

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) Transportation	16 Y, 0 N	Garner	Miller
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, individual motor vehicle and driver's license records are subject to public disclosure under Florida's public records laws unless a person requests that the access to the information in the records be limited. Florida's Drivers Privacy Protection Act (DPPA) allows an individual to limit access to the social security number, the driver's license or identification card number, name, address, and other personal information contained in motor vehicle and driver's license records. However, access to information regarding crashes, driving violations, and driver's status is not limited.

The Federal Driver Privacy Protection Act of 1993, as amended in 1999 by Congress, requires DPPA protections to apply automatically without the need for the subject of the records to "opt-in" for the protections, as is the case in Florida. Under federal law, a person must "opt-out" for the DPPA protections not to apply. While Florida's Act mirrors the federal law in most respects, it does not provide default protection as required by the federal DPPA. Information that is currently available to the general public in Florida, unless the subject requests protection includes the subject's name, driver's license number, and address.

Failure to comply with the federal act by eliminating the requirement that persons must opt-in to the DPPA protections may subject Florida to civil damages of up to \$5,000 per day if the United States Attorney General decides to act, and Florida is judicially determined to not be in substantial compliance with the federal act.

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 restricts the ability of licensed attorneys conducting investigations in anticipation of litigation, and for other persons conducting investigations in connection with filed proceedings to obtain the personal information contained in DHSMV's records for the purpose of conducting mass commercial solicitations of clients for litigation against motor vehicle dealers. This change provides protection to the subject of a record that is more stringent than is required 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, in a clear and conspicuous manner, an opportunity for the subject of the record to prohibit such uses. The change will bring Florida's DPPA into closer compliance with the federal DPPA.

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

STORAGE NAME: h1737.tr.doc
DATE: March 11, 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

Currently, individual motor vehicle and driver's license records are subject to public disclosure under Florida's public records laws unless a person requests that the access to the information in the records be limited. Florida's Drivers Privacy Protection Act (DPPA) allows an individual to limit access to the social security number, the driver's license or identification card number, name, address, and other personal information contained in motor vehicle and driver's license records. However, access to information regarding crashes, driving violations, and driver's status is not limited.

A number of exceptions to the DPPA allow certain persons, organizations, businesses and government agencies to access the personal information covered by the Act. 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.

The Federal Driver Privacy Protection Act of 1993, as amended in 1999 by Congress, requires DPPA protections to apply automatically without the need for the subject of the records to "opt-in" for the protections, as is the case in Florida. Under federal law, a person must "opt-out" for the DPPA protections not to apply. While Florida's Act mirrors the federal law in most respects, it does not provide default protection as required by the federal DPPA. Information that is currently available to the

general public in Florida, unless the subject requests protection includes the subject's name, driver's license number, and address.

Failure to comply with the federal act by eliminating the requirement that persons must opt-in to the DPPA protections may subject Florida to civil damages of up to \$5,000 per day if the United States Attorney General decides to act, and Florida is judicially determined to not be in substantial compliance with the federal act.

In addition, exceptions in Florida's DPPA allow lawyers 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 the act 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 closer 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.