

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 w/CS 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)	7 Y, 0 N	Carlson	Bohannon
2) Education K-20	24 Y, 0 N w/CS	Carlson	Bohannon
3) Judiciary			
4) Education Appropriations (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

HB 229 prohibits a state university, community college or public postsecondary technical center from:

- 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, community college or public postsecondary technical center to review its policies and procedures relating to social security numbers and other student identifying information and submit a plan that minimizes the opportunity for student identity theft. The plan shall describe how the Internet restrictions are to be implemented and must include provisions for educating staff regarding the proper and improper uses of social security numbers and other student identifying information.

Each state university must submit its plan to the Governor, Board of Governors, President of the Senate, and Speaker of the House of Representatives by February 1, 2005 and shall implement the plan no later than July 1, 2005. Each community college and each public postsecondary technical center must submit their plans to the Governor, State Board of Education, President of the Senate, and Speaker of the House of Representatives by February 1, 2005 and shall implement the plans no later than July 1, 2005.

The bill also requires each state university to annually report its compliance with the provisions of s. 119.0721 and s. 1002.22, F.S., to the Board of Governors, and each community college and public postsecondary technical center to report their compliance to s. 119.0721 and s. 1002.22 to the State Board of Education.

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, public postsecondary technical centers 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: h0229c.edk.doc
DATE: April 2, 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, community colleges and public postsecondary technical centers to report on and implement a plan minimizing student identity theft and by requiring a them to document compliance with Florida law, 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, community college or public postsecondary technical center from:

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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 certain uses of student social security numbers by state universities, community colleges and public postsecondary technical centers; to require review of policies and reporting of and implementation of a plan to minimize student identity theft; to require annual documentation of compliance; and to provide a cause of action for enforcement.

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.

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

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.

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.

2. Other:

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.

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.

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

The Subcommittee on Higher Education recommended a strike-all amendment to the bill on March 29, 2004. The amendment removes provisions that are redundant to current Florida law and the Family Education Rights and Privacy Act; requires affected institutions to evaluate their policies and procedures and implement a plan to reduce identify theft; requires the institutions to report their plans and compliance with privacy laws to the Governor, Board of Governors (state universities), State Board of Education (community colleges and public postsecondary technical centers), the President of the Senate and the Speaker of the House of Representatives.

The Committee on Education K-20 adopted a strike-everything amendment to the bill on March 31, 2004. The amendment removed redundant language and required additional reporting. This analysis is drawn to the amendment.