

Bill No. CS for SB 2008

Amendment No. \_\_\_\_ Barcode 491100

CHAMBER ACTION

Senate

House

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Senator Sebesta moved the following amendment:

**Senate Amendment (with title amendment)**

On page 2, line 22, through page 8, line 7, delete those lines

and insert: 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 private person or entity acting on behalf of

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1 a federal, state, or local agency in carrying out its  
2 functions.

3           3. For use in connection with matters of motor vehicle  
4 or driver safety and theft; motor vehicle emissions; motor  
5 vehicle product alterations, recalls, or advisories;  
6 performance monitoring of motor vehicles, motor vehicle parts,  
7 and dealers; motor vehicle market research activities,  
8 including survey research; and removal of nonowner records  
9 from the original owner records of motor vehicle  
10 manufacturers.

11           4. For use in the normal course of business by a  
12 legitimate business or its agents, employees, or contractors,  
13 but only:

14           a. To verify the accuracy of personal information  
15 submitted by the individual to the business or its agents,  
16 employees, or contractors; and

17           b. If such information as so submitted is not correct  
18 or is no longer correct, to obtain the correct information,  
19 but only for the purposes of preventing fraud by, pursuing  
20 legal remedies against, or recovering on a debt or security  
21 interest against, the individual.

22           5. For use in connection with any civil, criminal,  
23 administrative, or arbitral proceeding in any court or agency  
24 or before any self-regulatory body for:

25           a. Service of process by any certified process server,  
26 special process server, or other person authorized to serve  
27 process in this state.

28           b. Investigation in anticipation of litigation by an  
29 attorney licensed to practice law in this state or the agent  
30 of the attorney; however, the information may not be used for  
31 mass commercial solicitation of clients for litigation against

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1 motor vehicle dealers.

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

6 d. Execution or enforcement of judgments and orders.

7 e. Compliance with an order of any court.

8 6. For use in research activities and for use in  
9 producing statistical reports, so long as the personal  
10 information is not published, redisclosed, or used to contact  
11 individuals.

12 7. For use by any insurer or insurance support  
13 organization, or by a self-insured entity, or its agents,  
14 employees, or contractors, in connection with claims  
15 investigation activities, anti-fraud activities, rating, or  
16 underwriting.

17 8. For use in providing notice to the owners of towed  
18 or impounded vehicles.

19 9. For use by any licensed private investigative  
20 agency or licensed security service for any purpose permitted  
21 under this paragraph. Personal information obtained based on  
22 an exempt driver's record may not be provided to a client who  
23 cannot demonstrate a need based on a police report, court  
24 order, or a business or personal relationship with the subject  
25 of the investigation.

26 10. For use by an employer or its agent or insurer to  
27 obtain or verify information relating to a holder of a  
28 commercial driver's license that is required under 49 U.S.C.  
29 ss. 31301 et seq ~~the Commercial Motor Vehicle Safety Act of~~  
30 ~~1986, 49 U.S.C. App. 2710 et seq.~~

31 11. For use in connection with the operation of

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1 private toll transportation facilities.

2           12. For bulk distribution for surveys, marketing, or  
3 solicitations when the department has obtained the express  
4 consent of the person to whom such personal information  
5 pertains. ~~implemented methods and procedures to ensure that:~~

6           a. ~~Individuals are provided an opportunity, in a clear~~  
7 ~~and conspicuous manner, to prohibit such uses; and~~

8           b. ~~The information will be used, rented, or sold~~  
9 ~~solely for bulk distribution for survey, marketing, and~~  
10 ~~solicitations, and that surveys, marketing, and solicitations~~  
11 ~~will not be directed at those individuals who have timely~~  
12 ~~requested that they not be directed at them.~~

13           13. For any use if the requesting person demonstrates  
14 that he or she has obtained the written consent of the person  
15 who is the subject of the motor vehicle record.

16           14. For any other use specifically authorized by state  
17 law, if such use is related to the operation of a motor  
18 vehicle or public safety.

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

24           The restrictions on disclosure of personal information  
25 provided by this paragraph shall not in any way affect the use  
26 of organ donation information on individual driver licenses  
27 nor affect the administration of organ donation initiatives in  
28 this state. Personal information exempted from public  
29 disclosure according to this paragraph may be disclosed by the  
30 Department of Highway Safety and Motor Vehicles to an  
31 individual, firm, corporation, or similar business entity

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1 whose primary business interest is to resell or redisclose the  
2 personal information to persons who are authorized to receive  
3 such information. Prior to the department's disclosure of  
4 personal information, such individual, firm, corporation, or  
5 similar business entity must first enter into a contract with  
6 the department regarding the care, custody, and control of the  
7 personal information to ensure compliance with the federal  
8 Driver's Privacy Protection Act of 1994 and applicable state  
9 laws. An authorized recipient of personal information  
10 contained in a motor vehicle record, except a recipient under  
11 subparagraph 12., may contract with the Department of Highway  
12 Safety and Motor Vehicles to resell or redisclose the  
13 information for any use permitted under this paragraph.  
14 However, only authorized recipients of personal information  
15 under subparagraph 12. may resell or redisclose personal  
16 information pursuant to subparagraph 12. Any authorized  
17 recipient who resells or rediscloses personal information  
18 shall maintain, for a period of 5 years, records identifying  
19 each person or entity that receives the personal information  
20 and the permitted purpose for which it will be used. Such  
21 records shall be made available for inspection upon request by  
22 the department. The department shall adopt rules to carry out  
23 the purposes of this paragraph and the federal Driver's  
24 Privacy Protection Act of 1994, 18 U.S.C. 2721 et seq Title  
25 ~~XXX, Pub. L. No. 103-322~~. Rules adopted by the department  
26 shall provide for the payment of applicable fees and, prior to  
27 the disclosure of personal information pursuant to this  
28 paragraph, shall require the meeting of conditions by the  
29 requesting person for the purposes of obtaining reasonable  
30 assurance concerning the identity of such requesting person,  
31 and, to the extent required, assurance that the use will be

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1 only as authorized or that the consent of the person who is  
2 the subject of the personal information has been obtained.  
3 Such conditions may include, but need not be limited to, the  
4 making and filing of a written application in such form and  
5 containing such information and certification requirements as  
6 the department requires.

7           Section 2. Paragraph (aa) of subsection (3) of s.  
8 119.07, Florida Statutes, is subject to the Open Government  
9 Sunset Review Act of 1995 in accordance with s. 119.15,  
10 Florida Statutes, and shall stand repealed on October 2, 2009,  
11 unless reviewed and saved from repeal through reenactment by  
12 the Legislature.

13           Section 3. The Legislature finds that it is a public  
14 necessity that personal information in an individual's motor  
15 vehicle record held by the Department of Highway Safety and  
16 Motor Vehicles be exempt from public disclosure. Making such  
17 personal information exempt conforms state law to the  
18 requirements of the Federal Driver's Privacy Protection Act of  
19 1994, as amended by s. 350 of Pub. L. No. 106-69, which  
20 prohibits disclosure of such information of a sensitive,  
21 personal nature, with specified exceptions. Additionally, the  
22 Legislature notes that the state has a compelling interest in  
23 regulating motor vehicles and motor vehicle drivers. The sale  
24 of automobiles not only provides jobs for Floridians, but  
25 taxes collected from their sale and use provide revenues to  
26 the state. It should also be noted that automobiles also are  
27 attractive targets for thieves. Theft of automobiles not only  
28 deprives the lawful owners of their property but such theft  
29 interferes with the chain of title and causes insurance rates  
30 to rise. As a result, the state must collect information about  
31 automobile sales, the sellers and buyers, insurance companies,

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1 and other businesses. Further, the Legislature notes that  
2 automobiles, if used improperly, can cause injury and death to  
3 persons in this state. Therefore, the state, must ensure that  
4 persons who drive in this state are properly trained,  
5 licensed, and insured. As a result, the state must collect  
6 personal information regarding persons who drive in this  
7 state. The personal information that is contained in motor  
8 vehicle records, if readily available for public inspection  
9 and copying, could be used to invade the personal privacy of  
10 the persons named in the records or it could be used for other  
11 purposes, such as solicitation, harassment, stalking, and  
12 intimidation. Limiting access to the state's motor vehicle  
13 records will protect the privacy of persons who are listed in  
14 those records and minimize the opportunity for invading that  
15 privacy. Thus, the Legislature finds that such personal  
16 information in motor vehicle records should be exempt from the  
17 requirements of Article I, s. 24 of the State Constitution.  
18 Nevertheless, the Legislature also notes that there are a  
19 number of reasons that certain agencies, businesses, and other  
20 persons should be granted limited access to exempt personal  
21 information contained in motor vehicle records. The  
22 Legislature finds that access to this personal information by  
23 these governmental and private entities should be continued in  
24 a limited, regulated fashion in order to balance the privacy  
25 rights of persons named in motor vehicle records with the need  
26 for these entities to perform certain important regulatory and  
27 economic functions that are important to the health, safety,  
28 and welfare of the citizens of the state. Persons named in  
29 motor vehicle records may need to be notified of product  
30 recalls, advisories, or product monitoring and manufacturers  
31 and others need current addresses to contact them. Government

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1 agencies, including courts and law enforcement agencies and  
2 persons acting on their behalf, may need access to carry out  
3 their legislatively assigned functions. Additionally,  
4 researchers, investigators, insurance companies, and other  
5 businesses and industries often must rely on personal  
6 information in motor vehicle records to operate and perform  
7 certain business functions. Such information should be  
8 available in the normal course of business by legitimate  
9 businesses, their agents, employees, or contractors to verify  
10 the accuracy of personal information and to obtain correct  
11 information; to prevent fraud; to pursue legal remedies  
12 against; or to recover on a debt or security interest.  
13 Further, such exempt information should be available for use  
14 in connection with any civil, criminal, administrative, or  
15 arbitral proceeding for service of process; execution of  
16 enforcement of judgments and orders; compliance with an order  
17 of any court; by insurers or support organizations in  
18 connection with claims for investigation activities,  
19 anti-fraud activities, and rating or underwriting; and for  
20 providing notice to owners of towed or impounded vehicles.  
21 Access to such exempt information should also be provided for  
22 investigation in anticipation of litigation or for a filed  
23 proceeding, but the Legislature finds that authorizing access  
24 to motor vehicle records for these limited purposes should not  
25 be construed to permit mass commercial solicitation of clients  
26 for litigation against motor vehicle dealers because it would  
27 be contrary to the limited access contemplated by the  
28 exceptions to the exemption and would further invade the  
29 privacy of persons named in these records. Further,  
30 researchers, investigators, or insurance companies may need to  
31 access the large database of motor vehicle records for use in



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1 producing statistical reports, but the Legislature finds that  
 2 this access should not infringe upon the privacy of the  
 3 persons named in the records by publishing, redisclosing, or  
 4 using that information or to contact the named persons. Thus,  
 5 the Legislature specifically finds that it is a public  
 6 necessity that personal information in motor vehicle records  
 7 must be exempt, with the limited exceptions to that exemption  
 8 authorized herein.

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

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11

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 1, lines 9-24, delete those lines

15

16 and insert:

17 the record; revising certain conditions under  
 18 which the Department of Highway Safety and  
 19 Motor Vehicles may release information in  
 20 connection with a legal proceeding; revising  
 21 conditions for the release of information for  
 22 bulk distribution use; providing for release of  
 23 information when the department has obtained  
 24 consent from the subject of the record;  
 25 providing that the restrictions on the  
 26 disclosure of information do not affect the use  
 27 of organ donor information; providing for  
 28 future repeal and legislative review; providing  
 29 legislative finding of public necessity;  
 30 providing an effective date.

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