

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1466

SPONSOR: Banking and Insurance Committee and Senator Sanderson

SUBJECT: Motor Vehicle Insurance--Public Records Exemption as to Motor Vehicle Crash Reports

DATE: March 26, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In September 2000, the Fifteenth Statewide Grand Jury, in a report on insurance fraud related to personal injury protection (PIP) benefits found that individuals called “runners” pick up copies of motor vehicle crash reports filed with law enforcement agencies and use them to solicit people involved in motor vehicle accidents. The Grand Jury found that access to crash reports provided the ability of such runners, who were employed by unscrupulous attorneys and medical providers, to contact large numbers of potential clients in violation of the prohibition of crash report use for commercial solicitation purposes. In the words of the Grand Jury, “the wholesale availability of these reports is a major contributing factor to this illegal activity and likely the single biggest factor contributing to the high level of illegal solicitation.”

The Grand Jury examined crash report fraud and made two recommendations to the Legislature:

- Protect the victims of crimes or accidents by prohibiting the release of accident reports to anyone other than the victim, their insurance company, a radio or television station licensed by the FCC, or a professional journalist. The Grand Jury stated that this would “close the door” to access by solicitors with no legitimate need for the reports.
- Increase the penalty for persons who access crash reports by increasing the violation to a third degree felony.

Committee Substitute for Senate Bill 1466 addresses the Grand Jury’s concerns by providing an exemption from the public records requirements for motor vehicle crash reports that reveal personal information concerning parties involved in a vehicular accident. Specifically, the bill provides an exemption from public records provisions (s. 119.07(1), F. S.), and s. 24(a), Art. 1 of the State Constitution) for such crash reports for a period of 60 days from the date the report is filed, however, exceptions are provided for the following persons or entities: parties to the crash, their legal representatives, their insurance agents, their insurers or insurers to which they have

applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, radio or television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices, and free newspapers. Persons attempting to access crash reports within the 60-day period must present “legitimate credentials or identification” demonstrating their right to access such information. Further, any state or federal agency authorized by law to have access to crash reports must be granted access.

The bill provides that it is a third degree felony for employees of state or local agencies who knowingly disclose crash reports to persons not entitled to access such information as well as for persons who obtain confidential crash report information who are not entitled to access such information. The bill provides a statement of public necessity.

This bill substantially amends section 316.066, Florida Statutes.

II. Present Situation:

Grand Jury Findings--Insurance Fraud Related to Personal Injury Protection Insurance

In September 2000, the Fifteenth Statewide Grand Jury, in a report on insurance fraud related to personal injury protection (PIP) benefits, found a strong correlation between utilization of crash reports and the commission of PIP fraud. It found that individuals called “runners” pick up copies of motor vehicle crash reports filed with law enforcement agencies and use them to solicit people involved in motor vehicle accidents. Other runners print the information in “accident journals” sold to medical providers and attorneys who solicit persons involved in accidents. The Grand Jury noted that access to crash reports provided the ability of such runners, who were often employed by unscrupulous attorneys and medical providers, to contact large numbers of potential clients in violation of the prohibition of crash report use for commercial solicitation purposes. In the words of the Grand Jury, “virtually anyone involved in a car accident in the state is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.”

The Grand Jury made seven recommendations to the Legislature, five of which are addressed in Committee Substitute for SB 1092, while two of the recommendations are addressed in this bill. In summary, the two recommendations provide for the following:

- Protect the victims of crimes or accidents by prohibiting the release of accident reports to anyone other than the victim, their insurance company, a radio or television station licensed by the FCC, or a professional journalist. The Grand Jury stated that this would “close the door” to access by solicitors with no legitimate need for the reports.
- Increase the penalty for persons who access crash reports by increasing the violation to a third degree felony.

Florida’s No-fault Law

Background

The Legislature enacted Florida’s “no-fault” insurance provisions in 1971. Under the Florida Motor Vehicle No-Fault law, motor vehicle owners are required to maintain \$10,000 of personal injury protection (PIP) coverage (ss. 627.730-627.7405, F.S.). Personal injury protection covers

the vehicle owner, relatives residing in the same household, passengers or pedestrians involved in the motor vehicle accident who do not have their own personal injury protection coverage, and persons driving the vehicle with the owner's permission. Pursuant to s. 324.022, F.S., vehicle owners must also maintain \$10,000 in property damage liability insurance.

Those with PIP coverage receive limited immunity from tort liability for damages to the extent the economic loss is compensated under their personal injury protection policy. This limited immunity protects against non-economic damages, such as pain and suffering, however, the immunity does not extend to injuries consisting of: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement); (3) significant and permanent scarring or disfigurement; or (4) death. In short, a plaintiff must suffer a permanent injury in order to seek pain and suffering damages against a motorist with personal injury protection coverage.

Motor Vehicle Crash Reports

Section 316.066, F.S., requires law enforcement officers to file written reports of motor vehicle crashes. Pursuant to s. 119.105, F.S., police reports are public records. The use of crash reports made by law enforcement officers for commercial solicitation purposes is prohibited under both s. 119.105, F.S. and s. 316.066(3)(c), F.S.

Penalty provision

A third degree felony violation provides for up to 5 years incarceration and a \$5,000 fine.

Constitutional Access to Public Records and Meetings

Article I, s. 24 of the State Constitution provides every person with 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. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide, by general law, for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or

information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the 5th year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed in October of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if: (1) the exempted record or meeting is of a sensitive, personal nature concerning individuals; (2) the exemption is necessary for the effective and efficient administration of a governmental program; or (3) the exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions: (1) what specific records or meetings are affected by the exemption? (2) whom does the exemption uniquely affect, as opposed to the general public? (3) what is the identifiable public purpose or goal of the exemption? (4) can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption: (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

III. Effect of Proposed Changes:

Section 1. Amends s. 316.066, F.S., relating to written reports of crashes, to provide that crash reports which reveal the identity, home or employment telephone number or address of, or other personal information concerning the parties involved in a crash, and which are received or prepared by any agency that regularly receives or prepares such information concerning the parties to vehicular crashes, are confidential and exempt from s. 119.07(1) and s. 24(a), Art I of the Florida Constitution, for a period of 60 days after the date the report is filed.

However, such reports may be immediately available to the following persons or entities: parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or

insurers to which such parties have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news. The bill provides that the following publications are not newspapers as referenced above:

- those intended primarily for members of particular professions;
- those intended primarily for distributing advertising;
- those intended primarily for publishing names and other personally identifying information concerning parties to crashes.

Any state or federal agency authorized by law to have access to crash reports must be granted access to the reports. Persons attempting to access crash reports within the 60-day period must present legitimate credentials or identification that demonstrates his or her qualifications to access such reports.

The bill declares that the exemption is subject to the Open Government Sunset Review Act of 1995, and shall stand repealed on October 1, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Third degree felony penalties are provided in the bill for the following persons: any employee of a state or local agency in possession of information made confidential under this provision who knowingly discloses the confidential crash report information to a person not entitled to access such information, and any person who knowingly obtains or attempts to obtain the confidential crash report information who is not entitled to access such information.

Section 2. Provides a statement of public necessity which finds that the portions of crash reports which reveal personal information as to crash victims are to be withheld from public inspection or disclosure to protect the privacy of such individuals. Also, the exemption is necessary to protect the public from “unscrupulous individuals” who promote the filing of fraudulent insurance claims by obtaining crash reports and who exploit victims at a time of emotional distress. The bill further provides that crash reports made by law enforcement officers must not be used for “commercial purposes,” however, utilization of such reports by the media is not to be construed as a “commercial purpose.”

Finally, the bill concludes that motor vehicle fraud is fueled by early access to crash reports because it provides the opportunity for filing fraudulent insurance claims. Such fraud adds as much as \$246 to the average motor vehicle insurance premium. Also, in the past 5 years, nearly 5,000 PIP referrals have been made to the Department of Insurance and 500 arrests have been made from such referrals.

Section 3. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Recently, two sections of Florida law dealing with police public records have been challenged under the First Amendment to the U.S. Constitution as unconstitutionally restricting protected commercial speech. In 1996, the U.S. District Court for the Southern District of Florida permanently enjoined the State of Florida from enforcing s. 316.650(11), F.S. (prohibiting the commercial use of identifying information on a uniform traffic ticket), because the state could not prove that the total ban on information usage directly advanced a substantial state interest (*Babkes v. Satz*, 994 F. Supp. 909 (S.D. Fla. 1996)). In 1998, a challenge was brought to s. 119.105, F.S. (prohibiting the commercial use of victim information obtained from police reports) (*Pellegrino v. Satz*, No. 98-7365-Civ. (S.D. Fla. 1998)). The state was preliminarily enjoined from enforcing the law during trial, however, the case settled before final adjudication.

Restrictions by other states on access to police public records have been challenged in the courts as well. Most recently, Kentucky's limitation on access to police accident reports and California's limitation on access to arrest records have been challenged facially under the First Amendment. While the Sixth and Ninth U.S. Circuit Courts of Appeals, responsible for Kentucky and California respectively, ruled each state's statutes unconstitutional for restricting protected commercial speech, the U.S. Supreme Court reversed and remanded the decisions of the Courts of Appeals saying that a facial invalidation was improper since the statutes dealt with access to government records and not the restriction of speech. Both cases are currently pending in U.S. District Courts and have not been finally adjudicated.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any reduction in insurance fraud resulting from this legislation should reduce insurer loss experience and could result in premium savings for policyholders. Victims of motor vehicle accidents should benefit from the provisions of this bill because they will not be subject to

the harassing tactics of “runners” or others who try such solicitations, who would presumably lose sources of revenue.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
