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**SFA**



**BILL ANALYSIS**

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Senate Bill 81 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Glenn D. Steil  
Committee: Judiciary

Date Completed: 4-30-02

### **RATIONALE**

The Freedom of Information Act (FOIA) provides that it is the public policy in Michigan that all people, except for incarcerated prisoners, "are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees". The Act further states: "The people shall be informed so that they may fully participate in the democratic process". Section 13 of FOIA, however, lists numerous types of information that a public body may exempt from disclosure as a public record under the Act. Included on that list is information or records that would disclose the Social Security number of any individual. Since that protection from disclosure is permissive, a public body is not prohibited from disclosing Social Security numbers.

Identity theft--the practice of assuming another person's identity through use of his or her personal information, such as a Social Security number, to obtain credit and make purchases--has been a growing problem across the country in recent years. According to a 1998 General Accounting Office report on identity fraud, arrests by the Secret Service in cases directly associated with identify fraud rose from 8,806 in fiscal year (FY) 1994-95 to 9,455 in FY 1996-97. In addition, the Social Security Administration (SSA) in 1999 surveyed 400 allegations of misuse made to the SSA's fraud hotline between October 1997 and March 1999. This survey found that 81.5% of those allegations involved identity theft. In order to protect people from being victimized by identity thieves, it has been suggested that exempting Social Security numbers from FOIA disclosure be required rather than allowed.

### **CONTENT**

The bill would amend the Freedom of Information Act to require that a public body exempt from disclosure under the Act an individual's Social Security number that was contained in a public record.

"Public body" means any of the following:

- A State officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of State government, but not the Governor or Lieutenant Governor, the executive office of the Governor or Lieutenant Governor, or employees of those offices.
- An agency, board, commission, or council in the legislative branch of State government.
- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency of such an entity.
- Any other body created by State or local authority or primarily funded by or through State or local authority.

The judiciary, including the office of the county clerk and its employees, when acting in the capacity of clerk to the circuit court, is not included in the definition of "public body".

"Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. "Public record" does not include computer software. The Act specifies that it separates public records into the following two classes:

- Those that are exempt from disclosure under the Act.
- All public records that are not exempt from disclosure and that are subject to disclosure under the Act.

MCL 15.243

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

A victim of identity theft can be devastated by the crime and might not even be aware that he or she has been targeted until well after the violation has occurred. According to the Director of the Federal Trade Commission's (FTC's) Bureau of Consumer Protection, unlike most crimes, in which the victim may be immediately aware of the violation, "[I]dentity theft is often silent and invisible. Identity thieves do not need direct contact with their victims. All they need is access to some key components of a victim's personal information, which, for most Americans, may be maintained and used by numerous different public and private entities" (testimony before the U.S. Senate Judiciary Committee's Subcommittee on Technology, Terrorism, and Government Information, March 20, 2002). The Bureau Director also testified that access to personal information, whether through legal or illegal means, is the key to identity theft.

According to the web site for the FTC's Identity Theft Data Clearinghouse, a centralized database used to aid law enforcement and track trends involving identity theft, the most common types of identity theft are fraudulently using or opening a credit card account; fraudulently opening telecommunications or utility accounts; passing bad checks or opening a new bank account; getting loans in another person's name; and working under another person's name (<http://www.consumer.gov/idtheft>). Typically, an identity thief obtains personal information, such as a person's Social Security number, and then opens accounts in that person's name and runs up charges on the accounts.

In recent years, both Federal and Michigan law have recognized the significance of the

problem of identity theft by prohibiting, and prescribing criminal penalties for, actions that constitute identity theft. Under the Identity Theft and Assumption Deterrence Act of 1998, it is a Federal crime to use another person's means of identification with intent to commit, aid, or abet any violation of Federal law or any felony under any applicable state or local law (18 USC 1028). In addition, Public Act 386 of 2000 amended the Michigan Penal Code to prohibit a person from obtaining or attempting to obtain the personal identity information of another person, including a Social Security number, with the intent to use that information unlawfully and without the person's authorization, to obtain financial credit, purchase or otherwise obtain or lease any property, obtain employment, obtain access to medical records or information contained in those records, or commit an illegal act.

While these statutes penalize criminals after the fact, and perhaps deter some would-be identity thieves, the bill would help prevent identity theft from occurring in the first place. By requiring public bodies to exempt Social Security numbers from disclosure, the bill would offer additional protection against the serious and increasingly common crime of identity theft.

**Response:** The law also should require private and public entities to reduce or eliminate the use of Social Security numbers as universal identifiers. Many services, from health insurance providers, to utility companies, to video rental stores, routinely use a person's Social Security number to index his or her account. Social Security numbers were never meant to be used in this manner and these practices should be halted.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.