

# Legislative Analysis

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## **PROHIBIT PERSONAL IDENTIFYING INFORMATION IN COURT FILINGS CONCERNING DIVORCE, CHILD SUPPORT, PATERNITY, AND DOMESTIC RELATIONS**

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**House Bill 4521-4523 (Substitutes H-1)**

**House Bill 6189 without amendment**

**Sponsor: Rep. Barb Byrum**

**Committee: Intergovernmental, Urban, and Regional Affairs**

### **First Analysis (6-9-08)**

**BRIEF SUMMARY:** The bills amend various acts to prohibit the inclusion of personal identifying information in court filings that concern divorce, child support, paternity, and domestic relations.

**FISCAL IMPACT:** House Bills 4521-4523 would have no identifiable fiscal impact on state or local government.

### **THE APPARENT PROBLEM:**

Often the documents officially recorded by courts, including court orders that concern divorce, child support, paternity, and domestic relations contain the signatures and Social Security numbers of those who file them, and also of those about whom they are filed.

As electronic records have proliferated, and access to records made easier on the Internet, those people whose Social Security numbers and other personal identifying information are available on the Internet risk the theft of their identity by unscrupulous people who violate the law. According to earlier committee testimony, there have been 7,000 cases of identify fraud in Michigan.

In some instances, state agencies require personal identifying information on the public records that are filed in court. For example, in the case of Domestic Relations Orders--those orders used (among other things) to address pension rights during divorce proceedings--the Michigan Office of Retirement Services requires that the divorcing parties' Social Security numbers be included in the body of the order, rather than as an attachment. The Office of Retirement Services has continued this practice under the advice of the Office of the Attorney General, despite the fact that the State Court Administrative Office has, since its 2004 directive, sanctioned all attorneys who file records with the court having Social Security numbers. According to the Attorney General, the Social Security numbers must be included in the orders because the law governing Eligible Domestic Relations Orders requires them.

To protect citizens' identities and their right to privacy, legislation has been introduced that would prohibit courts from entering orders or judgments that contain personal identifying information; or if a document does not comply, to redact personal identifying

information; or in the case of Eligible Domestic Relations Orders, to file the personal identifying information in an attachment.

### ***THE CONTENT OF THE BILLS:***

The bills would amend various acts to prohibit the inclusion of personal identifying information in court filings that concern divorce, child support, paternity, and domestic relations.

Under House Bills 4521-4523, "personal identifying information" means that term as defined in Section 3 of the Identity Theft Protection Act of 2004 (MCL 445.63), except that personal identifying information would not include a person's name and address.

[Note: Under the Identity Theft Protection Act, "personal identifying information" is defined to mean a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including a person's name, address, telephone number, driver license or state personal identification card number, Social Security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number credit card number, vital record, or medical records or information.]

A more detailed description of each bill follows.

House Bill 4521 (H-1) would amend RS 84 of 1846 entitled "Of Divorce" (MCL 552.1 et al.) to prohibit an order or judgment entered in an action for divorce or separate maintenance (or any document attached to or filed in the case) from containing personal identifying information unless specifically required by state or federal law, rule, or regulation, or by a court order or rule. The bill specifies that this prohibition would not affect an obligation of a person to provide personal identifying information to the Friend of the Court, or another person. The bill also specifies that the court could order that an order or other documents that did not comply be filed in the case file if the personal identifying information were redacted.

House Bill 4522 (H-1) would amend the Paternity Act (MCL 722.12) to prohibit an order of filiation (or any document attached to or filed in the case file with the order) from containing personal identifying information unless specifically required by state or federal law, rule, or regulation, or by a court order or rule. The bill specifies that this prohibition would not affect an obligation of a person to provide personal identifying information to the Friend of the Court or another person. The bill also specifies that the court could order that an order of filiation or other document that did not comply be filed in the case file if the personal identifying information were redacted.

House Bill 4523 (H-1) would amend the Family Support Act (MCL 552.452) to prohibit a child or family support order (or any document attached to or filed in the case file with the order) from containing personal identifying information unless specifically required by state or federal law, rule, or regulation, or by a court order or rule. The bill specifies that this prohibition would not affect an obligation of a person to provide personal identifying information to the Friend of the Court or another person. The bill also specifies that the court could order that an order or other document that did not comply be filed in the case file if the personal identifying information were redacted.

House Bill 6189 would amend the Eligible Domestic Relations Order Act (MCL 38.1702) to remove, from the definition of the term "eligible domestic relations order," the requirement that Social Security numbers be included in a court's order. Instead, the bill requires that the Social Security numbers of the participant and the alternate payee be sent to the retirement system in an attachment to the order. The bill specifies that the attachment is *not* to be filed with the court, but instead must be attached to the domestic relations order when it is sent to the plan administrator for approval.

The bill also revises the definition of "eligible domestic relations order" to require that an order contain names and last known addresses of the participant and alternate payee, and eliminating the requirement that an order contain the names, addresses, *and Social Security numbers* of the participant and alternate payee.

#### **ARGUMENTS:**

##### ***For:***

In an era when identity theft is on the rise, this legislation would prohibit the inclusion of personal identifying information--including Social Security numbers--in any order filed with the court, unless it was required by state or federal law, rule, or regulation, or by a court order or rule. The prohibition would apply when courts file documents concerning divorce, child support, paternity, and domestic relations. The legislation also allows the court to redact offending information as an alternative to refusing to enter the order. The bills are necessary in order to better protect citizens' privacy and the theft of their identities.

##### ***For:***

House Bill 6189 would require that Social Security numbers on Eligible Domestic Relations Orders be filed with the Michigan Office of Retirement Services as attachments, rather than entered in the body of the orders. According to the Family Law Section of the Michigan Bar Association (whose members helped to draft House Bill 6189), the bill eliminates what has been a "catch 22" for attorneys who have been caught between the conflicting requirements of the Eligible Domestic Relations Orders Act, and a directive of the State Court Administrative Office which has, since 2004, sanctioned attorney's who file documents with the courts having Social Security numbers.

***POSITIONS:***

The State Bar of Michigan's Family Law Section supports House Bills 4521, 4522, and 4523. It helped draft House Bill 6189 but has not yet met to take a position on it. (6-4-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.