

MINUTES OF THE MEETING OF THE HOUSE STATE ADMINISTRATION COMMITTEE  
January 13, 1983

CHAIRMAN JOE BRAND called the meeting to order at 9 a.m. in Room 129 of the Capitol. Present were all members.

HOUSE BILL 149

Chairman Brand called for the hearing to begin on House Bill 149 by calling on its sponsor, REP. CARL SEIFERT, who said the measure would prohibit use of social security numbers except as provided by the law. He stressed the Montana Constitution's right to privacy provision, but also said that agencies have decided by administrative rule to use social security numbers on drivers licenses. That rule, by the Drivers License Bureau, took effect March 15, 1982. He said his constituents believe that is a definite invasion of privacy, and an abuse of the constitutional provision. He said federal law allows the states to make such use of social security numbers, but the Federal Privacy Act also encourages the states not to use them. He said, however, the Federal Privacy Act also "grand-fathers" existing uses into legitimacy. REP. SEIFERT said he has amendments for the bill to exempt certain portions of the operations of the University systems and the Revenue Dept. from terms of the bill. He spoke of the development of giant computer dossiers on people, by use of their social security numbers.

TOM RYAN, representing the Montana Senior Citizens Association, stated his group's support of the measure.

TOM STETSON, Charlo, spoke for the bill. He spoke of the "sneaky way" the program has been put into effect by the Drivers License Bureau. He said he researched the matter and found that it was by way of administrative rule, not law. He said there was no citizen input at all into the question. He said the rule was not contemplated for public comment. He said 60 people in Ronan were "very upset." He said "this type of thing should be stopped now and the bill passed so it can't be done down the road."

LAWRENCE WIENBERG, Assistant Chief, Legal Counsel for the University system, said the system supports the measure as amended, he said privacy laws expect educational institutions to secure privacy to educational records. He referred to a handout of a copy of the public law. (See witness Wienberg's statement attached and two handouts.) He said the University system must be exempted from the bill for two reasons: (1) the University system is subject to the Family Educational Records Privacy Act. He said it restricted schools from releasing information about students. He said that if the University system did not obey the federal law, federal money would be lost.

(2) He said the University must use social security numbers for Pell grants and loans and other federal aid programs, otherwise the programs would not be available to Montana students. He said that \$20-30 million is at stake. He endorsed the amendments.

ANTHONY OSTHEIMER, said a possible hazard in reviewing this bill is that people tend to hear what the federal government wants to do without thinking of what the proposed actions would do for peoples' own privacy. He said that social security numbers are used on drivers licenses to substantiate personal checks. He said a lifetime of information could be put into a computer file by way of social security numbers. He urged the committee to "think about our right to privacy."

REP. BERNIE SWIFT said he was "chagrined and shocked" to find social security numbers used on drivers licenses. He said it was a violation of privacy.

CURT CHISHOLM, representing the Department of Institutions, spoke for the bill but said it would create problems. He said the Institutions Department collects social security numbers on patients and inmates. He said the measure would force the department to purge all the files on behalf of patients and inmates, even those who get benefits and must use social security numbers to get those benefits. He said the bill would result in the Institutions Department being put into a "negative position." He asked that the bill be amended to exclude the Department of Institutions.

BOB WOOD, representing the Department of Commerce, said his agency needed to verify information for housing programs by way of social security numbers, and to verify incomes. He said this was for the purpose of standardized housing and housing assistance funding.

ELLEN FEAVER, Director of the Department of Revenue and Taxation, said social security numbers were "most critical in the administration of the income tax period." She said tax information is by statute confidential. She spoke on behalf of original amendments asked for by revenue, and spoken for by the bill's sponsor. She said social security numbers were also needed for public assistance programs, including fraud investigations and Medicaid investigations and Welfare fraud investigations.

CHUCK O'REILLY, the Sheriff of Lewis and Clark County and representing the Montana Peace Officers Association, said law enforcement use social security numbers through the NCIC computer system. He said that for some reason most people will not alter their social security numbers. He asked for the committee to exempt local law enforcement agencies from the bill, "otherwise you are restricting us."

#### OPPONENTS

BILL ROMINE, speaking for the Clerks and Recorders Association, said that some voting registrars do use social security numbers, but the request for voters social security numbers is voluntary. He suggested that the bill be limited to use only in application and regulation of drivers licenses. He said that social security numbers are for election administrators to prevent multiple registrations. He said present law is effective and protects privacy.

LARRY NACHTSHEIM, Administrator of the Public Employees Retirement Division, said that he administers \$28 million a year in funds, and he has the same problems with the bill.

BOB JOHNSON, Administrator of the Teacher's Retirement Division, endorsed Nachtsheim's testimony.

WAYNE TOOLEY, Administrator of the Drivers License Bureau, said that national authorities have been searching for a universal identification number. He said the only useful one was the social security number. He said use of the social security number would promote traffic safety and "make sure an individual is entitled to have that license." He said the biggest problem for licensing officials is to keep those people who have serious records and who have false identification cards off the roads. He said licenses are accepted as universal identification cards, and under the present system, which uses the name and date of birth of drivers, there are probably ten to as many as 40 duplicate records in the existing system for each person in the committee room at the present time. He said there is no reason to write social security numbers on personal checks, however, it offers some protection against the people who write bad checks.

SARA POWER, the Assistant Attorney General, stated the office's objections to the bill. She said the social security number use is voluntary and people may refuse to give their numbers.

JIM MCGARVEY, representing the Montana Federation of Teachers, spoke against the bill.

McGarvey said he resented the gravitation the society has toward each individual becoming a computer card. He said driver license numbers are given to insurance companies when accidents happen or when insurance fees are paid.

THERE BEING NO FURTHER PROPONENTS OR OPPONENTS HEARD, CHAIRMAN BRAND CALLED FOR A CLOSING STATEMENT BY REP. SEIFERT.

In closing, Rep. Seifert said that last year he applied for a social security number, and the new cards no longer have the endorsement on them "for social security and tax use only, not for identification purposes." Rep. Seifert said there were some necessary exemptions from the bill but it should be remembered that the social security number is one of an individual's "most private possessions."

CHAIRMAN JOE BRAND CALLED FOR QUESTIONS FROM COMMITTEE MEMBERS.

REP. FRANCIS KOEHNKE asked Power if the motor vehicle officials advise applicants that use of social security numbers are voluntary. She said yes. Rep. Koehnke said that regardless, most people think the use is involuntary.

REP. JERRY DRISCOLL said that such advice was not given in Billings.

REP. McBRIDE said that University ID's have the social security number on them. She said "this is a reality of the University system." Weinberg says use of the social security numbers were voluntary. He said the social security system came into use very early, and part of the problem is because of the privacy ban. He said that at present there are now three John Smiths in the University directory. He emphasized that federal law considerably restricts use and disclosure of private information.

Chairman Joe Brand asked of a witness standing behind the Chairman's table about the exemptions proposed. He said that "everybody's been saying that they all have the information but nobody releases it to anybody else." Chairman Brand also asked that if social security numbers were not on drivers licenses, how would people get checks cashed. The gentleman answered that at present, there are three Russell E. Smiths in Montana, and that he himself does not need a drivers license to cash checks. He said there are many life-long public servants who don't have social security numbers but are able to cash checks.

The gentleman said that 95 percent of the people tried to stay within the law, and it is not fair to punish that 95 percent who do the right thing just for the excuse of pursuing the 5 percent. He said that drivers licenses have photographs which are better than numbers. He said the tremendous capacity of computers to list, sort and search computer files is "nothing" and he said people can get 9, 10 or 96 social security numbers.

Chairman Brand asked the gentleman if his concerns were only with drivers licenses. The gentleman answered that as a witness they were, but as a citizen, the issue goes much deeper.

Rep. McBride asked Tooley if there had been any thought to changing the number system in the Drivers License Bureau. Tooley said his office had been trying to do that for some time but the need is to converse with other states about drivers and social security numbers to provide a universal reference. He said about 30 states use them, and most uses in most states are voluntary.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 149.

#### HOUSE BILL 140

Chairman Brand opened the hearing on House Bill 140 by calling on its sponsor, REP. RALPH EUDAILY, who said the bill was introduced at the request of the Teacher's Retirement Division. He called it a housekeeping bill, because it appears a section of the existing law violates the age discrimination laws. He deferred to Teacher's Retirement Division Administrator, Bob Johnson for further explanation.

Johnson stated that a mandatory retirement age is now in the statutes of 70. He said that teachers may not be certified after age 70, but according to the Attorney General's opinion #54, dated February 5, 1982, the appropriate authorities cannot enforce that provision. He said there was a good chance of being sued and losing. He said that as far as the law was concerned now, the age of retirement was a matter between a teacher and the employer.

DAVE SEXTON, representing the Montana Education Association, endorsed the measure, he said it was in line with the law.

Jim McGarvey, representing the Montana Federation of Teachers, stated his support for the measure.

THERE BEING NO MORE PROPONENTS FOR HOUSE BILL 140 BEING HEARD AND NO OPPONENTS, CHAIRMAN BRAND CALLED FOR A CLOSING STATEMENT BY REP. EUDAILY.

In closing, Rep. Eudaily stated that the purpose of the bill was to avoid a lawsuit that would use up funds in the Teacher's Retirement Division.

CHAIRMAN BRAND CALLED FOR QUESTIONS BY COMMITTEE MEMBERS.

QUESTIONS BY COMMITTEE MEMBERS

Chairman Brand asked what effect the change would have on the fund. Johnson said very little because the average retirement age is going down.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING ON HOUSE BILL 140.

HOUSE BILL 141

Chairman Brand opened the hearing on House Bill 141 by calling on its sponsor, REP. GAYE HOLLIDAY, who stated that the provision would allow game wardens to purchase credit time for the retirement system for their military service.

TOM SCHNEIDER, Executive Director of the Montana Public Employees Association, stated his support for the measure. He said that game wardens and sheriffs are the only ones who do not have the option to purchase military time credit. He said the employee would have to pay only a percentage of the contribution. Schneider spoke for the proposed amendment, saying that the bill as written would leave a deficit, but the amendment would allow the purchase to be made at no additional cost to the system. He said the amendment would also allow the individual to decide if he/she wanted to invest in the purchase and make his/her military time count.

JIM FLYNN, Director of the Department of Fish, Wildlife and Parks, stated the department's support for the measure. He said that with the adoption of the amendments the wardens would be out of step with other people in the department but in step with other law enforcement programs. He said he would support the measure if it would not cost the department anything. (See Flynn's statement attached.)

THERE BEING NO FURTHER PROPONENTS FOR HOUSE BILL 141, CHAIRMAN BRAND CALLED FOR STATEMENTS BY OPPONENTS.

OPPONENTS

Larry Nachtsheim, Administrator of the Public Employees Retirement Division, said the measure would cost 1.35 percent of payroll period. In the case of a highway patrol, a similar situation, the payroll of \$180,000 a year or more, that's \$18,000 a year. Nachtsheim said, however, the bill would be satisfactory if the employee paid into the fund for the proper "actuarial cost." He said that would amount to 17.07 percent of salary.

THERE BEING NO FURTHER STATEMENTS BY OPPONENTS, CHAIRMAN BRAND CALLED FOR A CLOSING STATEMENT BY THE SPONSOR.

Rep. Holliday spoke for adoption of the amendment to require the employee to bear the actual cost to the system of his purchase of military time credit.

CHAIRMAN BRAND CALLED FOR QUESTIONS BY COMMITTEE MEMBERS.

Chairman Brand asked Nachtsheim how many people who are now covered by the Game Wardens Retirement System. Nachtsheim said that there were 90 active members, and 35 retired as of July 1, 1982. He said the average pension was \$565 a month. Chairman Brand said the committee would not act on the bill until more information was provided. He said that he was concerned that those already retired continued to get their full entitlement.

REP. BILL HAND asked if the 17.07 percent figure was for each year of service sought to be purchased. Nachtsheim said it was.

Rep. Jerry Driscoll asked if game wardens were in the state pay plan. Schneider said they were generally at grade 13, step 7 or 8 and that the cost would amount to about \$3,400 a year for each year of time purchased.

REP. CLYDE SMITH asked if the 17 percent was the same as the highway payroll buy-out rate. Nachtsheim said it was not, that highway patrol people pay only the employee compensation, which is about 6.5 percent.

THERE BEING NO FURTHER QUESTIONS FROM COMMITTEE MEMBERS, CHAIRMAN BRAND CLOSED THE HEARING INTO HOUSE BILL 141.

EXECUTIVE SESSION

CHAIRMAN BRAND BROUGHT THE COMMITTEE INTO EXECUTIVE SESSION BY CALLING FOR ACTION ON HOUSE BILL 107.

Chairman Brand said that the problem with House Bill 107 was that agencies would be uncomfortable if they had to write something. He said the problem is "upfront." He said that it was a good idea for the bill and that if guidelines were set, the bill should be recommended DO PASS AS WRITTEN. But he said that if the committee would not change the bill he would suggest a committee bill be put in later.

REP. HAND MOVED House Bill 107 DO PASS, REP. JOHN PHILLIPS SECONDED.

Question was called and the motion CARRIED by unanimous voice vote.

HOUSE BILL 57

Chairman Brand said that with regard to House Bill 57, it would be appropriate to have a look at the entire system of retirement, and how veterans are treated. Rep. O'Connell spoke of possible discrimination against Vietnam Vets by the bill. Chairman Brand said that the committee should take a look at the entire system.

Chairman Brand indicated that he had decided to hold House Bill 57 for a fiscal note and for other legislation pertaining to the system.

HOUSE BILL 140

REP. WALTER SALES MOVED DO PASS, REP. MUELLER SECONDED.

Rep. Sales said that during the past three sessions, first lawmakers saw a bill that doesn't discriminate. He said it was a great bill.

The question was called and the motion CARRIED by unanimous voice vote.

HOUSE BILL 141

It was decided by concensus that the committee needed more information before it could act on House Bill 141.

HOUSE BILL 149

Chairman Brand suggested that House Bill 149 be held in order to watch Senate action on a particular bill regarding drivers licenses only.



REP. JOHN RYAN noted that he had received only one complaint about social security number usage and that was about drivers licenses.

Rep. Driscoll stated that drivers licenses officials and others should advise prominatly that use of social security numbers is voluntary.

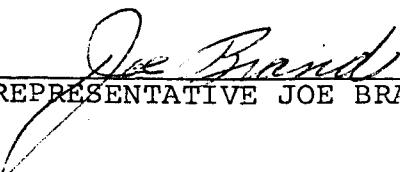
Rep. Chet Solberg asked if the bill might worsen the problem. Chairman Brand said no, the committee would wait on the Senate bill regarding drivers licenses. Rep. Solberg said he was neutral but he questioned what could be done to provide a numbering system for the drivers licenses.

Rep. Mueller noted that "almost all people" have social security numbers.

Rep. Hand said that if there were no numbers on drivers licenses maybe people wouldn't be able to cash checks. Chairman Brand said he agreed and asked what would be used to cash checks. Rep. Koehnke said he used his Montana drivers licenses number for years with no problem. Chairman Brand said that merchants want drivers licenses and appropriate numbers to show that a prospective check casher is a reliable source.

REP. MUELLER MOVED to hold the bill in committee, REP. PISTORIA SEONDED. The question was called and PASSED by unanimous voice vote.

REP. MUELLER MOVED ADJOURNMENT, REP. KOEHNKE SEONDED, AND CHAIRMAN BRAND DECLARED THE MEETING ADJOURNED.

  
REPRESENTATIVE JOE BRAND, Chairman

# STANDING COMMITTEE REPORT

JANUARY 13,

19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 107

first reading copy (white )  
Color

"AN ACT AMENDING SECTIONS 13-27-406 AND 13-27-407, MCA, TO REVISE THE DEADLINES FOR FILING BALLOT ISSUE ARGUMENTS AND REBUTTAL ARGUMENTS; AND TO CLARIFY THE RESULT OF NOT MEETING THE DEADLINE."

Respectfully report as follows: That HOUSE Bill No. 107

DO PASS

# STANDING COMMITTEE REPORT

JANUARY 13,

19 **83**

MR. **SPEAKER**.....

We, your committee on **STATE ADMINISTRATION**.....

having had under consideration **HOUSE**..... Bill No. **140**

**first** reading copy ( **white** )  
Color

"AN ACT ELIMINATING THE MANDATORY RETIREMENT AGE FOR A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM AND REQUIRING A TEACHER INITIALLY EMPLOYED BY THE MONTANA UNIVERSITY SYSTEM AFTER AGE 70 TO BECOME A MEMBER OF THE RETIREMENT SYSTEM; AMENDING SECTION 19-4-302, MCA; REPEALING SECTIONS 19-4-305 AND 19-4-803, MCA; AND PROVIDING AN EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE**..... Bill No. **140**

DO PASS

*House* BILL NO. *140*  
*Carroll*

INTRODUCED BY \_\_\_\_\_  
BY REQUEST OF THE TEACHERS' RETIREMENT DIVISION

5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE  
6 MANDATORY RETIREMENT AGE FOR A MEMBER OF THE TEACHERS'  
7 RETIREMENT SYSTEM AND REQUIRING A TEACHER INITIALLY EMPLOYED  
8 BY THE MONTANA UNIVERSITY SYSTEM AFTER AGE 70 TO BECOME A  
9 MEMBER OF THE RETIREMENT SYSTEM; AMENDING SECTION 19-4-302,  
10 MCA; REPEALING SECTIONS 19-4-305 AND 19-4-803, MCA; AND  
11 PROVIDING AN EFFECTIVE DATE."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 Section 1. Section 19-4-302, MCA, is amended to read:  
15 "19-4-302. Active membership. (1) Unless otherwise  
16 provided by this chapter, the following persons must be  
17 active members of the retirement system, with the exception  
18 that those persons who became eligible for membership on  
19 September 1, 1937, or on September 1, 1939, and who elected  
20 not to become members under the provisions of the law at  
21 that time are not required to be members:

- 22 (a) any person who is a teacher, principal, or
- 23 district superintendent as defined in 20-1-101;
- 24 (b) any person who is an administrative officer or a
- 25 member of the instructional or scientific staff of a unit of

- 1 the Montana university system--except--as--provided---in
- 2 19-4-305;
- 3 (c) any person employed in an instructional services
- 4 capacity by the office of the superintendent of public
- 5 instruction, the office of a county superintendent, a
- 6 special education cooperative, a public institution of the
- 7 state of Montana, the Montana state school for the deaf and
- 8 blind, or a school district;
- 9 (d) any person who has elected not to become a member
- 10 of the retirement system and is reentering service in a
- 11 capacity prescribed by (a), (b), or (c) of subsection (1);
- 12 (e) any person who has elected not to become a member
- 13 of the retirement system, who has been continuously employed
- 14 in a capacity prescribed by (a), (b), or (c) of subsection
- 15 (1) since the time of such election, and who may thereafter
- 16 elect to become a member of the retirement system.
- 17 (2) In order to be eligible for active membership, any
- 18 person described in subsection (1) must:
- 19 (a) be employed in the capacity prescribed for his
- 20 eligibility for at least 30 days in any fiscal year; and
- 21 (b) have the compensation for his creditable service
- 22 totally paid by an employer as defined herein.
- 23 (3) At any time a person's eligibility to become a
- 24 member of the retirement system is in doubt, the retirement
- 25 board shall determine his eligibility for membership. All

HR - 140

1 persons in similar circumstances shall be treated alike."

2 NEW SECTION. Section 2. Repealer. Sections 19-4-305

3 and 19-4-803, MCA, are repealed.

4 NEW SECTION. Section 3. Effective date. This act is

5 effective July 1, 1983.

-End-

*House* BALL NO. *141*  
*Holliday Hall - Durbin Skully*

1 INTRODUCTION BY  
2  
3 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING GAME WARDENS  
4 TO QUALIFY ACTIVE SERVICE IN THE ARMED FORCES FOR RETIREMENT  
5 PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
7  
8 Section 1. Election to qualify military service for  
9 full credit. (1) (a) A member with 10 years or more of state  
10 service qualified under this chapter may, at any time prior  
11 to retirement, make a written election with the board to  
12 qualify all or any portion of his active service in the  
13 armed forces of the United States for the purpose of  
14 calculating retirement benefits, up to a maximum of 5 years,  
15 if he is not otherwise eligible to receive credit for this  
16 service pursuant to 19-8-304.

17 (b) To qualify this service he must contribute to the  
18 retirement fund the amount determined by the board to be  
19 due, based on his compensation and normal contribution rate  
20 as of his 11th year and as many succeeding years as are  
21 required to qualify this service, with interest from the  
22 date he becomes eligible for this benefit to the date he  
23 contributes. He may not qualify more years of military  
24 service than he has years of creditable state service in

1 excess of 10 years.  
2 (2) If a member has retired from active duty in the  
3 armed forces of the United States with a normal service  
4 retirement benefit, he may not qualify his military service  
5 under subsection (1). However, a member who is serving or  
6 has served in the military reserves with the expectation of  
7 receiving a military service pension may qualify his active  
8 military service under subsection (1) if his active duty in  
9 the armed forces of the United States is not more than 25%  
10 of the total sum of all years of military service, including  
11 reserve and active duty time.

12 Section 2. Codification instruction. Section 1 is  
13 intended to be codified as an integral part of Title 19,  
14 chapter 8, part 3, and the provisions of Title 19, chapter  
15 8, apply to section 1.

16 Section 3. Effective date. This act is effective on  
17 passage and approval.

-End-

*HB 141*

VISITORS' REGISTER

HOUSE \_\_\_\_\_

COMMITTEE \_\_\_\_\_

BILL HB 140

Date \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
George Jones	Kalispell	Self	—	—
S. Bennett	Helena	Mont Union System	—	—
TOM RYAN	Helena	Mont. Service Officers ASSN	✓	
F Robert Johnson	Helena	Teacher Retirement	✓	
Rep Ralph Adair	Missoula	Teachers Retirement (Legislative)	✓	
John Smith	Helena	Self		✓
David Sexton	Helena	MEA	✓	
Jim McGee	Helena	MFT	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

House State Administration Committee

Bill Summaries

Thursday, January 13, 1983

- HB 140 (Eudaily): The Teachers' Retirement Act now requires that a teacher must retire at age 70 and prohibits a teacher who is initially employed by the Montana University System after age 70 from joining the retirement system. HB 140, introduced by request of the Teachers' Retirement Division, repeals both restrictions.
- HB 141 (Holliday): Currently the Game Wardens' Retirement Act has no provision permitting a member to qualify his military service for retirement credits. HB 141 gives game wardens the option to purchase this service.
- HB 149 (Seifert): This bill prohibits the state, local governments, and school districts from using for any purpose an individual's social security number; provided, however, that the number can be used by: 1) public employers when administering provisions of the Social Security Act or performing payroll or employment functions; 2) the Department of Revenue when administering tax collection programs; and 3) the Department of Social and Rehabilitation Services when administering public assistance programs.



149

ANTHONY MCILWAIN OSTHEIMER

(406) 745-4125

Tom Stetson - Charlo

(406) 644-2774

Seifert 1/13/83

Mr. Chairman, members of the committee, for the record I am Representative Carl Seifert from District 26, Polson, Montana.

I am here today as chief sponsor of House Bill 149. HB 149 is a bill for an act entitled: "AN ACT PROHIBITING THE USE OF SOCIAL SECURITY NUMBERS BY PUBLIC AGENCIES EXCEPT UNDER CERTAIN CIRCUMSTANCES: AMENDING SECTION 13-2-114, MCA."

The reason that I have agreed to sponsor this piece of legislation is merely the fact that the drafters of the 1972 constitution gave high priority to individual privacy. Early in the year of 1982, the Montana Division of Motor Vehicles passed Rule No. ARM 23.3.131. What the rule means is this-- that you cannot get a drivers license without giving your Social Security number and if you drive without the license you can be fined or jailed. This rule became effective on March 15, 1982. The rule also specifies that the name, date of birth and Social Security number would all be required to get a registered drivers license.

In the past Montana drivers licenses were identified by a code that was based on last name and date of birth.

This particular rule has created much anxiety and hard feelings among many people throughout the state. Again, I will mention that the concerned people feel that it is definitely an invasion of privacy. Their points are well taken in that our Social Security numbers are for Social Security and tax purposes, not for identification as the card so specifically states. Instead of being a single entity, the numbers are becoming keys unlocking doors into financial, educational, medical and military records. The people feel that it is a cancerous growth invading our right to privacy. One individual even has mentioned that it could be a "back-door" approach to registering firearms' owners and gives you an idea of how the system is being abused.

Section 1211 of HR 10612, entitled Social Security Account Numbers, provides that it is the policy of the United States that any state or political subdivision thereof may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the Social Security account numbers issued by the Secretary of the U.S. Department for the purpose of establishing the identify of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such state or any agency thereof having administrative responsibility for the law involved the Social Security account number issued to him by the Secretary.

I further call your attention to the Federal Privacy Act of 1974. It specifies that it is unlawful for any federal, state or local government agency to deny any right, benefits

or privileges provided by law because you refuse to give your Social Security number. This is true unless use of the number is required by federal statute or the agency uses the number in a record keeping system which was in operation before January 1, 1975, and disclosure of the Social Security number was required by statute or regulation adopted before that date.

Montana statute merely requires under Section 61-5-11, that Montana licenses shall contain a photograph of the licensee in the form as prescribed by the division, a distinguishing number, full name, date of birth and residence address.

In closing I will only mention that since much public pressure has been put on the Attorney General's office and the Department of Highways, that I have been advised by Chief Tooley that they would promptly proceed with the change of their rules and that they would repeal the rule on making it mandatory to use the Social Security number, and that any use of this number would be strictly voluntary on the part of the licensee.

Even though the problem has been corrected to meet the needs of the public as they see fit, we feel that this piece of legislation is still of a serious nature--that it should be on the Montana statutes. We also feel that in doing this it may deter other departments from attempting to use the Social Security numbers for identification.

Again, it was the feeling of the group that brought this to my attention, that this form of identification could become a giant step toward computer dossiers on every American citizen, thereby enabling some bureaucrat instant access to one's entire financial, banking, hunting, utilities, military, tax, voting and driving and medical data. They feel, again, invasion of privacy totally contrary to our free society.

CARL SEIFERT  
Representative  
January 12, 1983

CS/dh

(f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

Compensation.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

Per diem.

5 USC 5332  
note.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

Travel ex-  
penses.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

Report to  
President and  
Congress.

(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Penalties.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

Sec. 6. The Office of Management and Budget shall—

5 USC 552a  
note.

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

Ante, p. 1897.

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Sec. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

5 USC 552a  
note.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(or, in the case of a levy described in section 6331(d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer)". *Ante*, p. 1710.

(4) Paragraph (1) of section 6331(d) (relating to levy on salaries and wages) is amended by striking out the last sentence. 26 USC 6331.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to levies made after December 31, 1976. 26 USC 6334 note.

#### SEC. 1210. JOINT COMMITTEE REFUND CASES.

(a) IN GENERAL.—Section 6405(a) (relating to reports of refunds and credits) is amended to read as follows: 26 USC 6405.

“(a) BY TREASURY TO JOINT COMMITTEE.—No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to private foundations and pension plans under chapters 42 and 43, in excess of \$200,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.” 26 USC 4940, 4971.

(b) TENTATIVE REFUNDS.—Section 6405(c) is amended by striking out “\$100,000” and inserting in lieu thereof “\$200,000”.

(c) AUDIT.—Section 8023(a) (relating to powers to obtain information from the Internal Revenue Service) is amended by adding at the end thereof the following new sentence: “In the investigation by the Joint Committee on Taxation of the administration of the internal revenue taxes by the Internal Revenue Service, the Chief of Staff of the Joint Committee on Taxation is authorized to secure directly from the Internal Revenue Service such tax returns, or copies of tax returns, and other relevant information, as the Chief of Staff deems necessary for such investigation, and the Internal Revenue Service is authorized and directed to furnish such tax returns and information to the Chief of Staff together with a brief report, with respect to each return, as to any action taken or proposed to be taken by the Service as a result of any audit of the return.” 26 USC 8023.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any refund or credit with respect to which a report has been made before the date of the enactment of this Act under subsection (a) or (c) of section 6405 of the Internal Revenue Code of 1954. 26 USC 6405 note.

(2) The amendment made by subsection (c) shall take effect on January 1, 1977. 26 USC 8023 note.

#### SEC. 1211. SOCIAL SECURITY ACCOUNT NUMBERS.

(a) Section 208(g) of the Social Security Act is amended, in the matter preceding clause (1) thereof, by striking out “entitled—” and inserting in lieu thereof “entitled, or for any other purpose—”. 42 USC 408.

(b) Section 205(c)(2) of such Act is amended by adding at the end thereof the following new subparagraphs: 42 USC 405.

“(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individ-

ual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

“(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of the enactment of this subparagraph, be null, void, and of no effect.

“(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of the Social Security Act.

42 USC 601,  
651.  
“State.”

“(iv) For purposes of this subparagraph, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.”

26 USC 6109.

(c) Section 6109 (relating to identifying numbers) is amended by adding at the end thereof the following new subsection:

Regulations.

“(d) USE OF SOCIAL SECURITY ACCOUNT NUMBER.—The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.”

42 USC 405.

42 USC 408.

(d)(1) Section 208 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

“(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;”

(2) section 208(g)(2) of such Act is amended by adding “or” at the end thereof.

**SEC. 1212. ABATEMENT OF INTEREST WHEN RETURN IS PREPARED FOR TAXPAYER BY THE INTERNAL REVENUE SERVICE.**

26 USC 6404.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by adding at the end thereof the following new subsection:

“(d) ASSESSMENTS ATTRIBUTABLE TO CERTAIN MATHEMATICAL ERRORS BY INTERNAL REVENUE SERVICE.—In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(f)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.”

26 USC 6404  
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to returns filed for taxable years ending after the date of the enactment of this Act.



# THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH  
HELENA, MONTANA 59620-2602

(406) 449-3024

COMMISSIONER OF HIGHER EDUCATION

January 12, 1983

TO: Larry Weinberg, Assistant Chief Legal Counsel  
FROM: Ed Nelson, Director GSL Program *EN*  
SUBJECT: Social Security Number Use

Social Security numbers are used as recipient identifiers for financial aid programs in higher education. This use of the number is required by the U.S. Department of Education.

Present programs include as follows:

Pell Grants, Supplemental Educational Opportunity Grants, College Work Study, State Student Incentive Grants, National Direct Student Loans, and the Guaranteed Student Loan Program.

I have contacted the U.S. Department of Education and talked to Mr. Larry Oxendine regarding this question. He has assured me that if we are not permitted to use the Social Security number we would not be able to offer Federal Student Financial Aid to students. All but the Guaranteed Student Loan Program are campus based programs. The on campus programs provide approximately \$20 million per year. The State run Guaranteed Student Loan Program has provided over 17,000 loans worth nearly \$40 million since its beginning in July of 1980.

EN/rc

HOUSE BILL 149

BE AMENDED AS FOLLOWS:

- 1) Page 1, line 23,  
Strike: "Collection"  
Insert: "or public assistance related"  
Strike: "or"
- 2) Page 1, line 25.  
Following: "programs"  
Insert: "; or (d) the administration or the operation of the  
Montana university system, the community colleges,  
or the postsecondary vocational-technical centers"



WITNESS STATEMENT

NAME Tom Schneider BILL No. HB 141  
ADDRESS Box 716 DATE 1/13/83  
WHOM DO YOU REPRESENT MPEA  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME abt VAN DER VEE BILL No. HB 141

ADDRESS 2300 WILDER DATE \_\_\_\_\_

WHOM DO YOU REPRESENT SELF

SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Larry Nachtshen BILL No. 141  
ADDRESS \_\_\_\_\_ DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT PEND  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*Bill requires funding.*

VISITORS' REGISTER

HOUSE \_\_\_\_\_ COMMITTEE \_\_\_\_\_

BILL 141

Date \_\_\_\_\_

SPONSOR Gay Holiday

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
J.M. Flynn	Halenia	DEPT FWP	X	
L. Hachheim	"	PERD		X
M. Schuler	Helenia	MPVA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HB 141

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

The Department of Fish, Wildlife and Parks supports the passage of HB 141. The opportunity to buy back military time is an opportunity now available to non-enforcement employees within the agency and we feel it ought to be available to our enforcement employees.

We do not anticipate that passage of this bill will result in an increase in the department's contributions to the Warden Retirement System FY83 and 84. We will not learn of the long range impact until our Actuary Evaluation in 1984. At that time future impacts will be identified.

To establish consistency and because of the lack of fiscal impact, we urge your favorable consideration of HB 141.

House State Administration Committee

Bill Summaries

Thursday, January 13, 1983

- HB 140 (Eudaily): The Teachers' Retirement Act now requires that a teacher must retire at age 70 and prohibits a teacher who is initially employed by the Montana University System after age 70 from joining the retirement system. HB 140, introduced by request of the Teachers' Retirement Division, repeals both restrictions.
- HB 141 (Holliday): Currently the Game Wardens' Retirement Act has no provision permitting a member to qualify his military service for retirement credits. HB 141 gives game wardens the option to purchase this service.
- HB 149 (Seifert): This bill prohibits the state, local governments, and school districts from using for any purpose an individual's social security number; provided, however, that the number can be used by: 1) public employers when administering provisions of the Social Security Act or performing payroll or employment functions; 2) the Department of Revenue when administering tax collection programs; and 3) the Department of Social and Rehabilitation Services when administering public assistance programs.

*Hovass* BILL NO. *149*  
 INTRODUCED BY *Sen. Timmy Lee*  
*Enger* *Jensen* *Edlund* *Atkins* *Harwood* *Alby*  
*HAPP* *Thompson* *Thompson* *Schwartz*  
 A BILL FOR AN ACT ENTITLED: *JAN ACT PROHIBITING THE USE OF MONTANA*  
 SOCIAL SECURITY NUMBERS BY PUBLIC AGENCIES EXCEPT UNDER *ADMIN*  
 CERTAIN CIRCUMSTANCES; AMENDING SECTION 13-2-114, MCA. *Beam*  
*Winters*

1 Section 2. Section 13-2-114, MCA, is amended to read:  
 2 "13-2-114. Registration numbers to be assigned. (1)  
 3 The registration form for each elector shall be assigned a  
 4 number by the election administrator, using a system of  
 5 numbering that best accommodates the filing system and list  
 6 preparation method used. ~~The Hovass's the election~~  
 7 administrator may not adopt the use of the elector's social  
 8 security number as the registration number. If ~~social~~  
 9 security numbers are used, they may not be printed on lists  
 10 of registered voters or released as public information.  
 11 (2) ~~If social security numbers are used as the~~  
 12 registration number, the election administrator may assign  
 13 an alternative number for any elector who does not have a  
 14 social security number or who declines to provide the  
 15 number. A system of assigning alternative numbers shall be  
 16 developed in consultation with the secretary of state."

-End-

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 NEW SECTION. Section 1. Use of social security  
 10 numbers by public agencies. (1) Except as provided in  
 11 subsection (2), no entity of the state, local government  
 12 unit, or school district may use for any purpose an  
 13 individual's social security account number issued by the  
 14 secretary of the United States department of health and  
 15 human services or require an individual to disclose the  
 16 social security account number issued to him.

17 (2) The prohibition contained in subsection (1) does  
 18 not apply to:  
 19 (a) public employers when administering provisions of  
 20 the federal social security act or performing appropriate  
 21 payroll or employment functions;  
 22 (b) the department of revenue when administering tax  
 23 collection programs; or  
 24 (c) the department of social and rehabilitation  
 25 services when administering public assistance programs.

VISITORS' REGISTER

HOUSE \_\_\_\_\_ COMMITTEE \_\_\_\_\_

BILL 149

Date \_\_\_\_\_

SPONSOR \_\_\_\_\_

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
John G Thomas	Helena	Dep of Institution	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Dwight B. Tooley	Helena	Driver Services Bure.		<input checked="" type="checkbox"/>
Earl Hardy	Billings	Montana Colleges		
Sarah Power	Helena	Motor Vehicles		<input checked="" type="checkbox"/>
Lawrence Wank	Helena	Mont. Univ. System	X-as amend	
Chuck O'Reilly	Helena	Mont Sheriff & Peace Officers		
Bob Wood	Helena	Commerce		amend
Bernie Swift	Hamilton	self	<input checked="" type="checkbox"/>	
CURT CHISHOLM	HELENA	DEPT OF INSTITUTIONS	<input checked="" type="checkbox"/>	
Ellen Flaherty	Helena	Dept of Revenue		
Tom McGinnis	Helena	MFG	<input checked="" type="checkbox"/>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



WITNESS STATEMENT

NAME Bernie Swift BILL No. 149

ADDRESS 1900 Broadway DATE 1/13/83

WHOM DO YOU REPRESENT Self

SUPPORT  OPPOSE  AMEND as amended 1/75

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. by sponsor -

Comments:

I concur with the proposed Bill as now presented for the following reasons:

1. Prevents the further encroachment upon personal ~~and~~ privacy.
2. The Social Security numbers original use was for federal identification in conjunction with social security records and tax purposes.
3. To extend use of the SS# to all other factors is an unfair disclosure of private information and will eventually permeate to all areas.

Bernie Swift

WITNESS STATEMENT

NAME Larry Nachtsheim BILL No. 149

ADDRESS PERD DATE 1-13-83

WHOM DO YOU REPRESENT \_\_\_\_\_

SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Chuck O'Reilly BILL No. HB 149  
ADDRESS Helena DATE 1-13-83  
WHOM DO YOU REPRESENT Montana Sheriffs & Peace Officers Assoc.  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Duane B Tolley BILL No. H 149  
ADDRESS Helena DATE 1-13  
WHOM DO YOU REPRESENT DRIVER SERVICES BUREAU  
SUPPORT \_\_\_\_\_ OPPOSE  AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HOUSE BILL 149

BE AMENDED AS FOLLOWS:

- 1) Page 1, line 23,  
Strike: "Collection"  
Insert: "or public assistance related"  
Strike: "or"
- 2) Page 1, line 25,  
Following: "programs"  
Insert: "; or (d) the administration or the operation of the  
Montana university system, the community colleges,  
or the postsecondary vocational-technical centers"
- 3) Page 2, line 1,  
Insert: "(d) law enforcement agencies while performing their  
official duties."

*Carl A. Seifert*

Ch. 31 ADMINISTRATION OF PROGRAMS 20 § 1232g

Pub.L. 94-273 substituted "January" for "October".

by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974]."

**Change of Name.** The Committee on Labor and Public Welfare of the Senate, was abolished and replaced by the Committee on Human Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

**Fiscal Year Transition Period of July 1, 1976, through September 30, 1976, Deemed Part of Fiscal Year Beginning July 1, 1975.** Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning July 1, 1975, for purposes of subsec. (a) of this section, see section 204(5) of Pub. L. 94-274, Apr. 21, 1976, 90 Stat. 393, set out as a note under section 390e of Title 7, Agriculture.

**Effective Date of 1976 Amendment.** Amendment by Pub.L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub.L. 94-482, set out as an Effective Date of 1976 Amendment note under section 1001 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. 4093. See, also, Pub.L. 94-273, 1976 U.S. Code Cong. and Adm.News, p. 690; Pub. L. 94-482, 1976 U.S.Code Cong. and Adm. News, p. 4713.

**Effective Date.** Pub.L. 93-380, § 512(b), provided that: "The amendments made

§ 1232g. Family educational and privacy rights

Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are

in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.



Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; record-keeping

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of

such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under

the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

**Surveys or data-gathering activities; regulations**

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

**Students' rather than parents' permission or consent**

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

**Informing parents or students of rights under this section**

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

**Enforcement; termination of assistance**

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

**Office and review board; creation; functions**

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and com-

plaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Pub.L. 90-247, Title IV, § 438, as added Pub.L. 93-380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93-568, § 2(a), Dec. 31, 1974, 88 Stat. 1858.

#### Historical Note

1974 Amendment. Subsec. (a)(1). Pub.L. 93-568, § 2(a)(1)(A) to (C), (2)(A) to (C), (3), designated existing par. (1) as subpar. (A), and in subpar. (A) as so designated, substituted reference to educational agencies and institutions for reference to state or local educational agencies, institutions of higher education, community colleges, schools, agencies offering preschool programs, and other educational institutions, substituted the generic term education records for the enumeration of such records, and extended the right to inspect and review such records to parents of children who have been in attendance, and added subpars. (B) and (C).

Subsec. (a)(2). Pub.L. 93-568, § 2(a)(4), substituted provisions making the availability of funds to educational agencies and institutions conditional on the granting of an opportunity for a hearing to parents of students who are or have been in attendance at such institution or agency to challenge the contents of the student's education records for provisions granting the parents an opportunity for such hearing, and added provisions authorizing insertion into the records a written explanation of the parents respecting the content of such records.

Subsec. (a)(3). Pub.L. 93-568, § 2(a)(1)(G), added subsec. (a)(3).

Subsec. (a)(4), (5). Pub.L. 93-568, § 2(a)(2)(F), added subsec. (a)(4) and (5).

Subsec. (a)(6). Pub.L. 93-568, § 2(a)(5), added subsec. (a)(6).

Subsec. (b)(1). Pub.L. 93-568, § 2(a)(1)(D), (2)(D), (3), (8)(A) to (C), (10)(A), in provisions preceding subpar. (A), substituted "educational agency or institution which has a policy of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section)" for "state or local educational agency, any institution of higher education, any community college, any school, agency offering a

preschool program, or any other educational institution which has a policy or practice of permitting the release of personally identifiable records or files (or personal information contained therein)", in subpar. (A), substituted "educational agency, who have been determined by such agency or institution to have" for "educational agency who have", in subpar. (B), substituted "the student seeks or intends to" for "the student intends to", in subpar. (C), substituted reference to "section 408(c)" for reference to "section 409 of this Act" which for purposes of codification has been translated as "section 1221e-3(c) of this title", and added subpara. (E) to (1).

Subsec. (b)(2). Pub.L. 93-568, § 2(a)(1)(E), (2)(E), substituted "educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection" for "state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) of this section".

Subsec. (b)(3). Pub.L. 93-568, § 2(a)(8)(D), substituted "information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements" for "data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identi-

after the data so obtained has been collected".

Subsec. (b)(4). Pub.L. 93-568, § 2(a)(9), substituted provisions that each educational agency or institution maintain a record, kept with the education records of each student, indicating individuals, agencies, or organizations who obtained access to the student's record and the legitimate interest in obtaining such information, that such record of access shall be available only to parents, school officials, and their assistants having responsibility for the custody of such records, and as a means of auditing the operation of the system, for provisions that with respect to subsec. (c)(1), (c)(2), and (c)(3) of this section, all persons, agencies, or organizations desiring access to the records of a student shall be required to sign forms to be kept with the records of the student, but only for inspection by the parents or the student, indicating specifically the legitimate educational or other interest of the person seeking such information, and that the form shall be available to parents and school officials having responsibility for record maintenance as a means of auditing the operation of the system.

Subsec. (e). Pub.L. 93-568, § 2(a)(1)(F), substituted "to any educational agency or institution unless such agency or institution" for "unless the recipient of such funds".

Subsec. (g). Pub.L. 93-568, § 2(a)(7), (10)(B), struck out reference to sections 1232c and 1232f of this title and added provisions that except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Effective Date of 1974 Amendment. Pub.L. 93-568, § 2(b), provided that: "The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974."

Effective Date. Pub.L. 93-380, § 513(b)(1), provided that: "The provisions of this section [classified to this section] shall become effective ninety days after the date of enactment [Aug. 21, 1974] of section 438 of the General Education Provisions Act [this section]."

Short Title. Pub.L. 93-380, § 513(b)(2), provided that: "This section [classified to this section and provisions set out as a note under this section] may be cited as the 'Family Educational Rights and Privacy Act of 1974'."

Legislative History. For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. 4093. See, also, Pub.L. 93-568, 1974 U.S. Code Cong. and Adm.News, p. 6779.

### Code of Federal Regulations

Applicability of policies and procedures, see 45 CFR 99.1 et seq.

### Notes of Decisions

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#### 1. Discriminatory practices

In view of significant role of private lawsuits in ending various forms of discrimination in school systems, this section should not serve as cloak for alleged discriminatory practices simply because litigation to end such practices is initiated by private plaintiffs rather than government. *Rios v. Read*, D.C.N.Y.1977, 73 F.R.D. 589.

#### 2. Notice of disclosure

If subpoenaed documents in relation to placing children with handicapping conditions in specialized classes were consid-

ered to be in a personally identifiable form, this section placed the burden on the educational agency or institution, and not on the party who subpoenaed the documents, to make reasonable effort to notify students or parents of the subpoena in advance of compliance therewith. *Mattie T. v. Johnston*, D.C.Miss.1976, 74 F.R.D. 498.

Requirement of this section that school district give notice to parents and students of disclosure, under court order, of school records and of opportunity of students or parents to contest disclosure did not create unreasonable administrative burden upon district, inasmuch, as under Department of Health, Education and Welfare guidelines, district would be only required to make reasonable effort to notify parents of impending disclosure, notice could be effected by publication or other reasonable method chosen

by district and, since case was one to vindicate civil rights, cost or inconvenience was less weighty factor than in other cases. *Rios v. Read*, D.C.N.Y.1977, 73 F.R.D. 589.

Where Spanish speaking plaintiffs sought records of individual students in school district in connection with class action based on failure to remedy plaintiff students' English language deficiencies, appropriate notice by publication or mail must be given to students and parents, in both Spanish and English, describing nature of action, parties, nature of information to be disclosed and notifying them of opportunity to send to court in writing any specific reason why disclosure of any student's records would be undesirable or harmful to student or his parents so that disclosure of such records should not be allowed. *Id.*

by court order, disclosure order should require that recipients of records avoid revealing data to individuals unconnected with litigation and destroy data when it is no longer needed, but it is not required that names of students be redacted from records and neutral identifying information be substituted. *Rios v. Read*, D.C.N.Y.1977, 73 F.R.D. 589.

#### 4. Subpoena

This section did not bar disclosure of subpoenaed documents relating to placing of children with handicapping conditions in specialized classes, under conditions provided in subpoena which allowed covering up or deleting any information contained in the subpoenaed documents which might tend to identify the student or students who were the subject of or mentioned in the documents. *Mattie T. v. Johnston*, D.C.Miss.1976, 74 F.R.D. 498.

#### 5. Disclosure orders

When disclosure of public school students' records to private party is directed

### § 1232h. Pupil rights, protection; inspection by parents or guardians of instructional material; "research or experimentation program or project" defined

All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

Pub.L. 90-247, Title IV, § 439, as added Pub.L. 93-380, Title V, § 514(a), Aug. 21, 1974, 88 Stat. 574.

#### Historical Note

**Effective Date.** Pub.L. 93-380, § 514(b), provided that: "The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974]."

**Legislative History.** For legislative history and purpose of Pub.L. 93-380, see 1974 U.S.Code Cong. and Adm.News, p. 4093.

### § 1232i. Limitations on withholding of Federal assistance

#### Refusal to supply personal data on students or families

(a) Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a pre-

related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in subsection (a) of this section, or which may relate to the compliance of the recipient with any requirement of an applicable program.

Pub.L. 90-247, Title IV, § 437, as added Pub.L. 95-561, Title XII, § 1231 (c), Nov. 1, 1978, 92 Stat. 2346.

**Codification.** A prior section 1232f was renumbered by Pub.L. 95-561 and is now set out as section 1221e-1a of this title.

**Effective Date.** Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub.L. 95-561, set out as a note under section 1232c of this title.

**Transfer of Functions.** All functions of the Secretary and the Department of Health, Education, and Welfare under this chapter, including any aspects vested in subordinates of the Secretary or components of the Department, and all functions of the Secretary, the Assistant Secretary for Education, or the Commissioner of Education with respect to the Education Division of the Department, the Office of the Assistant Secretary for Education, including the National Center for Education Statistics, and specified education advisory committees in the Department, were transferred to the Secretary of Education, and specified offices in the

Department of Health, Education, and Welfare, all offices in the Office of the Assistant Secretary for Education or the Education Division of the Department, and specified education advisory committees in the Department, were transferred to the Department of Education, effective according to section 601 of Pub.L. 95-561, Title VI, Oct. 17, 1979, 93 Stat. 696, set out as a note under section 3401 of this title, 180 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1979, as prescribed and published, with specified exceptions, see sections 3441 and 3447 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 95-561, see 1978 U.S.Code Cong. and Adm.News, p. 4971.

**Library References.** Records & Reports  
C.J.S. Records §§ 34, 35, 39.

### § 1232g. Family educational and privacy rights

[See main volume for text of (a)]

Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; record-keeping

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

[See main volume for text of (A) to (I), closing provisions; (2) to (4)]

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

[See main volume for text of (c) to (p)]

As amended Pub.L. 96-46, § 4 (c), Aug. 6, 1979, 93 Stat. 342.

1979 Amendment. Subsec. (b)(5). Pub. L. 96-46 added subsec. (b)(5).

**Effective Date of 1979 Amendment.** Amendment by Pub.L. 96-46 effective Oct. 1, 1978, see section 8 of Pub.L. 96-46, set out as a note under section 2701 of this title.

**Transfer of Functions.** All functions of the Secretary and the Department of Health, Education, and Welfare under this chapter, including any aspects vested in subordinates of the Secretary or components of the Department, and all functions of the Secretary, the Assistant Secretary for Education, or the Commissioner of Education with respect to the Education Division of the Department, the Office of the Assistant Secretary for Education, including the National Center for Education Statistics, and specified education advisory committees in the Depart-

ment, were transferred to the Secretary of Education, and specified offices in the Department of Health, Education, and Welfare, all offices in the Office of the Assistant Secretary for Education or the Education Division of the Department, and specified education advisory committees in the Department, were transferred to the Department of Education, effective according to section 601 of Pub.L. 95-561, Title VI, Oct. 17, 1979, 93 Stat. 696, set out as a note under section 3401 of this title, 180 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1979, as prescribed and published, with specified exceptions, see sections 3441 and 3447 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 96-46, see 1979 U.S.Code Cong. and Adm.News, p. 819.

## Supplementary Index to Notes

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## 2. Notice of disclosure

Provision of this section that no funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in educational records unless furnished in compliance with judicial order, upon condition that parents and students are notified of all such orders in advance, relates to "privacy" and rather than establish a privilege would appear to establish procedures for advising or notifying a person what educational records pertaining to said person are to be released pursuant to judicial order. *Reeg v. Fetzer*, D.C.Okla.1976, 78 F.R.D. 34.

## 3. Disclosure orders

Disclosure of certain standardized reading and mathematics test scores, in a "scrambled" order and with names deleted, would protect privacy of students, provide parent with records which he sought, and impose no onerous burden upon school district; therefore, trial court erred in failing to order disclosure of test scores on ground that in their existing order the scores would be identifiable to some students through correlation to alphabetical list. *Kryston v. Board of Ed.*, East Ramapo Central School Dist., A.D.1980, 430 N.Y.S.2d 688.

## 5. Statement of claim for relief

Complaint filed by former students who sought relief against private college, which refused to release transcripts of their credits because of their nonpayment of college loans for which they had obtained discharges in bankruptcy, pursuant to subsec. (a)(1)(A) of this section giving students and their parents right to access to student educational records, failed to state claim on which relief could be granted. *Girardier v. Webster College*, C.A.Mo.1977, 563 F.2d 1267.

## 6. Cause of action

This section giving students and their parents right to access to student educational records does not say that private remedy is given, but rather, enforcement is solely in hands of Secretary, and under such circumstances, no private cause of action arises by inference. *Girardier v. Webster College*, C.A.Mo.1977, 563 F.2d 1267.

Buckley Amendment, section 513 of Pub.L. 93-380, which amended this section, does not forbid disclosure of information concerning a student and therefore does not forbid opening to public a faculty meeting at which such matters are discussed; such amendment simply cuts off federal funds otherwise available to an educational institution which has a policy or practice of permitting release of such information. *Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd*, 1977, 239 S.E.2d 415, 293 N.C. 594.

## 7. Independent sources of information

In connection with letter printed in of-

ficial high school student newspaper, which stated, among other things, that a particular student had been suspended from school, school official, being sued by former editor in chief and present assistant editor of student newspaper on ground that his action of seizing newspaper violated U.S.C.A.Const. Amend. 1, mistakenly relied upon this section, which prevents disclosure by a school district of certain information about students which is deemed to be confidential, since, although suspension information in such letter would fall within scope of this section if source of information had been school records, prohibitions of this section did not extend to information which was derived from a source independent of school records. *Frasca v. Andrews*, D.C.N.Y.1979, 463 F.Supp. 1043.

## 8. Procedure for obtaining records

State university's regulation providing that no person be given credit or other official recognition for work completed until all charges had been paid to the university was not inconsistent with this section, which gives to each educational agency or institution the right to establish appropriate procedures for the granting of a request by parents for access to the educational records of their children. *Spas v. Wharton*, 1980, 431 N.Y.S.2d 638, 106 Misc.2d 180.

## 9. Directory information

Since notice published in student handbook and Michigan State University Bulletin concerning release of student information complied with requirements of regulations promulgated pursuant to this section governing "directory information," requiring University to release computer tape containing student's names and addresses was not contrary to this section. *Kestenbaum v. Michigan State University*, 1980, 294 N.W.2d 223, 97 Mich.App. 228.

## 10. Consent

Where student data constitutes both "personal identifiable information" and "direct information" within meaning of regulations implementing this section, no written consent to disclosure of such matter is required so long as no purely personal information is released, an example being names and addresses only. *Kestenbaum v. Michigan State University*, 1980, 294 N.W.2d 223, 97 Mich.App. 228.

## 11. Educational agency or institution

Michigan State University, because it is a recipient of federal funds, falls within purview of this section. *Kestenbaum v. Michigan State University*, 1980, 294 N.W.2d 223, 97 Mich.App. 228.

## 12. Release of student's medical and personal records

In action in which teacher sued city, its board of education and two pupils and their parents to recover damages for injuries allegedly sustained when pupils attacked him in his classroom, court would not order release of medical and personal records of the students prior to their being given notice, independently of notice provided by summons and complaint, specifically advising them of proposed release of records; failure to appear to defend suit did not absolve teacher of giving them notice of application to compel production of their records. *Sauerhof v. City of New York*, 1981, 438 N.Y.S.2d 832, 108 Misc.2d 805.

## 13. Education records

Records maintained by intercollegiate athletic conference as to amount of money member institutions dispersed to student athletes during school year were not "educational records" required to be closed to public under this section. *Arkansas Gazette Co. v. Southern State College, Ark.* 1981, 620 S.W.2d 258.



**14. Persons entitled to disclosure**

Where natural father and mother were living separate and apart under terms of separation agreement providing for custody of child in the mother with rights of visitation to the father and parents were not divorced nor was there any court order affecting custody, visitation or support, natural father was entitled to in-

spect and review education records of child, a fifth grade student at public elementary school, even though natural mother had signed statement indicating that she did not wish or authorize school district to transmit school records to the natural father. Page v. Rotterdam-Mohonawen Central School Dist., N.Y.Sup. 1981, 441 N.Y.S.2d 323.

**§ 1232h. Protection of pupil rights****Inspection by parents or guardians of instructional material**

(a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

**Psychiatric or psychological examinations, testing, or treatment**

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

- (1) political affiliations;
- (2) mental and psychological problems potentially embarrassing to the student or his family;
- (3) sex behavior and attitudes;
- (4) illegal, anti-social, self-incriminating and demeaning behavior;
- (5) critical appraisals of other individuals with whom respondents have close family relationships;
- (6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or
- (7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

As amended Pub.L. 95-561, Title XII, § 1250, Nov. 1, 1978, 92 Stat. 2355.

1978 Amendment. Pub.L. 95-561 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-561 effective Oct. 1, 1978, see section 1530 of Pub.L.

95-561, set out as a note under section 2701 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-561, see 1978 U.S. Code Cong. and Adm. News, p. 4971.

**§ 1232i. Limitations on withholding of Federal assistance**

**Transfer of Functions.** All functions of the Secretary and the Department of Health, Education, and Welfare under this chapter including any aspects vested in subordinates of the Secretary or components of the Department, and all functions of the Secretary, the Assistant Secretary for Education, or the Commissioner of Education with respect to the Education Division of the Department, the Office of the Assistant Secretary for Education, including the National Center for Education Statistics and specified education advisory committees in the Department, were transferred to the Secretary of Education, and specified offices in the

Department of Health, Education, and Welfare, all offices in the Office of the Assistant Secretary for Education, or the Education Division of the Department, and specified education advisory committees in the Department, were transferred to the Department of Education, effective according to section 601 of Pub. L. 96-88, Title VI, Oct. 17, 1979, 93 Stat. 696, set out as a note under section 3401 of this title, 180 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1979, as prescribed and published, with specified exceptions, see sections 3441 and 3447 of this title.

Witness Weinberg (HB 149)

(f) (1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

Compensation.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

Per diem.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

5 USC 5332 note.

Travel expenses.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

Report to President and Congress.

(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Penalties.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

Sec. 6. The Office of Management and Budget shall—

5 USC 552a note.

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

Ante, p. 1897.

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Sec. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

5 USC 552a note.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(or, in the case of a levy described in section 6331(d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer)". *Ante*, p. 1710.

(4) Paragraph (1) of section 6331(d) (relating to levy on salaries and wages) is amended by striking out the last sentence. 26 USC 6331.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to levies made after December 31, 1976. 26 USC 6334 note.

#### SEC. 1210. JOINT COMMITTEE REFUND CASES.

(a) IN GENERAL.—Section 6405(a) (relating to reports of refunds and credits) is amended to read as follows: 26 USC 6405.

“(a) BY TREASURY TO JOINT COMMITTEE.—No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to private foundations and pension plans under chapters 42 and 43, in excess of \$200,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.” 26 USC 4940, 4971.

(b) TENTATIVE REFUNDS.—Section 6405(c) is amended by striking out “\$100,000” and inserting in lieu thereof “\$200,000”.

(c) AUDIT.—Section 8023(a) (relating to powers to obtain information from the Internal Revenue Service) is amended by adding at the end thereof the following new sentence: “In the investigation by the Joint Committee on Taxation of the administration of the internal revenue taxes by the Internal Revenue Service, the Chief of Staff of the Joint Committee on Taxation is authorized to secure directly from the Internal Revenue Service such tax returns, or copies of tax returns, and other relevant information, as the Chief of Staff deems necessary for such investigation, and the Internal Revenue Service is authorized and directed to furnish such tax returns and information to the Chief of Staff together with a brief report, with respect to each return, as to any action taken or proposed to be taken by the Service as a result of any audit of the return.” 26 USC 8023.

#### (d) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any refund or credit with respect to which a report has been made before the date of the enactment of this Act under subsection (a) or (c) of section 6405 of the Internal Revenue Code of 1954. 26 USC 6405 note.

(2) The amendment made by subsection (c) shall take effect on January 1, 1977. 26 USC 8023 note.

#### SEC. 1211. SOCIAL SECURITY ACCOUNT NUMBERS.

(a) Section 208(g) of the Social Security Act is amended, in the matter preceding clause (1) thereof, by striking out “entitled—” and inserting in lieu thereof “entitled, or for any other purpose—”. 42 USC 408.

(b) Section 205(c)(2) of such Act is amended by adding at the end thereof the following new subparagraphs: 42 USC 405.

“(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver’s license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individ-

ual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

“(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of the enactment of this subparagraph, be null, void, and of no effect.

“(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of the Social Security Act.

42 USC 601,  
651.  
“State.”

“(iv) For purposes of this subparagraph, the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.”

26 USC 6109.  
Regulations.

(c) Section 6109 (relating to identifying numbers) is amended by adding at the end thereof the following new subsection:

42 USC 405.

“(d) USE OF SOCIAL SECURITY ACCOUNT NUMBER.—The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.”

42 USC 408.

(d)(1) Section 208 of the Social Security Act is amended by inserting after subsection (g) the following new subsection:

“(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States:”

(2) section 208(g)(2) of such Act is amended by adding “or” at the end thereof.

**SEC. 1212. ABATEMENT OF INTEREST WHEN RETURN IS PREPARED FOR TAXPAYER BY THE INTERNAL REVENUE SERVICE.**

26 USC 6404.

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by adding at the end thereof the following new subsection:

“(d) ASSESSMENTS ATTRIBUTABLE TO CERTAIN MATHEMATICAL ERRORS BY INTERNAL REVENUE SERVICE.—In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(f)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.”

26 USC 6404  
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to returns filed for taxable years ending after the date of the enactment of this Act.



# THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH  
HELENA, MONTANA 59620-2602

(406) 449-3024

COMMISSIONER OF HIGHER EDUCATION

January 12, 1983

TO: Larry Weinberg, Assistant Chief Legal Counsel  
FROM: Ed Nelson, Director GSL Program *EN*  
SUBJECT: Social Security Number Use

Social Security numbers are used as recipient identifiers for financial aid programs in higher education. This use of the number is required by the U.S. Department of Education.

Present programs include as follows:

Pell Grants, Supplemental Educational Opportunity Grants, College Work Study, State Student Incentive Grants, National Direct Student Loans, and the Guaranteed Student Loan Program.

I have contacted the U.S. Department of Education and talked to Mr. Larry Oxendine regarding this question. He has assured me that if we are not permitted to use the Social Security number we would not be able to offer Federal Student Financial Aid to students. All but the Guaranteed Student Loan Program are campus based programs. The on campus programs provide approximately \$20 million per year. The State run Guaranteed Student Loan Program has provided over 17,000 loans worth nearly \$40 million since its beginning in July of 1980.

EN/rc

WITNESS STATEMENT

NAME Laurence Weinberg BILL No. HB 149  
ADDRESS 3725 Heather Dr., Helena DATE 11/13/83  
WHOM DO YOU REPRESENT MONT. UNIV. SYSTEM  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Comments on House Bill 149

Submitted by Laurence Weinberg  
on behalf of the  
Montana University System

House State Administration Committee  
January 13, 1983

House Bill 149 as introduced restricts the use of social security numbers by state and local governmental entities, with certain stated exceptions. This broad prohibition will have substantial adverse impacts on postsecondary education in Montana. I urge the committee to consider amendments creating an additional exception for the public postsecondary institutions.

The social security number is used as an identifier for purposes of the federal financial aid programs. If the schools cannot require the student to provide a social security number and cannot use that number, then the state institutions will not be able to participate in the federal financial aid programs. As the memo from Mr. Ed Nelson points out, the effect on Montana is literally in the millions of dollars.

Additionally the social security number is used as a student number at several of the campuses of the University System. I cannot speak in this regards for the community colleges or the vo-techs. As a result of the Family Educational Rights and Privacy Act of 1974 (FERPA), considerable restrictions are placed on the school in its use of the social security number and on release of the number. Thus, most of the protections that HB 149 would seek in general are already applicable to the public postsecondary schools. The enforcement mechanism of FERPA is primarily a ban on federal funding to institutions that release forbidden information. As noted above, this is a considerable sum of money, and not something that the schools take lightly.

Frequently a school in the course of time will enroll many students with the same or similar names (the University of Montana student directory lists three Robert Smiths presently). These students may request a transcript 10 years from today. Without a convenient identifier (that the former student will remember after a decade), there is a chance that the wrong transcript will be sent.

I believe with the need of the postsecondary institutions to have access to federal resources and with the protections of FERPA available, the exception advocated in the attached amendments will not jeopardize the intent of HB 149.

Thank-you for this opportunity to present this testimony.