

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 Use of Social Security Numbers in Public Postsecondary Education
SPONSOR(S): Rich
TIED BILLS: **IDEN./SIM. BILLS:** SB 1218 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Higher Education (Sub)		Tilton	Bohannon
2) Education K-20			
3) Judiciary			
4) Education Appropriations (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

HB 229 prohibits a state university or community college from:

- Using a social security number as an identification number to identify a student;
- Publicly posting or displaying in any manner a student's social security number;
- Printing a student's social security number on any identification document issued by a state university or community college;
- Requiring a student to transmit his or her social security number over the Internet unless the connection is secure and the social security number is encrypted; and
- Requiring a student to use his or her social security number to access an Internet website unless a password or unique personal identification number or other authentication device is also required to access the Internet website.

The bill requires each state university and each community college to develop a plan to implement the requirements of the bill for application to students enrolled after July 1, 2005. The plan must include provisions for educating staff regarding the proper and improper uses of social security numbers. The plan must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2005 and shall be implemented no later than July 1, 2005.

The bill also provides that, beginning July 1, 2005, any affected student may petition the circuit court for an order directing compliance with this section.

The bill may have a fiscal impact on state universities, community colleges, and the Department of Education. Please see FISCAL COMMENTS.

The bill has an effective date of July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0229.edk.doc
DATE: March 26, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

By requiring state universities and community colleges to implement a plan prohibiting the use of student social security numbers and by requiring a report of such implementation to be made by state universities and community colleges, the bill increases government and may require the institutions as well as the Department of Education to modify current procedures and recordkeeping policies.

B. EFFECT OF PROPOSED CHANGES:

Use of Student Social Security Numbers and Identify Theft

State universities and community colleges use a student’s social security number as a student’s primary identifier in order to locate records on that student. Social security numbers may be used by postsecondary institutions for a variety of reasons including financial aid, transcript exchange, monitoring student progress for accountability purposes, and conducting research to evaluate and improve educational programs and policies.

According to a survey conducted by the House Committee on State Administration, in conjunction with the House Committee on Information Technology¹, state universities and community colleges collect social security numbers for various purposes. Survey responses indicated that the state universities and community colleges disclosed social security numbers for a variety of legitimate student purposes such as to collection agencies, health insurance companies, and other contractors. The survey indicated that state universities and community colleges do not disclose a student’s social security number for commercial purposes or pecuniary gain.

However, the use of a student’s social security number and the potential for its public dissemination make it more likely that an individual could use a student’s social security number to obtain personal and private information, including financial and health information, for improper purposes. Improper use of personal identification information is becoming a state and national problem. In 2000, Governor Bush appointed a statewide Task Force on Privacy and Technology (Task Force) pursuant to s. 282.3095, F.S. According to the Task Force, identity theft is one of the fastest growing crimes in the U.S., affecting nearly half a million people in 1998. Florida accounts for the third most reported complaints of identity theft to the Federal Trade Commission.²

As a result, the 2002 Legislature created s. 119.0721, F.S., which establishes a public records exemption for social security numbers in the possession of state agencies, its agents, employees, or contractors.

¹ Interim Project Report by Committee on State Administration & Committee on Information Technology – November 2001.

² The Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

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

Existing Student Privacy Law

Florida law closely mirrors the federal Family Education and Rights and Privacy Act, 20 U.S.C. s. 1232g (FERPA). FERPA prohibits federal funds from being made available under any applicable program to any educational agency or institution that has a policy or practice of permitting the release of the education records of a student without the written consent of their parents to any individual, agency or organization, with certain specified exemptions.³ The law defines “education records” to include records, files, documents or other materials that contain information directly related to a student and are maintained by an educational agency or institution by a person acting for such agency or institution.⁴

Section 1002.22(2)(d), F.S., which is modeled after FERPA, prohibits any state or local educational entity, board, public school, technical center, or public postsecondary educational institution from releasing student records or reports to any individual, agency or organization without the written consent of the student or that student’s parent if that student is a minor.

Section 1002.22(2)(c), F.S., defines “records” and “reports” to *include* social security numbers.

Section 1002.22(3)(d)1.-13., F.S., provides exemptions from the prior consent requirement for the following persons or entities:

- Officials of schools or other educational institutions in which the student seeks to enroll;
- Other school officials who have legitimate educational interest in the information contained in the records;
- The U.S. Secretary of Education and other federal and state authorities who are authorized to receive such information subject to federal law and State Board of Education rule;
- School officials, in connection with a student’s application for financial aid;
- Individuals or organizations conducting studies relating to testing, administering financial aid programs or improving instruction in certain cases;
- Accrediting organizations, in order to carry out their functions;
- School readiness coalitions and the Florida Partnership for School Readiness;
- For use as evidence in student expulsion hearings;
- Appropriate parties in connection with an emergency;
- The Auditor General and OPPAGA, in certain cases;
- A court of competent jurisdiction in compliance with a court order in response to a lawfully issued subpoena in certain circumstances;
- Credit bureaus, in connection with an agreement for financial aid a student has executed; and
- Parties to an interagency agreement involving the Department of Juvenile Justice and other authorities for the purpose of reducing juvenile crime.

Section 1002.22(5), F.S., gives a student or his or her parent the right to enforce the privacy provisions by petition for injunction in circuit court, and provides for an award of attorneys fees and court costs if they prevail.

³ 20 U.S.C. s. 1232g(b)(1).

⁴ 20 U.S.C. s. 1232g(a)(4)(A).

Public Records Law

Section 119.0721, F.S., already provides an exemption for social security numbers held by any state agency or its agents, employees or contractors from the public records provisions of s. 119.07(1), F.S. and section 24(a) of Article I of the State Constitution. State universities and community colleges are “agencies” for purposes of s. 119.0721, F.S.⁵

Section 119.0721, F.S., allows for the exchange of social security numbers between governmental entities if the exchange is necessary for the receiving entity to perform its duties and responsibilities. For example, a state university could report a student’s social security number to the Department of Education associated with the department’s regulatory authority.

House Bill 229 – Proposed Changes

HB 229 prohibits a state university or community college from:

- Using a social security number as an identification number to identify a student;
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- Printing a student’s social security number on any identification document issued by a state university or community college;
- Requiring a student to transmit his or her social security number over the Internet unless the connection is secure and the social security number is encrypted; and
- Requiring a student to use his or her social security number to access an Internet website unless a password or unique personal identification number or other authentication device is also required to access the Internet website.

The bill defines “publicly post” or “publicly display” to mean to intentionally communicate or otherwise make available to the general public. It exempts from the prohibition on the public posting or display of a SSN records of the clerks of court governed by s. 119.07(3)(ff), F.S.

The bill defines an “identification document” as including, without limitation, a professional license, student identification card, driver’s license, Medicaid card, or health insurance card. According to the DOE, educational institutions generally do not have the authority to issue professional licenses, driver’s licenses, Medicaid cards, or health insurance cards.

The bill requires each state university and each community college to develop a plan to implement the requirements of the bill for application to students enrolled after July 1, 2005. The plan must include provisions for education staff regarding the proper and improper uses of social security numbers. The plan must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2005 and shall be implemented no later than July 1, 2005.

The bill also provides that, beginning July 1, 2005, any affected student may petition the circuit court for an order directing compliance with this section.⁶

C. SECTION DIRECTORY:

Section 1. Creates s. 1004.09, F.S., to prohibit the use of student social security numbers by state universities and community colleges; to require each state university and community college to develop an implementation plan; and to provide a cause of action for enforcement.

Section 2. Provides an effective date of July 1, 2004.

⁵ See s. 119.011(2), F.S.

⁶ Effective July 1, 2004, a student will have to pay a maximum filing fee cap of \$250 (up from the existing maximum fee cap of \$65.50 for one plaintiff), to initiate an action in circuit court, as a result of the statutory implementation of Revision 7 to Article V of the Florida Constitution. See s.32 of ch. 2003-402, L.O.F.; s. 28.241, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS:

The full fiscal impact of the bill is indeterminate. The extent to which state universities, community colleges, and the Department of Education may be required to modify their current procedures with regard to financial aid, transcript exchange, and information systems because of the prohibition against using social security numbers as an identification number to identify students is unknown.

State universities and community colleges will incur costs associated with implementing the bill's provisions. For example, they may have to acquire encryption technology. The Department of Education estimates a cost of \$100,000 to \$250,000 per community college, and reports that the University of Florida spent \$5 million converting student identification numbers to an eight-digit number.

The Florida Gulf Coast University estimated that it would cost \$355,000 to comply with the bill.⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

⁷ Reported to the Senate Committee on Education and reflected in the bill analysis to SB 1218 (the companion to HB 229), March 4, 2004.

2. Other:

This bill does not appear to raise any constitutional issues.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not apply to private postsecondary institutions or public postsecondary vocational technical centers.

The activities prohibited by paragraphs (1)(a), (1)(b) and (1)(c) of the bill are most likely already prohibited by ss. 119.0721, 1002.22, F.S. and FERPA.

The activities prohibited by paragraphs (1)(d) and (1)(e) would be likewise prohibited by ss. 119.0721, 1002.22, F.S. and FERPA to the extent that the use of the social security number is for access to a website owned or operated by a person or entity other than the state university or community college. However, these paragraphs are unclear as to whether they apply to web sites or Internet communications between a student and the state university or community college.

To the extent that the bill creates new exemptions from the open records law for social security numbers, it must comply with the separate bill and single subject requirements of Article 1, Section 24(c) of the State Constitution.

The bill's enforcement provision also mirrors s. 1002.22(5), F.S., with the exception that it does not provide for an award of attorneys fees or court costs to the prevailing parent or student.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES