



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law requires a law enforcement officer to file a written report for a motor vehicle crash if the crash:

- Resulted in death or personal injury;
- Resulted in damage to a vehicle or other property; or
- Rendered the vehicle inoperative and required a wrecker to remove it from traffic.<sup>1</sup>

The driver of the vehicle is required to file a written report if a law enforcement officer does not do so.<sup>2</sup> Supplemental written reports also might be required.<sup>3</sup> A driver failing to file the appropriate reports commits a noncriminal traffic infraction that is punishable as a nonmoving violation as provided in chapter 318, F.S. (\$30 penalty).<sup>4</sup>

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt<sup>5</sup> for a period of 60 days after the date the report is filed.<sup>6</sup> Such reports are immediately available to:

- The party involved in the crash and his or her legal representative, licensed insurance agent, insurer, or person under contract with such insurer to provide claims or underwriting information;
- Prosecutorial authorities;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation;<sup>7</sup> and
- Any local, state, or federal agency.<sup>8</sup>

A person with immediate access to confidential and exempt information contained in such reports must present a valid driver's license or other photo identification, proof of status, or identification that demonstrates his or her qualifications to access such reports. The person also must file a written

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<sup>1</sup> Section 316.066(3)(a), F.S.

<sup>2</sup> Section 316.066(1), F.S.

<sup>3</sup> Section 316.066(2), F.S.

<sup>4</sup> Section 316.066(6), F.S.

<sup>5</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>6</sup> Section 316.066(3)(c), F.S.

<sup>7</sup> The following are not newspapers for purposes of the exemption: newspapers intended for members of a particular profession or occupational group; newspapers with the primary purpose of distributing advertising; and newspapers with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes. *Id.*

<sup>8</sup> *Id.*

sworn statement<sup>9</sup> with the custodian of such reports attesting that the confidential and exempt information will not be used for commercial solicitation<sup>10</sup> of accident victims or knowingly disclosed to any third party for the purpose of solicitation, during the 60-day period.<sup>11</sup>

The following persons are guilty of a felony of the third degree<sup>12</sup> for violating the provisions of the exemption:

- An agency employee who willfully and knowingly discloses the confidential and exempt information to an unauthorized person;<sup>13</sup>
- A person without authorized access to such information and who obtains or attempts to obtain the information;<sup>14</sup> and
- A person who uses such information in violation of the sworn statement.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act,<sup>16</sup> the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

### **Effect of Bill**

HB 7035 removes the repeal date, thereby reenacting the public records exemption. It makes editorial and conforming changes and reorganizes the section.

The bill removes a clause reiterating the general requirement that an agency granted access to confidential and exempt information must maintain the status of that information. In *Ragsdale v. State*,<sup>17</sup> the Florida Supreme Court held that:

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.<sup>18</sup>

In *City of Riviera Beach v. Barfield*,<sup>19</sup> the court stated, “[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”<sup>20</sup> As such, the provision is unnecessary and has been removed, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

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<sup>9</sup> In lieu of the written sworn statement, the custodial agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers provided the contract states the confidential and exempt information will not be used for commercial solicitation. *Id.*

<sup>10</sup> Commercial solicitation does not include the use of a crash report for purposes of publication in a newspaper or a radio or television broadcast. Section 316.066(4), F.S.

<sup>11</sup> Section 316.066(3)(c), F.S.

<sup>12</sup> A felony of the third degree is punishable by a term of imprisonment not exceeding five years (s. 775.082(3)(d), F.S.) and a fine not exceeding \$5,000 (s. 775.083(1)(c), F.S.)

<sup>13</sup> Section 316.066(3)(d), F.S.

<sup>14</sup> Section 316.066(3)(e), F.S.

<sup>15</sup> Section 316.066(3)(f), F.S.

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 720 So.2d 203 (Fla. 1998).

<sup>18</sup> *Id.* at 206, 207.

<sup>19</sup> 642 So. 2d 1135 (Fla. 4<sup>th</sup> DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

<sup>20</sup> *Id.* at 1137.

C. SECTION DIRECTORY:

Section 1 amends s. 316.066, F.S., to remove the October 2, 2006, repeal date and make technical or grammatical changes..

Section 2 amends s. 324.051, F.S., to correct a cross-reference.

Section 3 amends s. 921.0022, F.S., to correct a cross-reference.

Section 4 provides an effective date of October 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 7035 may represent a minimal, non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 7035 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.