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CS/HB 7051

2009 Legislature

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act for social security numbers; amending s.  
4           119.071, F.S.; providing that social security numbers of  
5           current and former agency employees held by the employing  
6           agency are confidential and exempt from public records  
7           requirements; providing for future review and repeal of  
8           the exemption; requiring that an agency identify in  
9           writing the specific federal or state laws governing the  
10          collection, use, and release of social security numbers  
11          and ensure compliance therewith; requiring notice as to  
12          whether collection of a social security number is  
13          authorized or mandatory under federal or state law;  
14          clarifying that the public records exemption for social  
15          security numbers held by an agency does not supersede any  
16          federal law prohibiting the release of social security  
17          numbers or any other applicable public records exemptions  
18          for social security numbers; delineating conditions under  
19          which social security numbers held by an agency may be  
20          disclosed; redefining the term "commercial activity" for  
21          purposes of provisions authorizing the disclosure of a  
22          social security number under limited circumstances;  
23          eliminating agency reports of requests for social security  
24          numbers by commercial entities; reenacting ss.  
25          119.0714(1)(i), (2)(e), and (3)(b) and 1007.35(8)(b),  
26          F.S., relating to social security numbers contained in  
27          records that are made part of a court file, a future  
28          requirement of court clerks to keep social security

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 numbers confidential and exempt without a request for  
30 redaction and specified nonapplicability to court clerks  
31 with respect to court records, the availability of social  
32 security numbers as part of official records, a future  
33 requirement of county recorders to keep social security  
34 numbers confidential and exempt without a request for  
35 redaction and specified nonapplicability to county  
36 recorders with respect to official records, and access to  
37 specified information under the Florida Partnership for  
38 Minority and Underrepresented Student Achievement,  
39 respectively, for the purpose of incorporating the  
40 amendment to s. 119.071, F.S., in references thereto,;  
41 providing a statement of public necessity; providing an  
42 effective date.

43

44 Be It Enacted by the Legislature of the State of Florida:

45

46 Section 1. Paragraph (a) of subsection (4) and paragraph  
47 (a) of subsection (5) of section 119.071, Florida Statutes, are  
48 amended to read:

49 119.071 General exemptions from inspection or copying of  
50 public records.--

51 (4) AGENCY PERSONNEL INFORMATION.--

52 (a)~~1.~~ The social security numbers of all current and  
53 former agency employees which numbers are held by the employing  
54 ~~contained in agency employment records~~ are confidential and  
55 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
56 Constitution. This paragraph is subject to the Open Government

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57 Sunset Review Act in accordance with s. 119.15 and shall stand  
58 repealed on October 2, 2014, unless reviewed and saved from  
59 repeal through reenactment by the Legislature.

60 ~~2. An agency that is the custodian of a social security~~  
61 ~~number specified in subparagraph 1. and that is not the~~  
62 ~~employing agency shall maintain the exempt status of the social~~  
63 ~~security number only if the employee or the employing agency of~~  
64 ~~the employee submits a written request for confidentiality to~~  
65 ~~the custodial agency. However, upon a request by a commercial~~  
66 ~~entity as provided in sub-subparagraph (5)(a)7.b., the custodial~~  
67 ~~agency shall release the last four digits of the exempt social~~  
68 ~~security number, except that a social security number provided~~  
69 ~~in a lien filed with the Department of State shall be released~~  
70 ~~in its entirety. This subparagraph is subject to the Open~~  
71 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
72 ~~shall stand repealed on October 2, 2009, unless reviewed and~~  
73 ~~saved from repeal through reenactment by the Legislature.~~

74 (5) OTHER PERSONAL INFORMATION.--

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

82 b. The Legislature recognizes that the social security  
83 number can be used as a tool to perpetuate fraud against an  
84 individual and to acquire sensitive personal, financial,

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85 medical, and familial information, the release of which could  
86 cause great financial or personal harm to an individual.

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

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

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

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

96 b. An agency shall identify in writing the specific  
97 federal or state law governing the collection, use, or release  
98 of social security numbers for each purpose for which the agency  
99 collects the social security number, including any authorized  
100 exceptions that apply to such collection, use, or release. Each  
101 agency shall ensure that the collection, use, or release of  
102 social security numbers complies with the specific applicable  
103 federal or state law.

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

107 3. An agency collecting an individual's social security  
108 number shall provide that individual with a copy of the written  
109 statement required in subparagraph 2. The written statement also  
110 shall state whether collection of the individual's social  
111 security number is authorized or mandatory under federal or  
112 state law.

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113           4.~~a.~~ Each agency shall review whether its collection of  
114 social security numbers is in compliance with subparagraph 2. If  
115 the agency determines that collection of a social security  
116 number is not in compliance with subparagraph 2., the agency  
117 shall immediately discontinue the collection of social security  
118 numbers for that purpose.

119           ~~b. Each agency shall certify to the President of the~~  
120 ~~Senate and the Speaker of the House of Representatives its~~  
121 ~~compliance with this subparagraph no later than January 31,~~  
122 ~~2008.~~

123           5. Social security numbers held by an agency are  
124 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
125 of the State Constitution. This exemption applies to social  
126 security numbers held by an agency before, on, or after the  
127 effective date of this exemption. This exemption does not  
128 supersede any federal law prohibiting the release of social  
129 security numbers or any other applicable public records  
130 exemption for social security numbers existing prior to May 13,  
131 2002, or created thereafter.

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

136           a. The disclosure of the social security number is  
137 expressly required by federal or state law or a court order.

138           b. The disclosure of the social security number is  
139 necessary for the receiving agency or governmental entity to  
140 perform its duties and responsibilities.

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141 c. The individual expressly consents in writing to the  
142 disclosure of his or her social security number.

143 d. The disclosure of the social security number is made to  
144 comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or  
145 Presidential Executive Order 13224.

146 e. The disclosure of the social security number is made to  
147 a commercial entity for the permissible uses set forth in the  
148 federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss.  
149 2721 et seq., the Fair Credit Reporting Act, 15 U.S.C. ss. 1681  
150 et seq., or the Financial Services Modernization Act of 1999, 15  
151 U.S.C. ss. 6801 et seq., provided that the authorized commercial  
152 entity complies with the requirements of this paragraph.

153 f. The disclosure of the social security number is for the  
154 purpose of the administration of health benefits for an agency  
155 employee or his or her dependents.

156 g. The disclosure of the social security number is for the  
157 purpose of the administration of a pension fund administered for  
158 the agency employee's retirement fund, deferred compensation  
159 plan, or defined contribution plan.

160 h. The disclosure of the social security number is for the  
161 purpose of the administration of the Uniform Commercial Code by  
162 the office of the Secretary of State.

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

164 (I) "Commercial activity" means the permissible uses set  
165 forth in the federal Driver's Privacy Protection Act of 1994, 18  
166 U.S.C. ss. 2721 et seq., the Fair Credit Reporting Act, 15  
167 U.S.C. ss. 1681 et seq., or the Financial Services Modernization  
168 Act of 1999, 15 U.S.C. ss. 6801 et seq., or ~~provision of a~~

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169 ~~lawful product or service by a commercial entity. Commercial~~  
 170 ~~activity includes~~ verification of the accuracy of personal  
 171 information received by a commercial entity in the normal course  
 172 of its business, including identification or prevention of fraud  
 173 ~~or; use for insurance purposes; use in identifying and~~  
 174 ~~preventing fraud; use in~~ matching, verifying, or retrieving  
 175 information; ~~and use in research activities~~. It does not include  
 176 the display or bulk sale of social security numbers to the  
 177 public or the distribution of such numbers to any customer that  
 178 is not identifiable by the commercial entity.

179 (II) "Commercial entity" means any corporation,  
 180 partnership, limited partnership, proprietorship, sole  
 181 proprietorship, firm, enterprise, franchise, or association that  
 182 performs a commercial activity in this state.

183 b. An agency may not deny a commercial entity engaged in  
 184 the performance of a commercial activity access to social  
 185 security numbers, provided the social security numbers will be  
 186 used only in the performance of a commercial activity and  
 187 provided the commercial entity makes a written request for the  
 188 social security numbers. The written request must:

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

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

192 (III) Contain the commercial entity's name, business  
 193 mailing and location addresses, and business telephone number;  
 194 and

195 (IV) Contain a statement of the specific purposes for  
 196 which it needs the social security numbers and how the social

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197 security numbers will be used in the performance of a commercial  
198 activity, including the identification of any specific federal  
199 or state law that permits such use. ~~The aggregate of these~~  
200 ~~requests shall serve as the basis for the agency report required~~  
201 ~~in subparagraph 9.~~

202 c. An agency may request any other information reasonably  
203 necessary to verify the identity of a commercial entity  
204 requesting the social security numbers and the specific purposes  
205 for which the numbers will be used.

206 8.a. Any person who makes a false representation in order  
207 to obtain a social security number pursuant to this paragraph,  
208 or any person who willfully and knowingly violates this  
209 paragraph, commits a felony of the third degree, punishable as  
210 provided in s. 775.082 or s. 775.083.

211 b. Any public officer who violates this paragraph commits  
212 a noncriminal infraction, punishable by a fine not exceeding  
213 \$500 per violation.

214 ~~9.a. Every agency shall file a report with the Executive~~  
215 ~~Office of the Governor, the President of the Senate, and the~~  
216 ~~Speaker of the House of Representatives by January 31 of each~~  
217 ~~year.~~

218 ~~b. The report required under sub-subparagraph a. shall~~  
219 ~~list:~~

220 ~~(I) The identity of all commercial entities that have~~  
221 ~~requested social security numbers during the preceding calendar~~  
222 ~~year; and~~

223 ~~(II) The specific purpose or purposes stated by each~~  
224 ~~commercial entity regarding its need for social security~~



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225 ~~numbers.~~

226 ~~e. If no disclosure requests were made, the agency shall~~

227 ~~so indicate.~~

228 9.10. Any affected person may petition the circuit court

229 for an order directing compliance with this paragraph.

230 ~~11. This paragraph does not supersede any other applicable~~

231 ~~public records exemptions existing prior to May 13, 2002, or~~

232 ~~created thereafter.~~

233 Section 2. For the purpose of incorporating the amendment

234 made by this act to section 119.071, Florida Statutes, in

235 references thereto, paragraph (i) of subsection (1), paragraph

236 (e) of subsection (2), and paragraph (b) of subsection (3) of

237 section 119.0714, Florida Statutes, are reenacted to read:

238 119.0714 Court files; court records; official records.--

239 (1) COURT FILES.--Nothing in this chapter shall be

240 construed to exempt from s. 119.07(1) a public record that was

241 made a part of a court file and that is not specifically closed

242 by order of court, except:

243 (i) Social security numbers as provided in s.

244 119.071(5)(a).

245 (2) COURT RECORDS.--

246 (e)1. On January 1, 2011, and thereafter, the clerk of the

247 court must keep social security numbers confidential and exempt

248 as provided for in s. 119.071(5)(a), and bank account, debit,

249 charge, and credit card numbers exempt as provided for in s.

250 119.071(5)(b), without any person having to request redaction.

251 2. Section 119.071(5)(a)7. and 8. does not apply to the

252 clerks of the court with respect to court records.

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253 (3) OFFICIAL RECORDS.--

254 (b)1. If a social security number or a bank account,  
255 debit, charge, or credit card number is included in an official  
256 record, such number may be made available as part of the  
257 official records available for public inspection and copying  
258 unless redaction is requested by the holder of such number or by  
259 the holder's attorney or legal guardian.

260 2. If such record is in electronic format, on January 1,  
261 2011, and thereafter, the county recorder must use his or her  
262 best effort, as provided in paragraph (h), to keep social  
263 security numbers confidential and exempt as provided for in s.  
264 119.071(5) (a), and to keep complete bank account, debit, charge,  
265 and credit card numbers exempt as provided for in s.  
266 119.071(5) (b), without any person having to request redaction.

267 3. Section 119.071(5) (a)7. and 8. does not apply to the  
268 county recorder with respect to official records.

269 Section 3. For the purpose of incorporating the amendment  
270 made by this act to section 119.071, Florida Statutes, in a  
271 reference thereto, paragraph (b) of subsection (8) of section  
272 1007.35, Florida Statutes, is reenacted to read:

273 1007.35 Florida Partnership for Minority and  
274 Underrepresented Student Achievement.--

275 (8)

276 (b) The department shall contribute to the evaluation  
277 process by providing access, consistent with s. 119.071(5) (a),  
278 to student and teacher information necessary to match against  
279 databases containing teacher professional development data and  
280 databases containing assessment data for the PSAT/NMSQT, SAT,

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281 AP, and other appropriate measures. The department shall also  
282 provide student-level data on student progress from middle  
283 school through high school and into college and the workforce,  
284 if available, in order to support longitudinal studies. The  
285 partnership shall analyze and report student performance data in  
286 a manner that protects the rights of students and parents as  
287 required in 20 U.S.C. s. 1232g and s. 1002.22.

288       Section 4. The Legislature finds that it is a public  
289 necessity that agency employee social security numbers be made  
290 confidential and exempt from s. 119.07(1), Florida Statutes, and  
291 s. 24(a), Article I of the State Constitution. The Legislature  
292 notes that the lawful collection, use, or release of social  
293 security numbers requires knowledge of a variety of complex  
294 federal requirements that must be applied differently in various  
295 circumstances. Federal requirements for the collection, use, or  
296 release may differ from agency to agency depending upon the  
297 purpose or use for which the social security number is collected  
298 or the year in which the number was collected. The Legislature  
299 finds that compliance with applicable federal requirements  
300 regarding the collection, use, or release of social security  
301 numbers requires that agency employee social security numbers be  
302 made confidential and exempt.

303       Section 5. This act shall take effect October 1, 2009.