services; and s. 215.322(6), F.S., which exempts credit card numbers held by a variety of governmental entities.

Section 215.322(1), F.S., provides legislative intent for state agencies, the judicial branch, and units of local government to make their goods, services, and information more convenient to the public through the acceptance of payments by credit cards, charge cards, and debit cards to the maximum extent practicable when the benefits to the participating agency and the public substantiate the cost of accepting these types of payments. Section 215.322(2), F.S., authorizes a state agency, as defined in s. 216.011(1)(qq), F.S.,⁴¹ or the judicial branch, to accept credit cards,

³⁸ A portion of this exemption will repeal October 2, 2009, unless review and retained by the Legislature.

³⁹ An employee protected by this provision may file a written request for maintenance of the exemption with another custodial agency, thereby extending the scope of this exemption.

⁴⁰ Some of the exemptions in this section are subject to future sunset review and repeal.

⁴¹ This section states, “‘State agency’ or ‘agency’ means any official, officer, commission, board, authority, council,

charge cards, or debit cards in payment for goods and services with the prior approval of the Chief Financial Officer. Convenience fees are authorized by subsection (3) for credit card, charge card, and debit card payments. While this section regulates acceptance of credit, charge, or debit cards, mysteriously, the related exemption in subsection (6) only exempts credit card numbers. That subsection states:

Credit card numbers in the possession of a state agency, a unit of local government, or the judicial branch are *confidential* and exempt from the provisions of s. 119.07(1), F.S. [*emphasis added*].⁴²

While the exemption for bank account numbers and debit, charge and credit card numbers provided in s. 119.071(5)(a), F.S., protects these sequential numbers when “held by an agency,” the exemption is applicable to court files⁴³ and official records⁴⁴ as current law provides a method for ensuring redaction in both. The bill creating the exemption and applying it to these records, however, failed to include these records within the list provided in s. 119.07(6), F.S.⁴⁵

III. Effect of Proposed Changes:

Currently, s.119.071 (5)(a), F.S., makes social security numbers held by an agency confidential and exempt from public records requirements. The exemption, however, does not supersede any other applicable exemption and, in effect, it fills a gap for numbers that are not protected by other, more specific exemptions. The bill saves the exemption from repeal.

Additionally, the bill also reorganizes s. 119.071(5), F.S., so that the existing requirements imposed under the section are more obvious to the agencies that must implement and comply with the section. The reorganization of the section clarifies current limitations on agency collection of social security numbers, including: (1) agency identification of the legal authority by which it collects social security numbers in a written statement that must be provided to an individual upon request; and (2) agency review of whether its collection of social security numbers is in compliance with the section.⁴⁶ Agencies must file a report regarding their compliance with the section by no later than January 31, 2008.

committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, ‘state agency’ or ‘agency’ includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms ‘state agency’ and ‘agency’ include the judicial branch.”

⁴² In contrast to the exemption under review, this exemption makes credit card numbers confidential and exempt, not just exempt. Further, this exemption expressly includes the courts. Under *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992), the Florida Supreme Court found that the definition of “agency” in ch. 119, F.S., was intended to apply only to executive branch agencies and officers and to local governmental entities and their officers.

⁴³ Section 119.071(5)(a)7.d., F.S.

⁴⁴ Section 119.071(5)(a)7.b. and e., F.S.

⁴⁵ Section 119.07(6), F.S., states: “Nothing in this chapter shall be construed to exempt from subsection (1) a public record that was made a part of a court file and that is not specifically closed by order of court, except as provided in s. 119.071(a)(d) and (f), (2)(d), (e), and (f), and (4)(c) and except information or records that may reveal the identity of a person who is a victim of a sexual offense as provided in s. 119.071(2)(h).”

⁴⁶ Under current law and the bill, an agency is not authorized to collect an individual’s social security number unless it is specifically authorized to do so or unless it is imperative for the performance of that agency’s duties and responsibilities under the law. Social security numbers collected by an agency may not be used by that agency for any purpose other than the

The bill also standardizes language in the exception to the exemption which authorizes release of social security numbers to governmental entities. As currently drafted, the section specifically authorizes release to another governmental entity “or its agents, employees, or contractors,” if necessary for the receiving entity to perform its duties and responsibilities. The bill eliminates the reference to “agents,” “employees,” and “contractors” and substitutes the term “agency,” which by definition already includes all of these persons. The bill also standardizes this portion of the exemption by striking redundant and unnecessary language regarding the responsibility of these persons to maintain the confidentiality of these numbers. The exemption affords social security numbers the highest level of protection, making them both confidential and exempt, and an agency is not authorized to release the number except as provided in law. The confidential and exempt nature of the exemption travels with it to those limited, authorized persons who may be given access under the law.

Additionally, the bill relocates some provisions relating to the commercial exception to the exemption to a more prominent position in the beginning of the sub-paragraph to which they apply. Specifically, current law authorizes access by a commercial entity engaged in the performance of a commercial activity that provides a product or service that is available from a private source, or its agents, employees, or contractors, provided that the numbers will be used only in the normal course of business for legitimate business purposes and upon written, verified request.⁴⁷ This definition was difficult to find at the end of current sub-paragraph 5. The bill recreates “legitimate business purposes,” as the substance of the defined term “commercial activity,” which is located at the beginning of a new paragraph 7. and defines it to mean:

. . . the 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; 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.

Further, the bill defines “commercial entity,” a term that is used in the current section but not expressly defined for purposes of implementation of the section. The bill defines “commercial entity” to mean

. . . any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

purpose stated.

⁴⁷ Under s. 119.071(5)(a)5., F.S., a “legitimate business purpose” includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor.”

The bill also makes editorial and organizational changes to current law that requires a commercial entity to provide a written, verified request prior to granting access to a social security number. As a result, the applicable requirements for the written request are more prominent.

Penalties for false representation and for willful and knowing violation are retained by the bill but are reorganized so they have a more prominent position in the subsection. Under current law and the bill, it is a felony of the third degree punishable as provided in s. 775.082⁴⁸ or s. 775.083, F.S.,⁴⁹ to make a false representation in order to obtain a social security number or to willfully and knowingly violate the section.

The bill maintains a current requirement that agencies file an annual report with the President of the Senate, the Speaker of the House of Representatives and the Secretary of State regarding access by commercial entities but it substitutes the Executive Office of the Governor for the Secretary of State.

Currently, s. 119.071(5)(b), F.S., makes bank account numbers and debit, charge, and credit card numbers held by an agency exempt from public records requirements. This bill retains the exemption. The bill also repeals s. 215.322(6), F.S., which is an exemption for only credit card numbers, but which is subsumed by the exemption under review.

The bill also creates a new section of ch. 119, F.S., to co-locate some of the requirements for court files and records, and official records. Currently, s. 119.07(6), F.S., refers to some records exemptions in court files, as does s. 119.071(5), F.S. The bill transfers s. 119.07(6), F.S., to the newly-created s. 119.0714, F.S., amends the existing section by explicating what the current references in the section refer to,⁵⁰ and adds references to social security numbers and financial account numbers to the list as they were included by the enactment of s. 119.071(5)(a) and (b), F.S., but not expressly included in the list. No substantive changes are made by the transfer or by the clarifying language.

The bill also extends from January 1, 2008 until January 1, 2011, the period in which a person must request redaction of a social security number or financial account number included in a court file. Thereafter, a redaction request will not be required. The bill also extends for the same period of time the period in which redaction must be requested for the clerk of the court to keep social security numbers and financial account numbers confidential and exempt in the official records. If the official record is in electronic format, a request for redaction will not be required after January 1, 2011.

The bill also makes cross-reference changes.

⁴⁸ Section 775.082(3)(d), F.S., provides that for a felony of the third degree, a term of imprisonment not to exceed 5 years may be imposed.

⁴⁹ Section 775.083(1)(c), F.S., authorizes a fine of \$5,000 for a felony of the third degree.

⁵⁰ For example, currently, s. 119.07(6), F.S., includes s. 119.071(2)(d), F.S., within the list but it does not identify what s. 119.071(2)(d), F.S., refers to. The bill identifies that this provision refers to any comprehensive inventory of state and local law enforcement resources.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill is the result of an Open Government Sunset Review. *See*, Interim Project Review 2007-209. That report found that regardless of the original intent for the SSN, it has become a national identifier of individuals that is used by federal, state, and local agencies, as well as by commercial, financial, insurance and medical entities.⁵¹ While use of the SSN is widespread, there is no single law regulating use of SSNs, but instead there is a patchwork of Federal and Florida laws affecting their use.

When performing an Open Government Sunset Review, consideration of a variety of factors is required.⁵² The exemption in s. 119.071(5)(a), F.S., that is under review protects a variety of documents, but only protects the SSN within those documents. As such, the exemption is narrowly drafted and not overbroad. Further, the exemption protects each person who has been assigned a SSN who has provided that SSN to an agency. The identifiable public purpose or goal of the exemption is to protect the person who has been assigned the SSN from fraud or other harm by the disclosure of that number while still permitting commercial access for lawful business purposes. The SSN may be obtained from a variety of commercial sources for a fee.⁵³ Additionally, there may be instances where the number is not protected from government sources. For example, certain liens require the inclusion of SSNs. As the SSN is a unique identifier used in government, business, and health care, a complete bar to access is not only impractical, but could affect agency operations, commerce, the insurance industry and health care, among other activities. The Legislature has attempted to strike a balance between the need to protect the individual assigned the SSN while still recognizing the need of agencies to use the SSN, as well as that of businesses to access it for legitimate business purposes. As such, it appears that the exemption for SSNs meets the identifiable public purpose required by s. 119.15, F.S., of protecting information of a sensitive personal nature concerning individuals, the release of which could jeopardize their safety.⁵⁴

⁵¹ Commercial entity reports filed by agencies, including local governmental entities, show that commercial entities do request SSNs from agencies. These reports, however, do not appear to be particularly reliable as there are wide disparities between entities, some of which are not logical. For example, some cities note numerous requests for SSNs by funeral homes, yet other cities fail to report any requests by funeral homes.

⁵² Section 119.15(6)(a), F.S.

⁵³ Compromise of sensitive information held in databases of private industry is not unknown. For example, it was reported by CNN on February 17, 2005, that criminals posing as legitimate businesses gained access to SSNs and credit information of individuals in the database of ChoicePoint, Inc., placing approximately 145,000 consumers at risk for identity theft and fraud (about 10,000 of the 145,000 were Floridians). Further, on March 10, 2005, the Washington Post reported a database breach at LexisNexis Group, apparently by unauthorized use of passwords of legitimate customers. This breach was reported to have affected 32,000 consumers.

⁵⁴ Section 119.15(6)(b), F.S.

The specific records that are affected by the exemption in s. 119.071(5)(b), F.S., are bank account numbers, debit, charge and credit card numbers held by an agency. The exemption uniquely affects the person who owns or is assigned the financial accounts. These account numbers are used by agencies, individuals, and business entities in commerce, but they are closely-held and not generally available to the public. The exemption in s. 215.322(6), F.S., is a parallel general exemption for financial account numbers. That exemption, however, is not as comprehensive as it only protects credit card numbers. On the other hand, it expressly applies to the courts, whereas the exemption under review applies to agencies as defined in ch. 119, F.S. The exemption under review appears to meet two of the bases supporting an exemption under the Open Government Sunset Review Act. First, the exemption permits an agency to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption. Second, the exemption protects sensitive, personal information of individuals, the release of which could damage them financially. As a result, continued protection of financial account numbers held by agencies is advisable.

Further, it must be noted that the exemption in s. 215.322(6), F.S., does not protect all the financial account numbers authorized to be collected under the section. Such information is protected under the exemption under review; however, it is not clear that this information is protected in court records. As such, the exemption in s. 215.322(6), F.S., is redundant and deficient, but also more inclusive than the exemption under review.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A variety of government agencies appear to be taking steps to eliminate the open display of SSNs, but there does not appear to be a uniform practice or policy at the federal, state, or local

level to protect them.⁵⁵ According to a report by the United States Government Accountability Office:

Current federal restrictions on SSNs and other personal information are industry specific and do not apply broadly . . . given the industry specific nature of federal laws, no single federal agency has responsibility for ensuring the protection of individuals' personal information. Consequently, gaps remain at the federal level in protecting individuals' personal information.⁵⁶

In the past few years, Congress has considered legislation creating SSN restrictions. In many cases, the provisions considered mirrored provisions found in state laws.⁵⁷

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

⁵⁵ General Accounting Office (GAO), *Social Security Numbers, Governments Could Do More to Reduce Display in Public Records and on Identity Cards*, November 2004.

⁵⁶ GAO, *Social Security Numbers, Federal and State Laws Restrict Use of SSNs, yet Gaps Remain*, statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, September 15, 2005, at 18.

⁵⁷ *Id.* at 15.

VIII. Summary of Amendments:

None.

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