

STORAGE NAME: h0095.go
DATE: February 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 95

RELATING TO: Records of the Department of Highway Safety & Motor Vehicles

SPONSOR(S): Representative Heyman

STATUTE(S) AFFECTED: ss. 119.07, 319.17, 319.25, 320.05 & 322.20

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
- (2) FINANCE & TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

Congress enacted the Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA is a federal law prohibiting the release of "personal information" contained in state motor vehicle records, except in certain situations. DPPA requires that states comply with its provisions by 1997. Any state department of motor vehicles that has a policy or practice of substantial noncompliance is subject to a civil penalty of up to \$5,000 per day.

HB 95 allows individuals, upon request, to have personal information contained in their motor vehicle records exempt from public disclosure. However, such confidential information must be released in certain circumstances; for example, for use in connection with matters relating to:

- Motor vehicle theft, driver safety, motor vehicle emissions, and motor vehicle product alterations, recalls, or advisories.
- Legitimate business inquiries to verify personal information to prevent fraud.
- Civil, criminal, administrative, or arbitral proceedings in any court or agency or before any self-regulatory body.
- Insurance in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

This bill does not appear to have a fiscal impact on local government. This bill does have a fiscal impact on the Department of Highway Safety and Motor Vehicles. See "Fiscal Comments" section.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Congress enacted the Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA is a federal law prohibiting the release of "personal information" contained in state motor vehicle records, unless the release is otherwise specifically authorized.

Personal information is described as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver status." The DPPA defines motor vehicle records as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles."

DPPA requires that states comply with its provisions by 1997. Any state department of motor vehicles that has a policy or practice of substantial noncompliance is subject to a civil penalty of up to \$5,000 per day. In addition, DPPA provides for a criminal fine and civil remedy against any person who knowingly violates the DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States district court. Prior to the effective date of DPPA, states may continue to release motor vehicle records in accordance with existing state law.

The State of Florida has a strong policy of allowing public inspection of state, county, and municipal records. For many years this policy has been manifested in the state's Public Records Law. Florida citizens have a constitutional right to access records made or received by a public body or public official in connection with official business. However, the Legislature may exempt records from the requirement that public records be open for public inspection. Exemptions must be provided by general law, must specifically state a public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the law. See Art. I, s. 24, Fla. Const.

For certain individuals, the Legislature has already allowed personal information contained in motor vehicle records to be exempt from public disclosure. For example, current and former law enforcement personnel, correctional officers, and statewide prosecutors may opt to have certain personal information held exempt from public disclosure. See s. 119.07(3), F.S.

Section 119.15, F.S., provides that exemptions may be created or maintained only if at least one of the following apply: 1) the record is of a sensitive personal nature; 2) the exemption is necessary for effective and efficient administration of a governmental program; or 3) the exemption affects confidential information concerning an entity.

An exemption for personal information contained in a motor vehicle record could be justified under the first two criteria. First, the exemption could be justified because without the exemption the state could be subjected to a fine of not more than \$5,000 per day for "substantial noncompliance."

Second, the exemption protects "sensitive personal information" concerning individuals which if released could jeopardize the individual's safety.

Restricting access to motor vehicle records to prevent stalking was one recommendation specifically made by a recent Department of Justice report. In 1993, Congress directed the U.S. Department of Justice to develop a model anti-stalking code. The report included several recommendations, one of which is particularly relevant:

Potential stalkers may be able to gain access to personal information about their victims from public records, such as motor vehicle records...States may wish to examine their privacy and freedom of information statutes to determine whether amendments are needed to prevent information contained in public records from being used for illegal purposes.

A 1996 Florida Senate interim project report on personal records maintained by the Department of Highway Safety and Motor Vehicles (DHSMV) indicated that they could not document cases in Florida where a stalker obtained victim information from state motor vehicle records. The report results showed that this type of information is not compiled by the state and individual local law enforcement agencies would have to be contacted to identify cases where a stalker had obtained victim information from state motor vehicle records. However, the problem may exist in Florida even though information concerning such cases is not available.

Finally, release of social security numbers and other personally identifying information could create an opportunity for fraudulent activities against such individuals, especially with respect to financial matters.

B. EFFECT OF PROPOSED CHANGES:

HB 95 allows individuals to request that certain personal information regarding them contained in motor vehicle records be held exempt from public disclosure. This bill provides that "personal information includes, but is not limited to, the requester's social security number, driver identification number, name, address, telephone number, and medical or disability information. For purposes of this paragraph, personal information does not include information relating to vehicular crashes, driving violations, and driver's status." "Motor vehicle record" is defined to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

Even though an individual may request that such information be held exempt, such information will be released for use in connection with matters relating to:

- Motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; certain performance monitoring; to carry out the purposes of several federal laws; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
- Matters performed by or on behalf of any court or federal, state, or local agency.

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- Legitimate business inquiries to verify the accuracy of personal information; and, if such information so submitted is not correct, to obtain correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against an individual.
- Civil, criminal, administrative, or arbitral proceedings in any court or agency or before any self-regulatory body.
- Research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- Insurance in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.
- Notice to the owner of a towed or impounded vehicle.
- Use by licensed private investigative agency or licensed security service for any purpose permitted "under this paragraph."
- Use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license.
- Use in connection with the operation of private toll facilities.
- Bulk distribution for surveys, marketing, or solicitations, if the DHSMV has implemented procedures to ensure that: 1) persons are provided an opportunity to prohibit such use of their personal information; and 2) the information will be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations.
- Any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record.

This bill also requires the DHSMV, prior to the disclosure of personal information, to obtain reasonable assurance of the requestor's identity and that the use will only be as authorized, or that the consent of the person who is the subject of the information has been obtained.

Provisions in this bill also govern the resale or redisclosure of the personal information obtained from the DHSMV. In particular the bill requires recipients who resell or redisclose information to maintain for five years records that identify each person or entity that has received the information and the purpose for which it will be used. In addition, the bill places restrictions on how resold or redisclosed information may be used. For example, businesses that sell or redisclose personal information for bulk distribution surveys, marketing, or solicitations must provide an opportunity to persons not to have the surveys, marketing, or solicitations directed at them.

This bill also requires the DHSMV to adopt rules to carry out this legislation and the federal Driver's Privacy Protection Act of 1994. The rules must provide for "the payment of applicable fees." The applicable fees are set forth in statute; the rule is to implement the applicable statutory fees and provide a process for collecting same.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill creates the authority for the DHSMV to make rules in order to implement this legislation and the federal law.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill creates new responsibilities for DHSMV personnel in that they must facilitate nondisclosure of certain personal information contained in motor vehicle records, if a proper request for nondisclosure has been made.

(3) any entitlement to a government service or benefit?

This bill does not appear to increase or decrease any entitlement to a government service or benefit.

b. If an agency or program is eliminated or reduced:

This bill does not appear to eliminate or reduce an agency or program.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA

(2) what is the cost of such responsibility at the new level/agency?

NA

(3) how is the new agency accountable to the people governed?

NA

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No

- b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The beneficiaries of this legislation may be considered those persons who would be able to opt not to have personal information about them, contained in their motor vehicle records, made public. These persons do not directly pay any portion of DHSMV's implementation costs in keeping such information exempt from public disclosure.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill does appear to allow individuals to decide, to some degree, whether personal information regarding them contained in motor vehicle records will be released to the public.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill implements federal law which requires the DHSMV to facilitate nondisclosure of personal information contained in motor vehicle records when so requested by the affected person, with certain exceptions.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not appear to purport to provide services to families or children.

- (1) Who evaluates the family's needs?

NA

- (2) Who makes the decisions?

NA

- (3) Are private alternatives permitted?

NA

- (4) Are families required to participate in a program?

NA

- (5) Are families penalized for not participating in a program?

NA

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not appear to create or change a program providing services to families or children.

(1) parents and guardians?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 119.07(3)(bb), F.S.; authorizes the exemption from public disclosure of personal information contained in motor vehicle records held by the DHSMV, and authorizes exceptions to the exemption; defines "personal information" and "motor vehicle record"; and authorizes the adoption of rules by the DHSMV to implement the legislation and the federal Driver's Privacy Protection Act of 1994.

Sections 2 - 5: Amends ss. 319.17, 319.25, 320.05, 322.20, F.S., respectively, to provide a cross reference for the public records exemption.

Section 6: Provides a public necessity statement for the exemption described in Section 1 above.

Section 7: Provides an effective date of September 13, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See "Fiscal Comments" section below.

2. Recurring Effects:

See "Fiscal Comments" section below.

3. Long Run Effects Other Than Normal Growth:

See "Fiscal Comments" section below.

4. Total Revenues and Expenditures:

See "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See "Fiscal Comments" section below.

2. Direct Private Sector Benefits:

See "Fiscal Comments" section below.

3. Effects on Competition, Private Enterprise and Employment Markets:

See "Fiscal Comments" section below.

D. FISCAL COMMENTS:

In fiscal year 1995-96, the DHSMV received approximately \$21 million from the sale of motor vehicle records. In addition, revenues received by the private sector from the use and/or resale of the motor vehicle records are estimated to be well over a \$100 million annually. See Florida House of Representatives Committee on Transportation, Issue Paper, November 1996, Florida's Enactment of the Driver Privacy Protection Act etc., p. 4. The impact on the DHSMV's income as well as private sector use and resell income is indeterminate. *Id.*

"[T]he Department [DHSMV] estimates that it will ... cost \$1 million to administer the DPPA in Florida." *Id.*

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IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Similar legislation, HB 717 and SB 766, was before the Legislature last session. Both bills died.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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