

STORAGE NAME: h1967a.go
DATE: April 13, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1967
RELATING TO: Public Records/Motor Vehicle Information
SPONSOR(S): Representative Harrington
TIED BILL(S):

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

- (1) TRANSPORTATION YEAS 11 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Currently, the Department of Highway Safety and Motor Vehicles may release personal information contained in a motor vehicle record to the public. An individual may submit a form requesting his or her personal information be withheld. There are, however, 14 exceptions provided in law which allow for the release of all personal information, regardless of a request by an individual to block his or her information.

This bill provides that all personal information is exempt from being released to the public unless an individual submits to the department written permission to release his or her information. Most of the blocked information may still be released under the 14 exceptions.

The bill, however, provides for tighter restrictions relating to the release of an individual's social security number and medical or disability information.

This bill stipulates that the new restrictions on the disclosure of personal information will not affect the use of organ donor information on an individual's driver's license nor will it affect the administration or organ donor initiatives in this state.

This bill has an effective date of June 1, 2000.

This bill would have a significant impact on the Department of Highway Safety and Motor Vehicles. See Fiscal Analysis III.

Note: Please see part VI. Amendment or Committee Substitute Changes for the effect of the amendments adopted by the Committee on Transportation which are traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records 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 1, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of s. 24(a). Such a general law exempting records from public disclosure 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 a 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, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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. Currently, chapter 119, F.S., provides that the Department of Highway Safety and Motor Vehicles may release personal information contained in a motor vehicle record to the public. An individual may, however, submit a form requesting his or her personal information be withheld.

Motor Vehicle Records

Currently, chapter 119, F.S., provides that the Department of Highway Safety and Motor Vehicles may release personal information contained in a motor vehicle record to the public. An individual may, however, submit a form requesting his or her personal information be withheld.

Personal information contained in a motor vehicle record include the requester's social security number, driver identification number, name, address, telephone number, and medical or disability information. Information relating to accidents, driving violations, and a driver's status is not considered personal information.

There are 14 exceptions in s. 119.07(3)(bb), F.S., which allow for the release of all personal information, regardless of a request by an individual to block his or her information. As numbered, these exceptions are for use:

1. In matters of motor vehicle or driver safety and theft, emissions, product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by 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 1996, the Anti-Car Theft Act of 1992, and the Clean Air Act;
2. By any government agency for the purpose of carrying out its functions or any private person or entity acting on behalf of a government agency;
3. In matters of motor vehicle or driver safety and theft, emissions, product alterations, recalls, or advisories, performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities; removal of non-owner records of motor vehicle manufacturers;
4. In the normal course of business to verify the accuracy of personal information submitted by an individual;

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5. In connection with any field civil, criminal, administrative, or arbitral proceeding in any court or before any self-regulating body;
6. In research activities and in producing statistical reports, as long as the personal information is not published, re-disclosed, or used to contact the individuals;
7. By insurers or insurance support organizations;
8. In providing notice to the owners of towed or impounded vehicles;
9. By any licensed private investigative agency or licensed security service;
10. By an employer or its agent or insurer to obtain or verify information on a person holding a commercial driver's license as required under the Commercial Motor Vehicle Safety Act;
11. In connection with the operation of private toll transportation facilities;
12. In connection with bulk distribution of surveys, marketing, or solicitations unless an individual has prevented the release of information for this purpose;
13. When the person requesting information provides proof that he or she has obtained the written consent of the individual who is the subject of the motor vehicle record; and
14. When specifically authorized by state law, if the use is related to the operation of a motor vehicle or public safety.

Under s. 322.142(4), F.S., the department shall maintain a record of the digital image of the licensee (driver). Reproductions of that digital image shall be for administrative use only or for law enforcement. (An exception was created in s. 4, ch. 98-223, Laws of Florida, for the sale of these digital images for purposes of preventing fraud, but was repealed in 1999 by s. 1, ch. 99-306, Laws of Florida.)

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 119.07, F.S., to provide that all personal information is exempt from being released to the public unless an individual submits to the department written permission to release his or her information.

Most of the blocked information may still be released under the 14 exceptions. The bill, however, provides for tighter restrictions relating to the release of an individual's social security number and medical or disability information. This particular information may only be released for the use:

- By any government agency for the purpose of carrying out its functions or any private person or entity acting on behalf of a government agency (subparagraph 2.);
- In connection with any civil, criminal, administrative, or arbitral proceeding in any court or before any self-regulating body (subparagraph 5.);
- By insurers or insurance support organizations (subparagraph 7.);
- By an employer or its agent or insurer to obtain or verify information on a person holding a commercial driver's license as required under the Commercial Motor Vehicle Safety Act (subparagraph 10.); and
- When the individual for whom the information relates submits a written consent form to the department authorizing the release of his or her personal information (new subparagraph 15.).

This bill stipulates that the new restrictions on the disclosure of personal information will not affect the use of organ donor information on an individual's driver's license nor will it affect the administration or organ donor initiatives in this state.

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D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The department will require contracted programming modifications to the driver license software system at a total cost of \$94,000.

The department expects a \$1.6 million reduction annually to the Highway Safety Operating Trust Fund due to the restrictions on releasing social security numbers to bulk distributors.

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 spend funds or take an action requiring 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 municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill would bring the state in compliance with the federal Driver's Privacy Protection Act of 1994, as amended by s. 350 of Pub. L. No. 106-69, which prohibits the release of sensitive, personal information with specified exceptions. According to the Department of Highway Safety and Motor Vehicles, the possible consequences of not enacting this bill could be a \$5,000 a day fine through the United States Justice Department and the withholding of federal transportation dollars.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 3, 2000, the Committee on Transportation adopted three amendments, which will travel with the bill, and reported the bill favorably.

Amendment 1: This amendment changes the effective date to January 1, 2001.

Amendments 2 and 3: These amendments eliminate the requirement for a person to give express consent to release his or her personal information on a form prescribed by the department. This stipulation brings Florida into compliance with the federal Driver's Privacy Protection Act of 1994.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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