**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3409**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith and Jennings

Document Path: l:\council\bills\ms\7073ahb09.docx

Introduced in the House on February 3, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Personal Information Confidentiality Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/3/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\02-03-09.docx)‑7

2/3/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\02-03-09.docx)‑7

**VERSIONS OF THIS BILL**

[2/3/2009](file:///p:\pprever\2009-10\3409_20090203.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 4, TITLE 30 SO AS TO ENACT THE “PERSONAL INFORMATION CONFIDENTIALITY ACT”, TO PROVIDE PROCEDURES FOR THE COLLECTION, MAINTENANCE, AND DISCLOSURE OF PERSONAL INFORMATION ON CITIZENS WITH CERTAIN EXCEPTIONS AND TO PROVIDE CERTAIN RIGHTS TO PERSONS WHO SUFFER ADVERSE EFFECTS BECAUSE OF THE FAILURE OF AGENCIES TO COMPLY WITH THIS ARTICLE; AND TO REDESIGNATE THE EXISTING SECTIONS OF CHAPTER 4, TITLE 30 AS ARTICLE 1 ENTITLED “FREEDOM OF INFORMATION ACT”.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 4, Title 30 of the 1976 Code is amended by adding:

“Article 3

Personal Information Confidentiality Act

Section 30‑4‑310. This article may be cited as the ‘Personal Information Confidentiality Act’.

Section 30‑4‑320. The General Assembly finds that the right to privacy is a personal and fundamental right protected by Section 10, Article I of the Constitution of South Carolina, 1895, and by the United States Constitution and that all individuals have a right to privacy in information pertaining to them. The General Assembly further finds:

(1) the right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies;

(2) the increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information; and

(3) in order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.

Section 30‑4‑330. As used in this article:

(1) ‘Agency’ means a state office, an officer, a department, division, board, or commission except that it does not include the General Assembly or local political subdivisions.

(2) ‘Commercial purpose’ means a purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(3) ‘Disclose’ means to disclose, release, transfer, disseminate, or otherwise communicate all or part of a record orally, in writing, or by electronic or other means to a person or entity.

(4) ‘Individual’ means a natural person.

(5) ‘Maintain’ includes acquire, use, or disclose.

(6) ‘Person’ means a natural person, corporation, partnership, limited liability company, firm, or an association.

(7) ‘Personal information’ means information that is maintained by an agency that identifies or describes an individual including, but not limited to, name, social security number, physical description, home address, home telephone number, education, financial matters, photograph, and medical or employment history and includes statements made by, or attributed to, the individual.

(8) ‘Record’ means a file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voice print, or a number assigned to the individual.

Section 30‑4‑340. An agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the South Carolina Constitution or statute or mandated by the federal government.

Section 30‑4‑350. An agency shall collect personal information to the greatest extent practical directly from the individual who is the subject of the information rather than from another source.

Section 30‑4‑360. When an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or the agency has received a copy of the source document including, but not limited to, the name of a source who is an individual acting in his own private or individual capacity. If the source is an agency, a governmental entity or other organization, such as a corporation or an association, this requirement must be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

The agency shall maintain the source or sources of the information in a readily accessible form so it may provide it to the data subject when they inspect a record pursuant to Section 30‑4‑430. This section does not apply if the source or sources are exempt from disclosure under the provisions of this article.

Section 30‑4‑370. (A) An agency shall provide the notice specified in this section with the form used to collect personal information from individuals. When contact with the individual occurs regularly, an initial notice followed by a periodic notice of not more than one‑year intervals satisfies this requirement. This requirement is satisfied by notification to individuals of the availability of the notice in annual tax‑related pamphlets or booklets provided for them. The notice must include all of the following:

(1) the name of the agency and the division within the agency that is requesting the information;

(2) the title, business address, and phone number of the agency official responsible for the system of recordkeeping and who, upon request, shall inform an individual regarding the location of his records and categories of persons who use the information in those records;

(3) the authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information;

(4) with respect to each item of information, whether submission of the information is mandatory or voluntary;

(5) the consequences, if any, of not providing a part of the requested information;

(6) the principal purpose within the agency for which the information is to be used;

(7) all known or foreseeable disclosures which may be made of the information pursuant to Section 30‑4‑400; and

(8) the individual’s right of access to records containing personal information which are maintained by the agency.

(B) This section does not apply to a law enforcement document issued by an employee of a law enforcement agency in the performance of his duties when the violator is provided an exact copy of the document, or to accident reports when the interested parties may obtain a copy of the report pursuant to Sections 56‑5‑1210 through 56‑5‑1360.

(C) The notice required by this section does not apply to agency requirements for an individual to provide his name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that the requirement for an individual’s social security number must conform with the provisions of federal law.

Section 30‑4‑380. (A) An agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

(B) This standard need not be met except when the records are used to make a determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete the portion of the record that it knows or has reason to believe is inaccurate or untimely.

Section 30‑4‑390. An agency shall establish rules of conduct for a person involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each person on the rules and requirements of this article, and the remedies and penalties for noncompliance.

Section 30‑4‑400. (A) An agency must not disclose personal information that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

(1) to the individual to whom the information pertains;

(2) with the prior written consent of the individual to whom the record pertains, but only if the consent has been obtained not more than thirty days before the disclosure, or in the time limit agreed to by the individual in the written consent;

(3) to the appointed guardian of the individual or a person representing the individual provided it can be proved with reasonable certainty through the possession of agency forms, documents, or correspondence that the person is the authorized representative of the individual to whom the information pertains;

(4) to the officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired;

(5) to a person or to another agency when the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 30‑4‑410. With respect to information transferred from a law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency;

(6) to a governmental entity when required by state or federal law;

(7) pursuant to Article 1, the ‘Freedom of Information Act’;

(8) to a person who provides the agency with advance adequate written assurance that the information is used solely for statistical research or reporting purposes, but only if the information is to be disclosed in a form that does not identify an individual;

(9) pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon disclosure notification is transmitted to the individual to whom the information pertains at his last known address. Disclosure is not to be made if it is in conflict with other state or federal laws;

(10) to a person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if notification is not prohibited by law;

(11) to a person pursuant to a search warrant;

(12) to a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law;

(13) to another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing;

(14) to an adopted person and is limited to general background information pertaining to the adopted person’s natural parents, provided that the information does not include or reveal the identity of the natural parents;

(15) to a child or grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person’s natural parents, provided that the information does not include or reveal the identity of the natural parents;

(16) to a member of the General Assembly or staff member, who has the authorization of a member in writing, when the member has permission to obtain the information from the individual to whom it pertains or when the member provides reasonable assurance that he is acting on behalf of the individual;

(17) to the state post‑secondary educational institutions conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information, and assurances that the personal identity of the subject may not be further disclosed in individually identifiable form; and

(18) to the protection and advocacy agencies pursuant to federal law to protect and advocate the rights of persons with developmental disabilities and persons with mental illness, and to enable the agencies to exercise their authority and investigate incidents of abuse or neglect of persons with developmental disabilities or persons with mental illness.

(B) The provisions of this section may not be interpreted to require the disclosure of personal information to the individual to whom the information pertains when the information may otherwise be withheld pursuant to Section 30‑4‑440.

Section 30‑4‑410. (A) An agency shall keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to Section 30‑4‑400(9), (10), (11), (12), and (13). This accounting is also required for disclosures made pursuant to Section 30‑4‑400(5) or (6) unless notice of the type of disclosure has been provided pursuant to Sections 30‑4‑370 and 30‑4‑400. The accounting also must include the name, title, and business address of the person or agency to whom the disclosure is made. For the purpose of an accounting of a disclosure made pursuant to Section 30‑4‑400(12), it is sufficient for a law enforcement or regulatory agency to record the date of disclosure, the law enforcement or regulatory agency requesting the disclosure, and whether the purpose of the disclosure is for an investigation of unlawful activity under the jurisdiction of the requesting agency, or for licensing, certification, or regulatory purposes by that agency.

(B) Routine disclosures of information pertaining to crimes, offenders, and suspected offenders to law enforcement or regulatory agencies of federal, state, and local government are considered to be disclosures pursuant to Section 30‑4‑400(5) for the purpose of meeting the requirements of this section.

Section 30‑4‑420. In addition to the requirements provided in Section 30‑4‑160 and Section 56‑3‑545, with respect to the sale of information concerning the registration of a vehicle or the sale of information from the files of drivers’ licenses, the Department of Public Safety, by regulation, shall establish administrative procedures under which a person making a request for information is required to identify himself and state the reason for making the request. These procedures must provide for the verification of the name and address of the person making a request for information. The procedures also must provide for a ten‑day delay in the release of the requested information. The procedures also must provide for notification to the person to whom the information primarily relates, as to what information was provided, and to whom it was provided. The department shall establish, by regulation, a reasonable length of time to maintain a record of this information.

Section 30‑4‑430. (A) An individual has the right to inquire and be notified as to whether the agency maintains a record about him. Agencies shall take reasonable steps to assist individuals in making their request sufficiently specific.

(B) An agency may specify, by regulation, reasonable times, places, and requirements for identifying an individual who requests access to a record, and for disclosing the contents of a record.

(C) An agency may establish reasonable fees to be charged to an individual for making copies of a record.

Section 30‑4‑440. (A) This article does not require an agency to disclose personal information to the individual to whom the information pertains, if the information meets one of the following criteria, it:

(1) is compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual;

(3) is contained in a record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency;

(4) is maintained for the purpose of an investigation of an individual’s fitness for licensure or public employment, or of a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation, or a related investigation. The identities of individuals who provided information for the investigation may be withheld;

(5) would compromise the objectivity or fairness of a competitive examination for appointment or promotion in public service, or to determine fitness for licensure, or to determine scholastic aptitude;

(6) pertains to the physical or psychological condition of the individual, if the agency determines that disclosure would be detrimental to the individual. The information, upon the individual’s written authorization, must be disclosed to a licensed medical practitioner or psychologist designated by the individual;

(7) relates to the settlement of claims for work‑related illnesses or injuries and is maintained exclusively by the Worker’s Compensation Commission; and

(8) is required by statute to be withheld from the individual to whom it pertains.

(B) This section may not be construed to deny an individual access to information relating to him if another statute or decisional law of the State allows access.

Section 30‑4‑450. (A) Except as provided in subsection (C), if the agency determines that information requested pursuant to Section 30‑4‑430 is exempt from access, it shall inform the individual in writing of the agency’s finding that disclosure is not required by law.

(B) Except as provided in subsection (C), each agency shall conduct a review of its determination that particular information is exempt from access pursuant to Section 30‑4‑430, within thirty days from the receipt of a request by an individual directly affected by the determination, and inform the individual in writing of the findings of the review. The review must be conducted by the head of the agency or his designee.

(C) If the agency believes that compliance with the inspection request made pursuant to Section 30‑4‑430 would seriously interfere with attempts to apprehend persons who are wanted for committing a crime, or attempts to prevent the commission of a crime, or would endanger the life of an informant or other person submitting information contained in the record, it may petition the administrative judge of the Fifth Judicial Circuit to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court must be in camera. If the administrative judge finds that there are reasonable grounds to believe that compliance with subsection (A) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime, or attempts to prevent the commission of a crime, or endangers the life of an informant or other person submitting information contained in the record, the administrative judge shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. The order must not be issued for longer than thirty days but can be renewed at thirty‑day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subsection (A) or seek a new order pursuant to this subsection.

Section 30‑4‑460. (A) In disclosing information contained in a record to an individual, an agency shall not disclose personal information relating to another individual which may be contained in the record. In order to comply with this section, an agency, in disclosing information, shall delete from disclosure any information as may be necessary. This section may not be construed to authorize withholding the identities of sources except as provided in Section 30‑4‑440.

(B) In disclosing information contained in a record to an individual, an agency need not disclose information pertaining to that individual which is exempt pursuant to Section 30‑4‑440. In order to comply with this section, an agency, in disclosing personal information contained in a record, may delete from the disclosure exempt information.

Section 30‑4‑470. This article applies to the rights of an individual to whom personal information pertains and not to the authority or right of any other person, agency, or other state governmental entity to obtain this information.

Section 30‑4‑480. An individual may bring a civil action against an agency if the agency does one of the following:

(1) refuses to comply with an individual’s lawful request to inspect pursuant to Section 30‑4‑430;

(2) fails to maintain a record concerning an individual with the accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in a determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of this record if, as a proximate result of the failure, a determination is made which is adverse to the individual; or

(3) fails to comply with another provision of this chapter, or a regulation promulgated pursuant to it, in a way that has an adverse effect on an individual.

Section 30‑4‑490. (A) In a suit brought pursuant to the provisions of Section 30‑4‑480, the court may enjoin the agency from withholding the records and order the production to the individual of agency records improperly withheld from the individual. In this suit, the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or a portion of them may be withheld as exempt from the individual’s right of access. The burden is on the agency to sustain its action.

(B) The court shall assess against the agency reasonable attorney’s fees and other litigation costs reasonably incurred in a suit pursuant to this section in which the individual prevails. A party may be considered to have prevailed even though the individual does not prevail on all issues or against all parties.

(C) An agency that fails to comply with a provision of this article may be enjoined by a court of competent jurisdiction. The court may make an order or judgment as may be necessary to prevent the use or employment by an agency of practices which violate this article. Actions for injunction pursuant to this section may be prosecuted by the Attorney General, by a member of the general public, or by an individual acting in his own behalf.

(D) In a suit brought pursuant to the provisions of this article, the agency may be liable to the individual in an amount equal to the sum of:

(1) actual damages sustained by the individual, including damages for mental suffering; and

(2) the cost of the action together with reasonable attorney’s fees as determined by the court.

Section 30‑4‑500. An individual’s name and address may not be distributed, sold, or rented for commercial purposes by an agency unless the action is specifically authorized by law.

Section 30‑4‑510. An agency which maintains a mailing list shall add an individual’s name and address to the list only with prior written authorization of the individual. If an agency maintains a mailing list for the exclusive purpose of directly contacting the individual, it need not obtain prior written authorization of the individual.”

SECTION 2. Sections 30‑4‑10 through 30‑4‑165 of the 1976 Code are redesignated as Article 1, Chapter 4, Title 30 entitled ‘Freedom of Information Act’. The Code Commissioner is directed to change references from “chapter” to “article” as appropriate to reflect the redesignated provisions.

SECTION 3. This act takes effect July 1, 2009.

‑‑‑‑XX‑‑‑‑