

By the Committee on Governmental Oversight and Accountability

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1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; amending s. 119.071, F.S.;  
4           providing that social security numbers of current and  
5           former agency employees held by the employing agency  
6           are confidential and exempt; providing exceptions;  
7           authorizing current or former agency employees to  
8           provide written notice to another agency to maintain  
9           the confidential and exempt status of such social  
10          security number; providing exceptions; saving the  
11          exemption from repeal under the Open Government Sunset  
12          Review Act; deleting provisions that provide for  
13          repeal of the exemption; requiring that an agency  
14          identify the laws governing the collection, use, and  
15          release of social security numbers and ensure that it  
16          complies with such laws; requiring notice as to  
17          whether collection of a social security number is  
18          mandatory under federal or state law; redefining the  
19          term "commercial activity" for purposes of provisions  
20          authorizing the disclosure of a social security number  
21          under limited circumstances; clarifying that certain  
22          provisions do not supersede federal or state  
23          requirements regarding the collection, use, or release  
24          of social security numbers; providing a statement of  
25          public necessity; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29          Section 1. Paragraph (a) of subsection (4) and paragraph

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30 (a) of subsection (5) of section 119.071, Florida Statutes, is  
31 amended to read:

32 119.071 General exemptions from inspection or copying of  
33 public records.—

34 (4) AGENCY PERSONNEL INFORMATION.—

35 (a)1. The social security numbers of all current and former  
36 agency employees which numbers are held by the ~~contained in~~  
37 employing agency employment records are confidential and exempt  
38 from s. 119.07(1) and s. 24(a), Art. I of the State  
39 Constitution.

40 2. The employing agency may disclose a social security  
41 number of a current or former agency employee protected under  
42 subparagraph 1. if any of the following apply:

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

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

48 c. The individual expressly consents in writing to the  
49 disclosure of the individual's social security number.

50 d. The disclosure of the social security number is made in  
51 order to comply with the USA Patriot Act of 2001, Pub. L. No.  
52 107-56, Presidential Executive Order 13224.

53 e. The disclosure is made to a commercial entity for the  
54 permissible uses set forth in the Drivers Privacy Protection  
55 Act, 18 U.S.C. 2721 et seq., the Fair Credit Reporting Act, 15  
56 U.S.C. 1681 et seq., or the Financial Modernization Act of 1999,  
57 15 U.S.C. 6801 et seq., or for verification of the accuracy of  
58 personal information received by a commercial entity in the

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59 normal course of its business, as provided in paragraph (5) (a),  
60 if the authorized commercial entity complies with the  
61 requirements of that paragraph.

62 f. The disclosure of the social security number is for the  
63 purpose of the administration of a state agency employee's or  
64 the state agency employee's dependent's health benefits.

65 g. The disclosure of the social security number is for the  
66 purpose of the administration of a pension fund administered for  
67 the public employees' retirement fund, a deferred compensation  
68 plan, or defined contribution plan.

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

72 3. An individual who is currently or was formerly employed  
73 by an agency and whose social security number is protected under  
74 subparagraph 1. may file a written notice with another agency  
75 that is not his or her employer to notify such agency that the  
76 individual is protected under subparagraph 1. Upon receipt of  
77 such notification, the agency shall maintain the confidential  
78 and exempt status of the individual's social security number,  
79 except as provided in subparagraph 2.

80 ~~2. An agency that is the custodian of a social security~~  
81 ~~number specified in subparagraph 1. and that is not the~~  
82 ~~employing agency shall maintain the exempt status of the social~~  
83 ~~security number only if the employee or the employing agency of~~  
84 ~~the employee submits a written request for confidentiality to~~  
85 ~~the custodial agency. However, upon a request by a commercial~~  
86 ~~entity as provided in sub-subparagraph (5) (a) 7.b., the custodial~~  
87 ~~agency shall release the last four digits of the exempt social~~

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~~security number, except that a social security number provided in a lien filed with the Department of State shall be released in its entirety. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(5) OTHER PERSONAL INFORMATION.—

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

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

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

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

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

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

b. An agency shall identify in writing the specific federal

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117 or state laws governing the collection, use, and release of  
118 social security numbers for each purpose for which the agency  
119 collects the social security number, including any authorized  
120 exceptions that apply to such collection, use, and release. Each  
121 agency shall ensure that the collection, use, and release of  
122 social security numbers complies with the specific federal or  
123 state law that applies.

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

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

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

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

141 5. Social security numbers held by an agency are  
142 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
143 of the State Constitution. This exemption applies to social  
144 security numbers held by an agency before, on, or after the  
145 effective date of this exemption.

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

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

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

155           c. The individual expressly consents in writing to the  
156 disclosure of the individual's social security number.

157           d. The disclosure of the social security number is made in  
158 order to comply with the USA Patriot Act of 2001, Pub. L. No.  
159 107-56, or Presidential Executive Order 13224.

160           e. The disclosure is made to a commercial entity for the  
161 permissible uses set forth in the Drivers Privacy Protection  
162 Act, 18 U.S.C. 2721 et seq., the Fair Credit Reporting Act, 15  
163 U.S.C. 1681 et seq., or the Financial Modernization Act of 1999,  
164 15 U.S.C. 6801 et seq., if the authorized commercial entity  
165 complies with the requirements of this paragraph.

166           f. The disclosure of the social security number is for the  
167 purpose of the administration of a state agency employee's or  
168 the state agency employee's dependent's health benefits.

169           g. The disclosure of the social security number is for the  
170 purpose of the administration of a pension fund administered for  
171 the public employees' retirement fund, a deferred compensation  
172 plan, or defined contribution plan.

173           h. The disclosure of the social security number is for the  
174 purpose of the administration of the Uniform Commercial Code by

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175 the office of the Secretary of State.

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

177 (I) "Commercial activity" means the permissible uses set  
178 forth in the Drivers Privacy Protection Act, 18 U.S.C. 2721 et  
179 seq., the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., or  
180 the Financial Modernization Act of 1999, 15 U.S.C. 6801 et seq.,  
181 ~~or for provision of a lawful product or service by a commercial~~  
182 ~~entity. Commercial activity includes~~ verification of the  
183 accuracy of personal information received by a commercial entity  
184 in the normal course of its business, including identification  
185 and prevention of fraud; use for insurance purposes; use in  
186 ~~identifying and preventing fraud;~~ use in matching, verifying, or  
187 retrieving information; and use in research activities. It does  
188 not include the display or bulk sale of social security numbers  
189 to the public or the distribution of such numbers to any  
190 customer that is not identifiable by the commercial entity.

191 (II) "Commercial entity" means any corporation,  
192 partnership, limited partnership, proprietorship, sole  
193 proprietorship, firm, enterprise, franchise, or association that  
194 performs a commercial activity in this state.

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

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

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

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204 (III) Contain the commercial entity's name, business  
205 mailing and location addresses, and business telephone number;  
206 and

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

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

218 8.a. Any person who makes a false representation in order  
219 to obtain a social security number pursuant to this paragraph,  
220 or any person who willfully and knowingly violates this  
221 paragraph, commits a felony of the third degree, punishable as  
222 provided in s. 775.082 or s. 775.083.

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

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

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

232 (I) The identity of all commercial entities that have



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233 requested social security numbers during the preceding calendar  
234 year; and

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

238 c. If no disclosure requests were made, the agency shall so  
239 indicate.

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

242 11. This paragraph does not supersede any federal or state  
243 requirement regarding the collection, use, or release of social  
244 security numbers or any other applicable public records  
245 exemptions existing prior to May 13, 2002, or created  
246 thereafter.

247 Section 2. The Legislature finds that it is a public  
248 necessity that agency employee social security numbers be made  
249 confidential and exempt from s. 24(a), Article I of the State  
250 Constitution and s. 119.07(1), Florida Statutes. The Legislature  
251 notes that the lawful collection, use, and release of social  
252 security numbers requires knowledge of a variety of complex  
253 federal requirements that must be applied differently in various  
254 circumstances. Federal requirements for the collection, use, and  
255 release may differ from agency to agency depending upon the  
256 purpose or use for which the social security number is collected  
257 or the year in which such number was collected. The Legislature  
258 finds that compliance with applicable federal requirements  
259 regarding the collection, use, and release requires that agency  
260 employee social security numbers be made confidential and  
261 exempt.

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Section 3. This act shall take effect July 1, 2009.