

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0296
Prime Sponsor(s): Rep. Coram

Date: February 5, 2014
Bill Status: House SVMA
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SHORT TITLE: CONFIDENTIALITY SOCIAL SECURITY NUMBERS

| Fiscal Impact Summary* | FY 2014-2015 | FY 2015-2016 |
|-------------------------------------|---|---------------------|
| State Revenue | | |
| State Expenditures | Minimal workload and cost increases. See State Expenditures section. | |
| FTE Position Change | | |
| Appropriation Required: None | | |

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill amends an existing Colorado statute within the Colorado Consumer Protection Act (CCPA) concerning the confidentiality of an individual's social security number (SSN).

Under the bill, an organization may not make disclosure of an individual's SSN a condition to serve as an unpaid member of the organization's board of directors. The bill also adopts language from federal law that:

- prohibits state and local government agencies from denying a right, benefit, or privilege if an individual refuses to disclose his or her SSN; and
- requires state and local agencies to inform individuals whether an SSN disclosure is mandatory or voluntary, by what legal authority a disclosure is requested, and how a disclosed SSN will be used.

Finally, the bill clarifies that it does not apply to patient information subject to the federal Health Insurance Portability and Accountability Act (HIPAA).

Background

The federal Privacy Act of 1974¹ contains language substantially identical to that in the bill's proposed Section 6-1-715 (3.5), C.R.S., including language prohibiting "state or local government to deny an individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security account number." This provision of the Privacy Act does not apply to disclosures required by federal statute or by federal, state, or local law or rule adopted prior to 1975.

¹ Federal Privacy Act of 1974, Pub. L. No. 93-579 § 7; 5 U.S.C. § 552a note.

State Expenditures

The bill results in an ongoing minimal workload increase for the Judicial Branch and the Department of Law, and a minimal workload and cost increase, in FY 2014-15 only, for certain other state agencies.

Assumptions. Certain government activities that collect, use, or release social security numbers do not fall within the scope of the bill by definition. The fiscal note assumes that when a government agency's role is as an employer or a party to a contract, the use of an SSN is not related to a "right, benefit, or privilege" within the meaning of the bill.

The fiscal note also assumes that government agencies collect, use, and release SSNs with appropriate legal authority. Agencies that collect SSNs generally act under specific legal authority. For example, in the administration of unemployment insurance (UI) and Trade Adjustment Act benefits, the Colorado Department of Labor and Employment (CDLE) requires an SSN as the taxpayer identification number, in accordance with federal law.

Judicial Branch. Currently, a small amount of litigation in federal court concerns the analogous confidentiality and disclosure provisions in federal law. By incorporating disputed language into state law, it is anticipated that Colorado state courts will be required to interpret and apply provisions of the bill in a small number of cases. No new appropriations are necessary to address this minimal increase in the workload of state courts.

Department of Law. The procedures of state agencies that collect, use, and release SSNs may be challenged under the bill. In a small number of cases the bill may require the legal services of the Attorney General's Office to defend agency procedures related to the handling of SSNs. These services are assumed to be within the budget capacity of affected state agencies that reappropriate funds for legal services to the Department of Law.

The Attorney General is also responsible for investigating and taking enforcement action when it receives complaints concerning violations of the CCPA. Few complaints about organizations that require an SSN disclosure to serve on its board are anticipated, and workload associated with enforcement of the CCPA will increase minimally.

Other state agencies. The bill results in increased workload and costs for other state agencies in FY 2014-15, to the extent that the bill requires modification of current practices that collect and use SSNs. In many instances, SSNs are used by state agencies to verify an individual's identity. Affected agencies and areas of impact are summarized in Table 1.

| Table 1. State agencies with a potential fiscal impact under HB 14-1141. | | |
|---|---|--|
| Agency | Area of impact | Type of fiscal impact |
| Department of Labor and Employment | Various programs | Workload increase to inform individuals about the use of SSNs. |
| Department of Personnel | Central Collections Services | Increased workload to recover funds owed to state agencies if disclosure of SSN cannot be compelled. |
| Department of Local Affairs | Property taxation, senior and veteran exemptions | Workload increase to change manuals, application forms, training materials, and answer taxpayer questions. |
| Department of Public Health and Environment | Vital records; Medical marijuana; Other functions, such as the all hazards emergency volunteer database | Workload increase to inform individuals about the use of SSNs. |
| Department of Education | Teacher licensing | Workload increase to inform individuals about the use of SSNs. |
| Institutions of Higher Education | Student loans | Workload increase to inform student borrowers about the use of SSNs. |
| Department of Natural Resources | Permits and licensing | Workload increase to inform individuals about the use of SSNs. |
| Department of Regulatory Agencies | Securities regulation; Professions and occupations | Workload and costs to inform licensees about the use of SSNs; Legal costs. |
| Department of Revenue | Various processes | Workload and costs to inform taxpayers about the use of SSNs. |

Local Government Impact

Local government agencies that collect SSNs may be required to modify procedures to inform individuals about their authority to collect and use SSNs. Local governments may also be required to defend practices relative to standards in the bill, with associated legal costs. These impacts on local governments are expected to drive a minimal increase in workload and expenditures.

Technical Note

The fiscal note assumes that the bill establishes procedural requirements for the collection and use of SSNs, even when agencies are already legally authorized to make use of SSNs. However, the applicability of the bill to these legally authorized activities depends on interpretation of the CCPA. Specifically:

- Section 6-1-106 (1), C.R.S., defines the general applicability of the CCPA, stating that: "This article does not apply to conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency."
- Within the current section of the CCPA affected by the bill, Section 6-1-715 (3), C.R.S., provides, "This section shall not prevent the collection, use, or release of a social security number as required, permitted, or authorized by state or federal law or the use of a social security number for internal verification or administrative purposes, including by the department of revenue."

The fiscal note assumes the bill has an effect by mandating government procedures related to SSNs, but it does not propose or adopt any specific interpretation of the bill in the context of other state and federal law. Implementation of the bill will require affected agencies to resolve issues concerning the applicability and effect of the bill.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

Departmental Difference

The CDLE asserts that up to \$75 million in federal funding for the unemployment insurance (UI) program and the Trade Adjustment Act (TAA) are in jeopardy if benefits cannot be denied when an individual refuses to provide an SSN. The CDLE notes that federal law requires it to collect SSNs for the federally-supported UI and TAA programs. According to CDLE, the potential conflict between federal and state law under the bill may categorically impede federal funding for these programs.

Federal funding is not at risk based on authority in both state and federal law that contemplates and specifically authorizes CDLE's collection and use of SSNs. As discussed above, the CDLE is able to comply with the bill by modifying its procedures to comply with the bill, resulting in a minimal increase in workload in FY 2014-15.

State and Local Government Contacts

All Departments