S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 14, 2008

Opinion No. 08-123

Applicability of Section 6 of Chapter 170 of Public Acts of 2007

QUESTION

Whether the provisions of Section 6 of Chapter 170 of the Public Acts of 2007 are applicable to the Clerk of the Appellate Courts.

OPINION

Section 6 of Chapter 170 of the Public Acts of 2007 does not apply to the Clerk of the Appellate Courts.

ANALYSIS

In 2007, the Tennessee General Assembly adopted the Credit Security Act of 2007. *See* Public Chapter 170. Section 6 of that Act provides in part as follows:

> (a) On and after January 1, 2008, any person, nonprofit or for profit business entity in this state, including but not limited to any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including but not limited to health care, that has obtained a federal social security number for a legitimate business or governmental purpose shall make reasonable efforts to protect that social security number from disclosure to the public. Such social security numbers shall not:
>
> (1) Be posted or displayed in public;
> (2) Be required to be transmitted over the Internet, unless the Internet connection used is secure or the social security number is encrypted;

> (3) Be required to log onto or access an Internet website, unless used in connection with a password or other authentication device; or
>
> (4) Be printed on any materials mailed to a consumer, unless such disclosure is required by law, or the document is a form or application.
>
> (b) The requirements established pursuant to subsection (a)(1)-(4) do not apply to the disclosure of a federal social security number by an entity so long as such disclosure is for a legitimate business or governmental purpose and occurs pursuant to the terms of a business or governmental contract or other lawful legal obligation.

After January 1, 2009, a violation of subsection (a) is a Class B misdemeanor.

You have indicated that social security numbers are often included in the appellate records transmitted to the Office of the Appellate Court Clerk from the trial court clerks. Two examples you have provided are where the social security number of a party is included in a Stipulation of Facts filed with the trial court clerk and included as part of the technical record on appeal and where the social security number of a criminal defendant is included in a form judgment which is then included as part of the technical record on appeal. In light of these circumstances, you have asked whether the requirements of Section 6 of Chapter 170 apply to the Clerk of the Appellate Courts.

To resolve this question, it must be determined if the Clerk of the Appellate Court is a "person, nonprofit or for profit business entity . . . engaged in any business" for purposes of subsection (a) of the Act. Clearly, the Clerk of the Appellate Courts is not a nonprofit or for profit business entity engaged in any business. Rather, it is a government office and part of the judicial branch. Thus, the Act would only be applicable against the Clerk of the Appellate Courts if the Legislature intended to include such a governmental official within the definition of "person engaged in any business" in subsection (a). It is well-settled that the guiding principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996); *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). Legislative intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language. *Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distrib., Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). Moreover, if there is any ambiguity in the language, courts look to the entire statutory scheme to ascertain the legislative intent. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1955).

The Act does not define the term "person"; however, that term is ordinarily defined as a "human" or "individual." Webster's Ninth New Collegiate Dictionary, p. 877 (1988). Similarly, Black's Law Dictionary defines "person" as "a human being," a "natural person." Black's Law

Dictionary (8th Ed.), p. 1178 (2004).[1] While the duties and functions of the Clerk of the Appellate Courts are performed by a "human being" or "natural person", the Clerk is, as previously noted, a government office and part of the judicial branch. The office is created by statute and its duties and functions are also prescribed by statute. *See* Tenn. Code Ann. §§ 18-3-101, *et seq*. Pursuant to these statutes, the Clerk of the Appellate Courts is not engaged in a business, but rather is performing government functions on behalf of the judicial branch. Accordingly, it is our opinion that the Legislature did not intend to include the Clerk of the Appellate Courts as a "person engaged in any business" for purposes of subsection (a) and, therefore, that the provisions of Section 6 of the Credit Security Act of 2007 are not applicable to the Clerk of the Appellate Courts.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

Honorable Michael W. Catalano
Appellate Court Clerk
Supreme Court Building, 401 Seventh Avenue North
Nashville, TN 37219-1407

[1]Many statutes also define the term "person" to include corporations and/or other forms of business enterprise. In the case of Section 6(a) of Chapter 170, however, such enterprises are expressly included within the definition of "for profit business entity".