

STORAGE NAME: h0043.tr
DATE: December 29, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TRANSPORTATION
ANALYSIS**

BILL #: HB 43
RELATING TO: Public Records/Motor Vehicle Records
SPONSOR(S): Rep. Harrington
COMPANION BILL(S): None

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

- (1) TRANSPORTATION
 - (2) GOVERNMENTAL OPERATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The State of Florida's motor vehicle records contain personal information about licensees and motor vehicle owners. Personal information includes, but is not limited to, a driver's social security number, driver's license number, name, address, telephone number, and medical or disability information. Unless specifically exempted by law, the Department of Highway Safety and Motor Vehicles (DHS&MV) is required to make all motor vehicle records available to the public.

Current law specifically prohibits DHS&MV from releasing driver license photographs and digital images except for law enforcement purposes. In addition, DHS&MV is authorized to release driver license photographs, digital images, and other driver's license and state identification card information if such information is used solely for the prevention of fraud.

This bill exempts personal information in *all* motor vehicle records from public disclosure, unless the information is used for specified business or government purposes. An individual would no longer have the option of either keeping their motor vehicle record "open" for public inspection or having their personal information contained in their motor vehicle records exempt from public disclosure.

Business and governmental entities would continue to have access to the records pursuant to the 14 exceptions authorized under current law. In addition, DHS&MV's authority to release driver's license and state identification card information for the prevention of fraud is not affected by the bill.

During FY 1997-98, DHS&MV collected approximately \$25 million from the sale of driving and motor vehicle records. DHS&MV estimates that implementation of this bill will not significantly affect the continued sale of these records since a majority of the records presently sold fall within the current exceptions authorized by law. The sale of title and registration information to private requestors, of which an estimated \$150,000 is received annually, could result in an indeterminate revenue decrease to the Highway Safety Operating Trust Fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Motor vehicle records contain personal information about drivers and motor vehicle owners. Personal information includes, but is not limited to, a driver's social security number, driver identification number, name, address, telephone number, and medical or disability information.

Some people contend that personal information in motor vehicle records can be used to harm or harass others. As a result, they believe that DHS&MV should only release personal information in motor vehicle records when the information is used for legitimate business and law enforcement purposes.

Driver's Privacy Protection Act

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*. The DPPA further requires that states comply with its provisions by 1997. Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to \$5,000 per day.

Florida came into compliance with the DPPA in 1997, when chapter 97-185, Laws of Florida, became law.

Availability of Motor Vehicle Records

Unless specifically exempted by law, DHS&MV is required to make all motor vehicle records available to the public. See s. 119.07, F.S.

Authorized exemptions, which prohibit DHS&MV's release of the information, include the following:

- Individuals may request that their personal information be withheld from public disclosure. However, the information may still be released for specified purposes. Section 119.07, F.S., authorizes the release of such motor vehicle records according to fourteen exceptions, which includes use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency.
- Current and former law enforcement personnel, correctional officers, and statewide prosecutors may opt to have personal information held exempt from public disclosure.

Notwithstanding these exemptions from public disclosure, s. 322.142, F.S., specifically prohibits DHS&MV from releasing driver license photographs and digital images except for law enforcement purposes. This section also authorizes DHS&MV to release all driver license photographs, digital images, and other driver's license and state identification card information if such information is used solely for the prevention of fraud.

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Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

B. EFFECT OF PROPOSED CHANGES:

The bill revises the exemption from public records requirements for personal information contained in motor vehicle records held by DHS&MV. Personal information in *all* motor vehicle records would be exempt from public disclosure, unless the information is used for specified business or government purposes. An individual would no longer have the option of either keeping their motor vehicle record "open" for public inspection or having their record "closed" and exempt from public disclosure.

Business and governmental entities would continue to have access to the records pursuant to the exceptions authorized under current law. Also, DHS&MV's authority to release driver's license and state identification card information for the prevention of fraud is not affected by the bill. Personal information would continue to be available for the following purposes:

1. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.
2. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.
3. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
4. For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:
 - a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.
 - b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney.

- c. Investigation by any person in connection with any filed proceeding.
 - d. Execution or enforcement of judgments and orders.
 - e. Compliance with an order of any court.
6. For use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
 7. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.
 8. For use in providing notice to the owners of towed or impounded vehicles.
 9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this paragraph. Personal information obtained based on an exempt driver's record may not be provided to a client who cannot demonstrate a need based on a police report, court order, or a business or personal relationship with the subject of the investigation.
 10. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. App. 2710 et seq.
 11. For use in connection with the operation of private toll transportation facilities.
 12. For bulk distribution for surveys, marketing, or solicitations when the department has implemented methods and procedures to ensure that:
 - a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and
 - b. The information will be used, rented, or sold solely for bulk distribution for survey, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have timely requested that they not be directed at them.
 13. For 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.
 14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.

This bill also provides a public necessity statement for the exemption being revised.

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?

N/A

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

N/A

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

N/A

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

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

N/A

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

N/A

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

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

Some individuals and businesses may not have access to some motor vehicle records.

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

N/A

4. Individual Freedom:

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

N/A

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

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5. Family Empowerment:

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

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

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

N/A

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 119.07, F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Indeterminate, see D., Fiscal Comments

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

During FY 1997-98, DHS&MV collected approximately \$25 million from the sale of driving and motor vehicle records. DHS&MV estimates that implementation of this bill will not significantly affect the continued sale of these records since a majority of the records presently sold fall within the current exceptions authorized by law. The sale of title and registration information to private requestors, of which an estimated \$150,000 is

received annually, could result in an indeterminate revenue decrease to the Highway Safety Operating Trust Fund.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

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