

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; revising the exemption from public records requirements for personal information contained in a motor vehicle record; removing the requirement that the exemption be conditioned on a request for exemption by the person who is the subject of the record; revising certain conditions under which the Department of Highway Safety and Motor Vehicles may release information in connection with a legal proceeding; revising conditions for the release of information for bulk distribution use; providing for release of information when the department has obtained consent from the subject of the record; providing that the restrictions on the disclosure of information do not affect the use of organ donor information; providing for future repeal and legislative review; providing legislative finding of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (aa) of subsection (3) of section 119.07, Florida Statutes, is amended to read:

119.07 Inspection, examination, and duplication of records; exemptions.--

(3)

(aa) ~~Upon a request made in a form designated by the Department of Highway Safety and Motor Vehicles,~~ Personal information contained in a motor vehicle record that identifies

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

the subject of that record ~~requester~~ is exempt from subsection (1) and s. 24(a), Art. I of the State Constitution except as provided in this paragraph. Personal information includes, but is not limited to, the subject's ~~requester's~~ social security number, driver identification number, name, address, telephone number, and medical or disability information. For purposes of this paragraph, personal information does not include information relating to vehicular crashes, driving violations, and driver's status. ~~Such request may be made only by the person who is the subject of the motor vehicle record.~~ For purposes of this paragraph, "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles. Personal information contained in motor vehicle records exempted by ~~an individual's request pursuant to~~ this paragraph shall be released by the department for any of the following uses:

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

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

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; however, the information may not be used for mass

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

commercial solicitation of clients for litigation against motor vehicle dealers.

c. Investigation by any person in connection with any filed proceeding; however, the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

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 49 U.S.C. ss. 31301 et seq ~~the Commercial Motor Vehicle Safety Act of 1986, 49~~

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

~~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 obtained the express consent of the person to whom such personal information pertains. ~~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.

15. For any other use if the person to whom the information pertains has given express consent on a form prescribed by the department. Such consent shall remain in effect until it is revoked by the person on a form prescribed by the department.

The restrictions on disclosure of personal information provided by this paragraph shall not in any way affect the use of organ donation information on individual driver licenses nor affect

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

the administration of organ donation initiatives in this state.

Personal information exempted from public disclosure according to this paragraph may be disclosed by the Department of Highway Safety and Motor Vehicles to an individual, firm, corporation, or similar business entity whose primary business interest is to resell or redisclose the personal information to persons who are authorized to receive such information. Prior to the department's disclosure of personal information, such individual, firm, corporation, or similar business entity must first enter into a contract with the department regarding the care, custody, and control of the personal information to ensure compliance with the federal Driver's Privacy Protection Act of 1994 and applicable state laws. An authorized recipient of personal information contained in a motor vehicle record, except a recipient under subparagraph 12., may contract with the Department of Highway Safety and Motor Vehicles to resell or redisclose the information for any use permitted under this paragraph. However, only authorized recipients of personal information under subparagraph 12. may resell or redisclose personal information pursuant to subparagraph 12. Any authorized recipient who resells or rediscloses personal information shall maintain, for a period of 5 years, records identifying each person or entity that receives the personal information and the permitted purpose for which it will be used. Such records shall be made available for inspection upon request by the department. The department shall adopt rules to carry out the purposes of this paragraph and the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. 2721 et seq ~~Title XXX, Pub. L. No. 103-322.~~ Rules adopted by the department shall provide for the payment of

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

applicable fees and, prior to the disclosure of personal information pursuant to this paragraph, shall require the meeting of conditions by the requesting person for the purposes of obtaining reasonable assurance concerning the identity of such requesting person, and, to the extent required, assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. Such conditions may include, but need not be limited to, the making and filing of a written application in such form and containing such information and certification requirements as the department requires.

Section 2. Paragraph (aa) of subsection (3) of s. 119.07, Florida Statutes, is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that personal information in an individual's motor vehicle record held by the Department of Highway Safety and Motor Vehicles be exempt from public disclosure. Making such personal information exempt conforms state law to the requirements of the Federal Driver's Privacy Protection Act of 1994, as amended by s. 350 of Pub. L. No. 106-69, which prohibits disclosure of such information of a sensitive, personal nature, with specified exceptions. Additionally, the Legislature notes that the state has a compelling interest in regulating motor vehicles and motor vehicle drivers. The sale of automobiles not only provides jobs for Floridians, but taxes

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

collected from their sale and use provide revenues to the state.

It should also be noted that automobiles also are attractive targets for thieves. Theft of automobiles not only deprives the lawful owners of their property but such theft interferes with the chain of title and causes insurance rates to rise. As a result, the state must collect information about automobile sales, the sellers and buyers, insurance companies, and other businesses. Further, the Legislature notes that automobiles, if used improperly, can cause injury and death to persons in this state. Therefore, the state, must ensure that persons who drive in this state are properly trained, licensed, and insured. As a result, the state must collect personal information regarding persons who drive in this state. The personal information that is contained in motor vehicle records, if readily available for public inspection and copying, could be used to invade the personal privacy of the persons named in the records or it could be used for other purposes, such as solicitation, harassment, stalking, and intimidation. Limiting access to the state's motor vehicle records will protect the privacy of persons who are listed in those records and minimize the opportunity for invading that privacy. Thus, the Legislature finds that such personal information in motor vehicle records should be exempt from the requirements of Article I, s. 24 of the State Constitution. Nevertheless, the Legislature also notes that there are a number of reasons that certain agencies, businesses, and other persons should be granted limited access to exempt personal information contained in motor vehicle records. The Legislature finds that access to this personal information by these governmental and private entities should be continued in a

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

limited, regulated fashion in order to balance the privacy rights of persons named in motor vehicle records with the need for these entities to perform certain important regulatory and economic functions that are important to the health, safety, and welfare of the citizens of the state. Persons named in motor vehicle records may need to be notified of product recalls, advisories, or product monitoring and manufacturers and others need current addresses to contact them. Government agencies, including courts and law enforcement agencies and persons acting on their behalf, may need access to carry out their legislatively assigned functions. Additionally, researchers, investigators, insurance companies, and other businesses and industries often must rely on personal information in motor vehicle records to operate and perform certain business functions. Such information should be available in the normal course of business by legitimate businesses, their agents, employees, or contractors to verify the accuracy of personal information and to obtain correct information; to prevent fraud; to pursue legal remedies against; or to recover on a debt or security interest. Further, such exempt information should be available for use in connection with any civil, criminal, administrative, or arbitral proceeding for service of process; execution of enforcement of judgments and orders; compliance with an order of any court; by insurers or support organizations in connection with claims for investigation activities, anti-fraud activities, and rating or underwriting; and for providing notice to owners of towed or impounded vehicles. Access to such exempt information should also be provided for investigation in anticipation of litigation or for a filed proceeding, but the

ENROLLED

HB 1737, Engrossed 1

2004 Legislature

Legislature finds that authorizing access to motor vehicle records for these limited purposes should not be construed to permit mass commercial solicitation of clients for litigation against motor vehicle dealers because it would be contrary to the limited access contemplated by the exceptions to the exemption and would further invade the privacy of persons named in these records. Further, researchers, investigators, or insurance companies may need to access the large database of motor vehicle records for use in producing statistical reports, but the Legislature finds that this access should not infringe upon the privacy of the persons named in the records by publishing, redisclosing, or using that information or to contact the named persons. Thus, the Legislature specifically finds that it is a public necessity that personal information in motor vehicle records must be exempt, with the limited exceptions to that exemption authorized herein.

Section 4. This act shall take effect October 1, 2004.