

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1737 Driver's Privacy Protection Act
SPONSOR(S): Transportation and Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 2008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation</u>	<u>16 Y, 0 N</u>	<u>Garner</u>	<u>Miller</u>
2) <u>Transportation & Econ. Dev. Apps. (Sub)</u>	<u></u>	<u>McAuliffe</u>	<u>Hawkins</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

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.

The bill revises a public records exemption that withholds from public disclosure information contained in motor vehicle records held by the Department of Highway Safety and Motor Vehicles (DHSMV). Individuals will no longer need to "opt out" in writing to have their personal information exempted from being released. Instead, personal information on all persons with motor vehicle records will be automatically exempt from public disclosure unless the licensee requests such information be disclosed.

This bill also revises two exceptions allowing for public disclosure of motor vehicle records in connection with a legal proceeding and revises the citation to the federal Driver's Privacy Protection Act to reflect recent amendments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1737.ap.doc
DATE: March 29, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

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. The DPPA further requires states comply with its provisions by 1997. Florida came into compliance with the federal DPPA in 1997, when chapter 97-185, Laws of Florida, became law.

However in 1999, Public Law 106- 9, 113 Stat. 986, changed a provision in the federal DPPA from an "opt out" alternative to an "opt in" alternative. Under the amended federal DPPA, states may not imply consent from a driver's failure to take advantage of a state-afforded opportunity to block disclosure, but must rather obtain a driver's affirmative consent to disclose the driver's personal information. Florida is not in compliance with the 1999 amendment to the federal DPPA. Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to \$5,000 per day.

A number of exceptions to Florida's DPPA allow certain persons, organizations, businesses and government agencies to access the personal information covered by the Act. These exceptions are allowed under the federal DPPA. Examples of who may still access the information include:

- Auto manufacturers conducting a recall of parts or vehicles;
- Government agencies or private investigators with proper credentials and reasonable cause to receive the information (such as in the case of a stolen car);
- A legitimate business verifying information for employment purposes;
- Companies compiling statistical data or conducting surveys;
- Insurance agencies;
- Towing companies;
- Companies, like bus lines, that may need information about their commercial drivers;
- A person or agency that has been given written permission by the subject of the records to access the information;
- Process servers to aid in serving process;
- Lawyers to conduct investigations in anticipation of litigation;
- Any person to conduct investigations in connection with ongoing litigation, to execute or enforce judgments and orders, or to comply with an order of a court;
- Toll authorities for use in connection with the operation of toll facilities; and
- Companies that use the information for bulk distribution for surveys, marketing and solicitations.

In addition, exceptions in Florida's DPPA allow attorneys to use the personal information contained in motor vehicle and driver's license records to conduct investigations in anticipation of litigation. According to the Florida Automobile Dealer Association, some lawyers are using this exception to obtain dealership client lists for the purpose of soliciting potential clients.

Effect of Proposed Changes

HB 1737 brings Florida's DPPA into compliance with the federal act by applying the act's protections to record subjects automatically, without requiring them to "opt-in."

In addition, the bill limits exceptions to Florida's DPPA for licensed attorneys conducting investigations in anticipation of litigation, and for other persons conducting investigations in connection with filed proceedings, so that the personal information may not be obtained for the purpose of mass commercial solicitation of clients for litigation against motor vehicle dealers. This change provides protection to the subject of a record that is more stringent than what is provided in the federal DPPA.

The bill also narrows exceptions for bulk distribution by requiring DHSMV to have the express consent of the subject of the record prior to releasing the information for such purposes. Currently, DHSMV is only required to provide an opportunity, in a clear and conspicuous manner, for the subject of the record to prohibit such uses. The change will bring Florida's DPPA into substantial compliance with the federal DPPA.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07, F.S., to eliminate the opt-in provisions of Florida's DPPA, to limit exceptions to the act for investigations in anticipation of litigation, and to narrow exceptions provided to those engaging in bulk distribution of motor vehicle and driver's license records.

Section 2. Provides for sunset review and repeal on October 2, 2009, unless saved by reenactment by the Legislature.

Section 3. Provides a statement of public necessity.

Section 4. Provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain businesses engaging in bulk distribution of information contained in motor vehicle or driver's license records may experience a negative economic impact based on reduced availability of information, however, the impact is indeterminate. Likewise, some firms relying on such records for the purpose of developing new business may experience a negative economic impact that is indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require a grant or exercise of rulemaking authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 3, 2004, the Committee on Transportation adopted one amendment to PCB TR 04-02. The amendment prohibited the release of personal information to licensed attorneys conducting investigations in anticipation of litigation, and for other persons conducting investigations in connection with filed proceedings, for the purpose of conducting mass commercial solicitations of clients for litigation against motor vehicle dealers. Originally, the PCB eliminated altogether the exception to the exemption afforded to lawyers and litigants conducting investigations in anticipation of litigation. The Committee then reported the PCB favorably as amended.