

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

**BILL #:** CS/HB 1673 (PCB SA 02-11), 2ND ENG.

**RELATING TO:** Public Records / SS Numbers

**SPONSOR(S):** Council for Smarter Government, Committee on State Administration, Representative(s) Brummer and others

**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
  - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

**On May 13, 2002, CS/HB 1673, 2<sup>nd</sup> Engrossed, was approved by the Governor and became law as Chapter 2002-256, Laws of Florida (the "act"). The effective date of the act is "upon becoming law," which was on May 13, 2002.**

Agencies collect and use social security numbers (SSNs). Concerns arise regarding public dissemination of SSNs for privacy reasons, possible fraud, and identity theft. Currently, there are a number of exemptions that explicitly exempt a person's SSN from public disclosure in certain circumstances, but they do not cover all situations. This act:

- Creates a public records exemption for all SSNs held by an agency.
- Provides that this 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.
- 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.
- Instructs a person not to include SSNs in documents recorded with the county recorder unless required by law.
- Requires county recorders to publish and post signs and notices.

The fiscal impact on state and local governments is indeterminate. See "Fiscal Comments" section for further details.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government                      Yes     No     N/A

This act limits access to SSNs; creates penalties; requires county recorders to publish and post signs and notices; and requires agencies to file a yearly report.

2. Lower Taxes                              Yes     No     N/A

3. Individual Freedom                      Yes     No     N/A

4. Personal Responsibility                      Yes     No     N/A

5. Family Empowerment                      Yes     No     N/A

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

B. PRESENT SITUATION:

**Interim Study**

The House Committee on State Administration, in conjunction with the House Committee on Information Technology, conducted a survey regarding the collection, use, and dissemination of SSNs.<sup>1</sup> All state agencies, universities, community colleges, and junior colleges were surveyed and all of them completed the survey.<sup>2</sup>

Every agency and educational institution collects SSNs for various purposes.<sup>3</sup> Survey participants were asked to cite any statutory authority<sup>4</sup> or Florida Administrative Code (FAC) rule that specifically authorizes the collection of SSNs. Approximately 600 statutory or FAC rule citations were given as providing authority to collect SSNs. Of those citations, only 120 were categorized as “applicable”.<sup>5</sup>

Survey participants were asked if they ever disclose SSNs pursuant to a public records request. Sixty-three percent of the agencies responded that they either “always” disclose SSNs or “sometimes” disclose SSNs when a public records request is made; 37 percent responded that SSNs are never disclosed pursuant to a public records request. Sixty-six percent of the educational institutions never release SSNs pursuant to a public records request, while 34 percent of such

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<sup>1</sup> The SSN was selected because it is the only nationwide, unique, numeric form of identification, and because government entities routinely collect and often disclose SSNs.

<sup>2</sup> The Committee on State Administration and the Committee on Information Technology compiled all survey results into the November 2001 “Draft Interim Project Report”.

<sup>3</sup> For example, SSNs are collected for personnel functions (*e.g.*, applications for employment, tax purposes), for registration purposes (*e.g.*, agency examinations, training classes), and permitting purposes (*e.g.*, The Florida Fish and Wildlife Commission issues permits for the possession, exhibition, or sale of wildlife).

<sup>4</sup> “Statutory authority” was not limited to the Florida Statutes but was intended to include both federal and state law.

<sup>5</sup> Staff analyzed the responses from survey participants to determine the extent to which the cited statute or rule actually related to the collection of SSNs. The responses were categorized using the following terminology: “applicable”, “possibly applicable”, “not applicable”, “overly broad”, “no cite”, “no such statute or rule”, and “non responsive”. Applicable means that the cited statute explicitly authorizes the collection of SSNs.

institutions either “always” or “sometimes” release such numbers pursuant to a public records request.<sup>6</sup>

Approximately 50 percent of the agencies disclose SSNs to individuals, private entities, contractors, or any additional entities, by means other than through public records requests.<sup>7</sup> Educational institutions also disclose SSNs to individuals, private entities, contractors, and additional entities other than pursuant to a public records request. Seventy-one percent of the educational institutions disclose SSNs to various contractors, compared to 44 percent of the state agencies.<sup>8</sup> Fifty-nine percent of the state agencies have a contract with a non-governmental entity to provide information through which SSNs are disclosed.<sup>9</sup> Sixty-one percent of the educational institutions have contracts with non-governmental entities to provide information through which SSNs are disclosed.<sup>10</sup> According to the survey, no educational institution, pursuant to a contractual agreement, receives payment for the disclosure of records containing SSNs.

### **Social Security Numbers**

SSNs were designed only to help the government keep track of earnings and benefit information. Such numbers “are now used for almost every government transaction and on many private documents.”<sup>11</sup> Researchers at the General Accounting Office (the investigative arm of Congress) said that officials who maintain records containing SSNs have said that “their primary responsibility is to preserve the integrity of the record rather than protect the privacy of the individual SSN holder.”<sup>12</sup>

Agencies often use the SSN as a person’s primary identifier in order to locate records about that person. There is, however, concern regarding public dissemination of SSNs. By knowing a person’s SSN, other information is more readily accessible through governmental agencies and private entities. Much of the information available through the use of SSNs is private, personal information including financial and health information. With this number, and the information one can gain from its use, it is easier to perpetrate a fraud against someone, as well as to otherwise cause unwarranted harm to that person. Accordingly, over the years a number of public records exemptions have been created which prohibit or restrict the disclosure of SSNs. Currently, there are 23 state statutory exemptions that explicitly exempt a person’s SSN from public disclosure in

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<sup>6</sup> Survey results demonstrate that SSNs are consistently and routinely provided to other Florida state agencies, federal agencies, local governments, and other state governments.

<sup>7</sup> The Agency for Health Care Administration discloses SSNs to the University of South Florida’s Mental Health Institute and employee training contractors; the Department of Banking and Finance discloses SSNs to various collection agencies; and the Florida Fish and Wildlife Commission discloses SSNs to an appeals board for the issuance of lobster and stone crab trap certificates.

<sup>8</sup> Hillsborough Community College discloses records that contain SSNs to “numerous collection agencies”. Florida Agricultural and Mechanical University discloses SSNs to the National Student Loan Clearinghouse and various collection agencies.

<sup>9</sup> The Department of Revenue has contracts with the following entities: Florida Association of Court Clerks and Comptrollers, private legal service providers (25 different private attorney contracts), credit reporting agencies, financial institutions, genetic testing companies, BSWA (Internet software), and Deloitte and Touche Consulting. Electronic file transmission is the most popular means used by agencies for providing information containing SSNs to non-governmental entities when a contract exists. The Agency for Health Care Administration uses the following methods when distributing such documents to non-governmental entities: data dumps, direct remote access to agency data base, direct magnetic media, hard copies, and CD-ROMs.

<sup>10</sup> Miami-Dade Community College has contracts with Cigna Health Insurance, MetLife Dental Insurance, the National Student Loan Clearinghouse, Academic Financial Service Association Inc., NSO Financial Systems, Inc., and Enterprise Recovery System, Inc. Electronic file transmission is the most popular means used by educational institutions for providing information containing SSNs to non-governmental entities when a contract exists. St. Johns River Community College uses electronic files, which are uploaded and downloaded via the Internet; data dumps; direct remote access to a database; Internet access; hard copies; and disk copies.

<sup>11</sup> Hopper, D. Ian. Tallahassee Democrat, “Investigators warn about protecting privacy”, June 3, 2002.

<sup>12</sup> *Id.*

certain situations.<sup>13</sup> Additionally, there are 13 statutory exemptions for information that reveals the identity of a person, personal information, or personal identification information, which includes a person's SSN.<sup>14</sup> There is no all-encompassing state statutory exemption for SSNs.

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<sup>13</sup> Current SSN exemptions: s. 61.052(8), F.S. – SSN of each party to dissolution of marriage held by the court; s. 61.13(9)(b), F.S. – SSN of each party to any paternity or child support proceeding held by the tribunal and the State Case Registry; s. 97.0585(2), F.S. – Registered voters' SSNs held by voter registration agencies; s. 119.07(3)(i), F.S. – SSNs held by the employing agency of certain law enforcement personnel, certain personnel of the Department of Children and Families, certain personnel of the Department of Health, and certain personnel of the Department of Revenue or local governments, SSNs of the spouse and child of such personnel; SSNs of state attorneys, assistant state attorneys, statewide prosecutor, or assistant statewide prosecutors, SSNs of the spouse and child of such attorneys and prosecutors, SSNs of certain human resource, labor relations, or employee relations directors and managers, SSNs of the spouse and child of such directors and managers, SSNs of certain code enforcement officers and such officer's spouse and child; s. 193.114(6), F.S. – SSNs in an application for homestead tax exemption; s. 231.17(1), F.S. – SSNs of applicants seeking teacher certification held by the Department of Education; s. 288.99(16), F.S. – SSNs of customers of a certified capital company, complainant, or person associated with a certified capital company or qualified business; s. 372.561(2), F.S. – SSNs of applicants, for a license, permit, or authorization to take wild animal life or freshwater aquatic life, held by the Fish and Wildlife Conservation Commission; s. 372.57, F.S. – SSNs of applicants, for a license, permit, or authorization to take game, freshwater fish, or fur-bearing animals, held by the Fish and Wildlife Conservation Commission; s. 372.574(4), F.S. – SSNs provided for a license, permit, or authorization to take wild animal life or freshwater aquatic life, or for a license, permit, or authorization to take game, freshwater fish, or fur-bearing animals contained in records held by any subagent appointed by the county tax collector; s. 395.3025(11), F.S. – SSNs of employees of a licensed facility who have a reasonable belief that release of such number may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family, the SSNs of the spouses and children of such persons; s. 411.011, F.S. – SSNs contained in records of children enrolled in school readiness programs, held by the school readiness coalition or the Florida Partnership for School Readiness; s. 455.213(9), F.S. – SSNs of applicants desiring a license held by the Department of Business and Professional Regulation (DBPR); s. 456.013(11), F.S. – SSNs of applicants desiring to take the licensure examination held by DBPR; s. 434.00125(1)(b), F.S. – Except as necessary for the Department of Banking and Finance (DBF) to enforce the provisions of chapter 434, F.S., a consumer complaint and other information relative to an investigation or examination must remain confidential and exempt after the investigation or examination is completed or ceases to be active to the extent disclosure would reveal the SSN of a complainant, customer, or account holder; s. 498.047(8)(b), F.S. – Except as necessary for the Division of Florida Land Sales, Condominiums, and Mobile Homes to enforce the provisions of chapter 498, F.S., a consumer complaint and other information relative to an investigation must remain confidential and exempt after the filing of a notice to show cause or the investigation is completed or ceases to be active to the extent disclosure would reveal the SSN of a purchaser, account holder, or complainant; ss. 517.2015(1)(b) and 520.9965(1)(b), F.S. – Except as necessary for DBF to enforce the provisions of chapters 517 and 520, F.S., a consumer complaint and other information relative to an investigation or examination must remain confidential and exempt after the investigation or examination is completed or ceases to be active to the extent disclosure would reveal the SSN of a complainant, customer, or account holder; s. 548.021(4), F.S. – SSNs of applicants for licenses and permits associated with boxing and boxing matches held by Florida State Boxing Commission or DBPR; s. 741.04(1), F.S. – SSN of each party to a marriage held by the court; s. 742.031(3), F.S. – SSN of each party to any paternity hearing held by the court; s. 742.032(3), F.S. – SSN of each party to any paternity or child support proceeding held by the tribunal and the State Case Registry; s. 742.10(2), F.S. – SSN of each parent listed on any acknowledgement of paternity, consent affidavit, or stipulation of paternity held by the Office of Vital Statistics and the court. Additionally, there are numerous public records exemptions that exempt "personal identifying information" from public disclosure, which includes SSNs.

<sup>14</sup> Current exemptions for information that reveals the identity of a person, personal information, or personal identification information: s. 61.1827, F.S. – Information in the possession of a non-Title IV-D county child-support-enforcement agency that reveals the identity of an applicant for and recipient of child-support services.; s. 119.07(3)(bb), F.S. – Upon request, personal information contained in a motor vehicle record that identifies the requester; s. 119.07(3)(dd), F.S. – All personal identifying information contained in records relating to an individual's health or eligibility for health-related services held by the Department of Health (DOH) or its service providers; s. 228.093(3)(d), F.S. – Personally identifiable records or reports of a pupil or student, and any personal information contained therein; s. 240.551(22)(c), F.S. – Any sensitive, personal information regarding contract beneficiaries, including their identities; s. 316.066(3)(c), F.S. – Crash reports which reveal personal information concerning the parties involved in the crash and which are received or prepared by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes; s. 338.156(6), F.S. – Personal identifying information held by the Department of Transportation or an expressway authority in connection with prepayment of electronic toll facilities charges to the department, a county, or an expressway authority; s. 365.171(15), F.S. – Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency telephone number "911" system; s. 400.945, F.S. – Personal information about patients of a home medical equipment provider, which is received by the licensing agency through reports or inspection; s. 409.175(15), F.S. – Personal information about foster care parents and their families

### Laws in Other States

Florida is the only state that has a constitutional provision requiring public access to records.<sup>15</sup> Many states do, however, have statutory provisions governing access to records as well as provisions governing the collection of personal identifying information by agencies.

Some states do not have specific statutory exemptions for SSNs and therefore release such numbers to the public if the numbers are contained in a requested public record.<sup>16</sup> For example, Massachusetts does not have a statutory exemption for SSNs.<sup>17</sup>

Some states have exemptions for SSNs contained in specified records.<sup>18</sup> In Texas, some state agencies redact SSNs from records prior to release of those records to the public, even though

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that is contained in the licensing file of the Department of Children and Family Services (DCF); s. 414.295, F.S. – Personal identifying information contained in records relating to temporary cash assistance that identifies a participant or a participant’s family or household member held by DCF, the Agency for Workforce Innovation, Workforce Florida, Inc., the Department of Management Services, DOH, the Department of Revenue, the Department of Education, a regional workforce board, a local committee, or service providers under contract with any of these entities; s. 430.105, F.S. – Personal identifying information relating to a client of the Department of Elderly Affairs (DEA), a client of service providers contracting with DEA, and certain elders receiving services through programs administered by or funded by DEA; s. 440.185(11), F.S. – Any information in a report of injury or illness that would identify an ill or injured employee.

<sup>15</sup> Article I, s. 24, Florida Constitution.

<sup>16</sup> SSNs are not specifically exempted from public disclosure under Maryland law. (Telephone conversation, Policy Analyst, House Committee on Commerce and Government, January 10, 2002). New Hampshire does not have a public records exemption for SSNs and such numbers are not redacted when contained in public records. (Telephone conversation, Clerk Interviewer, Department of Justice, January 3, 2002). Nevada has no specific statutory exemption for SSNs. (Telephone conversation, Law Indexer, House of Representatives, January 7, 2002). Pennsylvania does not have a public records exemption for SSNs. (Telephone conversation, Research Analyst, House State Government Committee, January 4, 2002).

<sup>17</sup> Telephone conversation, Staff, Massachusetts Joint Committee on State Administration, January 2, 2002

<sup>18</sup> Missouri has specific exemptions for SSNs under certain circumstances. (Telephone conversation, Legislative Analyst, Missouri Legislature, House Research, January 3, 2002). Virginia has specific exemptions for SSNs under certain circumstances. (Telephone conversation, Virginia Freedom of Information Joint Advisory Council, January 10, 2002). New York’s “Personal Privacy Protection Law” addresses the responsibility of state agencies in the collection of personal information. That law requires each agency that maintains a system of records to “maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.” (New York State Consolidated Laws, Article 6-A, section 94(a), Personal Privacy Protection Law). In addition, New York law, in regards to the disclosure of personal information, provides that no agency may disclose any records or personal information unless that disclosure is pursuant to a written request by or the voluntary written consent of the person for which the records or personal information pertain. The written request or consent must specifically describe the personal information which is requested to be disclosed, the person or entity to whom such personal information is requested to be disclosed, and the uses which will be made of such personal information by the person or entity receiving it. (New York State Consolidated Laws, Article 6-A, section 96(a), Personal Privacy Protection Law). Finally, “personal information” is defined in New York’s Personal Privacy Protection Law as “any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject.” This definition clearly includes an identifier such as the SSN. Oklahoma has specific language relating to the collection and usage of SSNs. Oklahoma law provides that no state agency, board, commission or other unit or subdivision of state government can request or require, unless otherwise required by law, that any person reveal his or her SSN in order to obtain services or assistance. Additionally, no state agency, board, commission or other unit or subdivision of state government can use, for any purpose, numbers which correspond to the SSN of any person, unless otherwise required by law. (Section 74-3111, Oklahoma Statutes. Use of SSNs by state or subdivisions prohibited – Exceptions). Oklahoma law also addresses the indexing of databases that include SSNs. Such law provides that “[n]o state agency, board, commission or other unit or subdivision of state government may furnish any information indexed by social security number unless required by law or specifically authorized to do so by the holder of said social security number. Provided that this section shall not apply to a report produced by a state agency of monetary payments made to any state official or employee from State Treasury funds or accounts.” (Section 74-3113. Disclosure of information indexed by SSNs prohibited – Exceptions). New Jersey’s Title 47 Public Records law provides that “a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” (Title 47:1A-1, as amended by Section 1 of P.L. 1963, c.73, and approved on January 8, 2002.) Furthermore, such law states that a government record does not include “that portion of any document which discloses the social security number . . . of any person; except for use by any government agency, including any court

there is not a specific exemption for SSNs under Texas state law.<sup>19</sup>

Certain states redact SSNs from all public records whether there is a specific public records exemption for such numbers or not.<sup>20</sup> For example, Ohio does not have a statutory exemption for SSNs, but such numbers are still redacted, prior to public disclosure, pursuant to a 1994 Ohio Supreme Court case ruling. In *State ex rel. Beacon Journal Publishing company et al. vs. City of Akron*,<sup>21</sup> the Ohio Supreme Court held that employees' SSNs were "records" for purposes of the Public Records Act, but that disclosure of city employees' SSNs would violate their federal constitutional right to privacy. The court found that the harm caused by the invasion of an employee's privacy as a result of the release of that employee's SSN outweighed the public's interest in obtaining such number. Because of this holding, Ohio state agencies do not release SSNs contained in public records. Such numbers are redacted.<sup>22</sup>

### **Identity Theft**

Improper use of personal identification information is both a state and national problem. On July 31, 2000, Governor Bush appointed 17 citizens to serve on a statewide Task Force on Privacy and Technology (task force), which was established pursuant to s. 282.3095, F.S.<sup>23</sup>

Reports obtained by the task force from identity theft victims suggest that the financial toll on victims is highly significant. The task force found that, on average, victims spend more than 175 hours to regain their financial health, at a personal cost of almost \$1,000. The task force also found that victims of identity theft include nationwide businesses that either absorb or pass on to the consumer annual costs exceeding \$1 billion due to identity theft-related fraud.<sup>24</sup>

Statistics collected by Federal offices attest to the growing problem of identity theft. The General Accounting Office reported that consumer inquiries to the Trans Union Credit Bureau's Fraud Victim Assistance Department increased from 35,235 in 1992 to 522,922 in 1997, and that the Social Security Administration's Office of the Inspector General conducted 1153 SSN misuse investigations in 1997 compared with 305 in 1996. In 1999, the telephone hotline established by

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or law enforcement agency, in carrying out its functions, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the Division of Motor Vehicles . . . and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor." (Title 47:1A-1.1, as amended by Section 1 of P.L. 1963, c.73, and approved on January 8, 2002.)

<sup>19</sup> Telephone conversation, Clerk, Texas Legislature, House Committee on State Affairs, January 14, 2002.

<sup>20</sup> Michigan redacts SSNs from copies of requested records. (Telephone conversation, Michigan House Majority Staff Legal Council, January 7, 2002). Hawaii redacts SSNs from public records. (Telephone conversation, Staff Attorney, Hawaii Legislature, Office of Information Practices, January 10, 2002).

<sup>21</sup> 70 Ohio St.3d 605 (1994), 640 N.E.2d 164 (Ohio, 1994).

<sup>22</sup> Telephone conversation, Attorney, Ohio Legislative Service Commission, January 15, 2002. *But see* Florida Attorney General Opinion 99-20 ("No federal law has been found that would preclude the release of a social security number by a state or local agency that has properly obtained the number. Moreover, the Social Security Administration has informed this office that the Federal Privacy Act of 1974 relates to the collection of social security numbers and, in the context of controlling the release of such numbers, applies only to the executive branch of the federal government.")

<sup>23</sup> Identity protection policies became a primary focus of the task force. According to the task force's report, identity theft is one of the fastest growing crimes in America, affecting nearly half a million people in 1998. Florida accounts for more reported complaints of identity theft to the Federal Trade Commission than any other state, with the exception of California and New York. Of those complaints, 26 percent pertained to an identity thief opening up telephone, cellular, or other utility services in the victim's name, and 54 percent were regarding credit card fraud. Florida Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

<sup>24</sup> Florida Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

the Social Security Administration Inspector General received reports of almost 39,000 incidents of misuse of SSNs.<sup>25</sup>

## **Public Records Law**

### **Florida Constitution**

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records 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.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and the exemption must be no broader than necessary to accomplish its purpose.

### **Florida Statutes**

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

### **Open Government Sunset Review Act of 1995**

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be

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<sup>25</sup> Prepared Statement of the Federal Trade Commission (FTC) on Identity Theft. Before the Subcommittee on Technology, Terrorism, and Government Information of the Committee on the Judiciary, United States Senate, July 12, 2000. The following are consumer complaints made to the FTC:

Someone used my social security number to get credit in my name. This has caused a lot of problems. I have been turned down for jobs, credit, and refinancing offers. This is stressful and embarrassing. I want to open my own business, but it may be impossible with this unresolved problem hanging over my head. (May 18, 1999).

Someone is using my name and social security number to open credit card accounts. All the accounts are in collections. I had no idea this was happening until I applied for a mortgage. Because these "bad" accounts showed up on my credit report, I didn't get the mortgage. (July 13, 1999).

Help! Someone is using my social security number to get a job. (September 20, 1999).

no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and 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:

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 information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; 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 which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

C. EFFECT OF PROPOSED CHANGES:

**Public Records Exemption**

This act creates a public records exemption for *all* SSNs held by an agency<sup>26</sup> or its agents, employees, or contractors, effective October 1, 2002.<sup>27</sup>

This act provides a public necessity statement, as required by Art. I, s. 24 of the Florida Constitution, which states that the public disclosure of a person's SSN is of concern due to the amount of information such number can provide about an individual. The SSN is of a sensitive personal nature and is often the link to an individual's health, medical, and financial records. Such number is the only nationwide, unique numeric form of identification. Disclosure of the SSN provides access to private information about a person, which could be used to perpetrate fraud upon that person and to otherwise cause unwarranted harm to that person. The disclosure of such number constitutes an invasion into the life and personal privacy of a person. However, responsible commercial use of the SSN does not appear to result in personal or financial harm to a person but allows more complete identity verification thereby enhancing the mutual benefits of the commercial relationship.

This act provides that this SSN public records exemption does not supersede any other exemption for SSNs. This act creates a general SSN exemption for all agencies; however, an individual agency may currently have or may create in the future a more agency-specific SSN exemption. If an agency does have an agency-specific exemption, then that agency should adhere to that exemption for SSNs rather than this exemption.

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<sup>26</sup> Section 119.011(2), F.S., defines "agency" as "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."

<sup>27</sup> This exemption applies to Constitutionally elected officers.



This act provides for retroactive application of the public records exemption.<sup>28</sup> Thus, even if a SSN were collected by an agency prior to the effective date of this act, such number is still confidential and exempt from public disclosure.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

### **Exceptions to the Exemption**

#### **Governmental Entities**

An agency may disclose SSNs to another governmental entity, or that entity's agents, employees, or contractors, if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity, and such entity's agents, employees, and contractors, are required to maintain the confidential and exempt<sup>29</sup> status of the SSN.

#### **Commercial Entities**

An agency must not deny a commercial entity engaged in the performance of a commercial activity<sup>30</sup> or to such entity's agents, employees, or contractors access to SSNs, provided:

- SSNs will only be used in the normal course of business for legitimate business purposes; and
- The commercial entity makes a verified<sup>31</sup> written request for the SSNs.

The verified written request must be legibly signed by an authorized officer, employee, or agent of the commercial entity making the request, and such request must contain the commercial entity's name, business mailing and location addresses, business telephone number, and a statement of the specific purposes for which the entity needs the SSNs and how the SSNs will be used in the normal course of business for legitimate business purposes.<sup>32</sup>

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<sup>28</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 2002 WL 390687 (Fla.Cir.Ct.).

<sup>29</sup> Information and records that are made "confidential and exempt" may not be released to anyone other than to the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

<sup>30</sup> Section 14.203(1)(a), F.S., defines "commercial activity" as "an activity that provides a product or service that is available from a private source."

<sup>31</sup> Section 92.525, F.S., provides that verification may be accomplished in the following manner:

- Under oath or affirmation taken or administered before an officer authorized to administer oaths; or
- By the signing of a written declaration.

A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration. The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. Section 92.525(3), F.S., provides that a person who knowingly makes a false declaration is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

<sup>32</sup> On May 30, 2002, SB 24-E, 2<sup>nd</sup> Engrossed, was approved by the Governor and became law as Chapter 2002-391, Laws of Florida. Pursuant to Chapter 2002-391, L.O.F., beginning May 30, 2002, the clerks of the court or the county recorder with respect to court records and official records are no longer required to demand a verified written request from a commercial entity wanting access to SSNs contained in such records. If SSNs are contained in court records and official records, commercial entities as well as the general public are allowed access to those SSNs.

A legitimate business purpose includes, but is not limited to:

- 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.<sup>33</sup>

A legitimate business purpose *does not* include the display or bulk sale<sup>34</sup> of SSNs to the general public or the distribution of SSNs to any customer that is not identifiable by the distributor.

### **Requirements on Agency**

#### **Collection of SSNs**

This act provides that an agency must not collect SSNs unless authorized by law to do so, or unless the collection of SSNs is imperative for the performance of that agency's duties and responsibilities as set forth in law.<sup>35</sup> The collection of SSNs must be relevant to the purpose for which such number is collected. SSNs must not be collected until and unless the need for such numbers has been clearly documented. This means that an agency must provide in writing an adequate justification for its need to collect SSNs. Agencies collecting SSNs must provide individuals, upon their request, with a statement of the purposes for which the SSN is collected and used. Such statement must be provided at or prior to the time the SSN is collected. Agencies are required to ensure that SSNs collected for one purpose are not used for another purpose. Additionally, this act requires that SSNs collected by agencies prior to the effective date of this act,<sup>36</sup> must be reviewed for compliance with the act's provisions. SSNs must be removed from an agency's records if prior collection is found to be unwarranted and the agency must immediately discontinue the collection of SSNs for that purpose.

#### **Agency Report**

The aggregate of such requests will serve as the basis for the annual agency report required by this act. Beginning January 31, 2004, and each January 31<sup>st</sup> after that, each agency must file a report with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives. This report must list the identity of all commercial entities having requested SSNs during the preceding calendar year and the specific purpose or purposes stated by each commercial entity regarding such entity's need for SSNs. If no SSNs were requested by a commercial entity, then the agency must so indicate in its report.

### **Final Judgments, Court Orders, and Docket Sheets**

This act provides that on or after October 1, 2002, any final judgment, court order, or docket sheet containing SSNs must enter the SSNs on a separate page. This page must be maintained as a separate attachment, and that attachment must not be filed with or recorded by the county recorder

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<sup>33</sup> For example, newspapers can receive a person's SSN in order to verify a person's identity.

<sup>34</sup> Bulk sale is the selling (transferring of ownership) of a large number of SSNs to a third party.

<sup>35</sup> This does not prevent universities, community colleges, and junior colleges from collecting SSNs and using SSNs as a primary identifier.

<sup>36</sup> The effective date of CS/HB 1673, 2<sup>nd</sup> ENG., is "upon becoming a law." This bill was approved by the Governor and became law on May 13, 2002.

in the official records.<sup>37</sup> The separate attachment is available to other governmental entities and to commercial entities.

On May 30, 2002, SB 24-E, 2nd Engrossed, was approved by the Governor and became law as Chapter 2002-391, Laws of Florida. Chapter 2002-391, L.O.F., repealed the requirements pertaining to final judgments, court orders, and docket sheets (s. 119.072(5), F.S.). 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.

### Redaction

This act also provides that, except for separate sheets of paper identifying SSNs attached to final judgments, court orders, or docket sheets, SSNs included in court files before, on, or after October 1, 2002, must be redacted if the holder of the SSN, or his or her attorney or legal guardian, provides a legibly signed written request specifying the case name, case number, and the document heading and page number, otherwise the SSN may be made available for public inspection and copying as part of the court file.<sup>38</sup> Such written request must be delivered by mail, facsimile, or electronic transmission, or delivered in person, to the clerk of the court (clerk).<sup>39</sup> The holder of the SSN, or his or her attorney or legal guardian, cannot request removal of his or her SSN from a final judgment, court order, or docket sheet.<sup>40</sup> The clerk cannot charge a fee for the redaction of SSNs pursuant to such request.<sup>41</sup>

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<sup>37</sup> 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."

<sup>38</sup> On May 30, 2002, SB 24-E, 2nd Engrossed, was approved by the Governor and became law as Chapter 2002-391, Laws of Florida. Chapter 2002-391, L.O.F., repealed subsection (5) of s. 119.072, F.S., which was created by Chapter 2002-256, L.O.F. Chapter 2002-391, L.O.F., repeals the provision contained in subsection (5) which provides that any SSN, contained in a final judgment, court order, or docket sheet, be placed on a separate sheet of paper, which is not to be recorded with the Clerk, and which is 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 included in a court record may be redacted if the holder of that number makes a written request. 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.

<sup>39</sup> Article V, section 16 of the Florida Constitution provides for the Clerks of the Circuit Courts (Clerks). Clerks are selected pursuant to Article VIII, section 1 of the Florida Constitution, which specifies that clerks are elected constitutional officers, chosen by the electors of each county. A Clerk serves for a term of four years. There may be a Clerk of the County Court if authorized by general or special law. Chapter 28, F.S., sets forth the duties and responsibilities of the Clerk. Section 28.222, F.S., states that the Clerk "shall be the recorder of all instruments 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. 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; those portions 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, F.S., and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008, F.S.

<sup>40</sup> Pursuant to Chapter 2002-391, L.O.F., beginning January 1, 2006, the clerk of the court and the county recorder must keep *all* SSNs confidential and exempt. A person will no longer have to request redaction of such number. Additionally, the general public, along with commercial entities, will no longer have access to SSNs contained in court records and official records.

<sup>41</sup> 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

## Official Records

### Exclusion of SSNs

On or after October 1, 2002, no person preparing or filing a document for recordation with the county recorder may include a person's SSN in that document, unless required by law. If a SSN is or has been included in such document before, on, or after October 1, 2002, then such number may be made available for public inspection and copying as part of the official record.<sup>42</sup>

### Redaction

This act allows a person, or his or her attorney or legal guardian, to provide a signed written request to the county recorder requesting that the holder's SSN be redacted from an image or a copy of an official record placed on a county recorder's publicly available Internet website. Such request must be legibly signed by the requestor and must specify the identification page number that contains the SSN. Also, such request must be delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The county recorder cannot charge a fee for the redaction of SSNs pursuant to such request.<sup>43</sup>

### Notice to the Public

This act requires a county recorder to

- Immediately and conspicuously post signs throughout his or her offices for public viewing;
- Immediately and conspicuously post a notice on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records; and
- Publish on two separate dates in a newspaper of general circulation in the county where the county recorder's office is located, a notice stating that SSNs should not be included in

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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. 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. Issues arise when confidential or exempt information is permanently removed from the electronic or microfilm record in that the original document, as 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.

<sup>42</sup> Pursuant to Chapter 2002-391, L.O.F., beginning January 1, 2006, the clerk of the court and the county recorder must keep *all* SSNs confidential and exempt. A person will no longer have to request redaction of such number. Additionally, the general public, along with commercial entities, will no longer have access to SSNs contained in court records and official records.

<sup>43</sup> At present, the Clerks have varying practices regarding the redaction of confidential or exempt information contained in official records. Official records are usually kept in electronic format and on microfilm in the Clerks' offices. When a request is made to 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. The varying practices of the Clerks indicate that there is no consensus regarding how to redact confidential or exempt information from 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, containing all the information, is no longer retrievable. This could create conflict as to what was actually in the document, as originally recorded, should legal concerns emerge.

documents filed for recordation in the official records unless required by law, and how to request that a SSN be redacted from an image or copy of such document.<sup>44</sup>

### **Penalty Provisions / Petition to Court**

This act creates penalty provisions. Any person who falsely represents him or herself in order to obtain SSNs, or who willfully and knowingly violates the provisions this act, commits a third degree felony. Such felony is punishable by a term of imprisonment not to exceed five years<sup>45</sup> or a fine not to exceed \$5,000.<sup>46</sup> Also, any public officer who violates any provision of this act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500.<sup>47</sup> A commercial entity providing access to public records containing SSNs in accordance with this act is not subject to the previously mentioned penalty provisions.

This act provides for petition of the court. Any person affected by the act's provisions may petition the circuit court for an order directing compliance with this act.

#### 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.

2. Expenditures:

Indeterminate. See "Fiscal Comments".

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments".

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>44</sup> Such notice must be published on two separate dates prior to October 1, 2002.

<sup>45</sup> Section 775.082(3)(d), F.S.

<sup>46</sup> Section 775.083(1)(c), F.S.

<sup>47</sup> Pursuant to Chapter 2002-391, L.O.F., beginning May 30, 2002, the penalty provisions no longer apply to the clerks of the court or the county recorder.

D. FISCAL COMMENTS:

The interim survey<sup>48</sup> asked agencies and educational institutions to detail the effects of holding all SSNs exempt from public disclosure. The Department of Agriculture and Consumer Services (DACS) said there would be no impact on the agency, except as to the time and expense it would take to “block out” SSNs in response to a public records request.<sup>49</sup> DACS said there would also be an increased cost for a new system. The Department of Business and Professional Regulation said there would be no effect if SSNs were held exempt from public disclosure, except regarding the time and expense it would take to redact, or “blacken out”, SSNs on records provided through public records requests. Central Florida Community College responded that the financial impact would be minimal as long as SSNs continued to serve as primary identifiers. Palm Beach Community College and St. Petersburg Community College responded that such an exemption would have little effect, because SSNs are already protected from disclosure. The University of North Florida responded that if SSNs were exempt from disclosure, extensive changes would be necessary at a significant cost. The University of Florida stated that holding SSNs exempt from disclosure would result in a loss of efficiency, eliminate or reduce many of the services and benefits available from present technology, and increase reliance on manual processes. Expensive modifications to online and batch processes would be required.<sup>50</sup>

Finally, this act requires county recorders to publish and post signs and notices stating that SSNs should not be included in documents filed for recording unless required by law, and stating how to request that a SSN be redacted from an image or copy of such document. The cost for the county recorders posting such notices is minimal.

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.

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<sup>48</sup> See text *infra* at 2.

<sup>49</sup> Pursuant to a public records request, an agency must review the documents requested and then redact any exempt or confidential and exempt information. If a public records request is made for a large volume of hard copy records or for a large computer data dump, then an agency must review all records contained therein and redact all exempt or confidential and exempt information. This could require extensive use of technological resources or extensive assistance from personnel. Section 119.07(b), F.S., provides that agencies may levy a special service charge if a public records request for inspection, examination, or duplication will require extensive use of the agency’s technological or personnel resources. This charge must be reasonable and it must be based on the cost to the agency of fulfilling the extensive records request.

<sup>50</sup> With technological advances in computer software, agencies should be sensitive when purchasing new software, or updating their computer systems, of the capabilities and flexibility of the software and systems with regard to storage and retrieval of information as well as with regard to redaction capabilities—that is being able to blacken out various fields or suppress, or segregate, certain information. Furthermore, additional attention may need to be paid to information collection methodologies in order to more easily facilitate nondisclosure of confidential or exempt information. For many years agencies have been affected by a number of exemptions, and have had to deal with the repeal of old exemptions as well as with the creation of new exemptions. Also, finding and redacting SSNs should be more easily accomplished than keeping certain other more descriptive information exempt because the SSN is a sequenced, numeric piece of information, easily identifiable.

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:

Members of the legislature have expressed concern regarding access to SSNs and the availability of such numbers pursuant to a public records request. Several members have received calls from constituents who have also expressed concern regarding the public's easy access to such a personal and unique identifier. Access to a person's SSN not only creates the opportunity for identity theft or fraud, but also allows access to very sensitive personal information regarding individuals. Access to that information could cause harm or embarrassment to an individual and is an invasion of that individual's privacy.<sup>51</sup>

Private sector enterprises<sup>52</sup> rely upon public records, which sometimes include SSNs, as a means to "uncover fraud and identity theft, make sound credit determinations, and otherwise verify identities in order to conduct a vast amount of business transactions."<sup>53</sup> SSNs are considered an integral part of many businesses' verification process. Businesses were concerned that they would no longer be able to receive large data dumps containing SSNs on everybody, thus allowing them to perform their own searches, without being dependent upon the agency to confirm identities. Because of these concerns, this exemption provides an exception for commercial entities.

For persons other than commercial entities, this exemption will still not impede searches by SSN. If a person can provide an agency with an individual's name and SSN, that agency can conduct a search using the provided information. This act will only prevent an individual from receiving a data dump containing SSNs.

On January 10, 2002, the 16<sup>th</sup> Statewide Grand Jury (Grand Jury) issued a report regarding identity theft in Florida. The Grand Jury's report stated:

We suggest that rather than assuming everything government collects is automatically a public record unless otherwise exempted, we believe the presumption should be reversed. *That is, private information collected from citizens should be presumed confidential and non-disclosable unless there is a statutory ground for its release.* We are

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<sup>51</sup> Testimony taken at the Committee on State Administration meeting, October 23, 2001, and at the Joint Committee on State Administration and Committee on Information Technology meeting, November 27, 2001.

<sup>52</sup> Private sector enterprises include banks, insurance companies, security houses, newspapers, and private investigative agencies, to name a few.

<sup>53</sup> DiMarco, Anthony, Unintended Consequences of Limits on Public Records, September 21, 2000, at 1.

not convinced that doing so would violate the spirit and intent of the First Amendment.<sup>54</sup>

The Grand Jury's recommendations to maintain the security of SSNs included:

- Exempting personal identifying information of citizens from public records, including SSNs, birth dates, driver's license numbers, and phone numbers.
- Withholding personal information, including SSNs, at driver's license offices unless a person specifically asks for his or her own information to be released.
- Prohibiting the financial industry from selling personal information, including SSNs, without customer permission.
- Requiring government and businesses to only collect necessary personal information.<sup>55</sup>

On February 4, 2002, the *St. Petersburg Times* recently published an editorial entitled "Assaults on sunshine". The article discussed the necessity of the public records exemption for SSNs. It said:

The Social Security number is the only unique identifier we have and, as such, it has become the key to unlocking all sorts of personal records, from credit history to medical records. Easy access to Social Security numbers is a significant cause of the growing epidemic of identity theft. Obviously, the state should not be complicit in this. Floridians are forced to give up their Social Security numbers to government agencies for a variety of purposes, from filing for a homestead exemption to employment in a state job. In doing so, they should have confidence that the numbers are held for government purposes only and not made generally available.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Council for Smarter Government adopted an amendment to HB 1673. The bill, as amended, was reported favorably as a council substitute. The council substitute more clearly states the examples of a "legitimate business purpose". It clarifies that a legitimate business purpose does not include the display or bulk sale of SSNs to the general public. The council substitute changes the effective date from "upon becoming law" to October 1, 2002. Various members of the Business Privacy Coalition worked with staff to refine the amendment's provisions and are in support of the amendment, which is now the council substitute. The coalition, at the time the amendment (which is now the council substitute) was adopted expressed no further concerns with the public records exemption language.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

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

<sup>54</sup> Statewide Grand Jury Report, Identity Theft in Florida, First Interim Report of the 16<sup>th</sup> Statewide Grand Jury, case number SC 01-1095, January 10, 2002, at 13 (emphasis added).

<sup>55</sup> For example, "health clubs and video rental stores should not require Social Security numbers on applications." *Id* at 22.



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**DATE:** June 14, 2002

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**AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:**

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

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Don Rubottom

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON STATE ADMINISTRATION:**

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

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

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