

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 2008

SPONSOR: Transportation Committee and Senators Sebesta, Clary and Geller

SUBJECT: Motor vehicle records/public records

DATE: March 4, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

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 CS 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. Additionally, disclosure of social security numbers and medical and disability information contained in motor vehicle records is further clarified.

This CS 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 CS substantially amends s. 119.07 of the Florida Statutes.

II. Present Situation:

Motor vehicle records contain personal information about drivers and motor vehicle owners. Personal information is described as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but

not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver status.”

Drivers Privacy Protection Act

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 DPPA (1994) in 1997, when chapter 97-185, Laws of Florida, became law. However in 1999, Public Law 106-69, 113 Stat. 986, changed a provision in the DPPA from an “opt out” alternative to an “opt in” alternative. Under the amended 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 DPPA.

Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to \$5,000 per day. In addition, DPPA provides for a criminal fine and civil remedy against any person who knowingly violates the DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States district court.

Availability of Motor Vehicle Records

Unless specifically exempted by law, DHSMV is required to make all motor vehicle records available to the public (see s. 119.07 (1) (a), F.S.). Currently, individuals must complete a form provided by DHSMV to request their personal information be withheld from public disclosure or “opt out”. Upon receiving the request, DHSMV will block the personal information from any requester. Note choosing to “opt out” does not remove the information entirely from public disclosure, as there are numerous exceptions allowing for disclosure. Personal information is available for the following purposes:

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 of law enforcement agency, in carrying out its functions, or any 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 uses 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.
 - c. Investigation by any person in connection with any filed proceeding.
 - 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 the Commercial Motor Vehicle Safety Act of 1986, 49 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 implemented methods and procedures to ensure:
 - 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.

Public Records Law

Article I, s. 24(a), of the Florida Constitution, expresses Florida's public policy regarding access to government records in providing:

Every person has 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from open government requirements. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Section 119.07(1)(a), F.S., provides every person who has custody of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the “Open Government Sunset Review Act of 1995,” provides an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; 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.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07(3)(aa), F.S., to provide holders of Florida driver licenses will not have to “opt out” to ensure identifying information contained in motor vehicle records is withheld from public disclosure. Additionally, disclosure of social security numbers and medical and disability information contained in motor vehicle records is further clarified.

The CS revises two exceptions allowing for public disclosure in connection with a legal proceeding specifying the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

This CS also provides driver license information can be distributed for surveys, solicitations or marketing purposes only when the license holder expressly consents to the release of the information for that purpose.

This CS provides the restrictions contained in s. 119.07(3) (aa), F.S., do not impair the use of organ-donation information found on a driver license nor impair the administration of organ-donation initiatives in this state.

This CS also revises the citation to the federal Driver’s Privacy Protection Act to reflect recent amendments.

This CS makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 8, 2009, unless reviewed and reenacted by the Legislature.

Section 2 provides a public necessity statement.

Section 3 provides this act takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The CS revises a public records exemption that withholds from public disclosure information contained in motor vehicle records held by 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.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Citizens will not have to go through the process of “opting out” of public disclosure identifying information held by the DHSMV in driver license records. Consequently, there may be an impact on private entities that collect and aggregate information obtained from public agencies.

C. Government Sector Impact:

According to DHSMV, during FY 2002-2003, DHSMV collected approximately \$25,664,048 in fees from the sale of driving and motor vehicle records. DHSMV estimates implementation of this CS will not significantly affect the continued sale of these records since a majority of the records presently sold fall within the current exemptions authorized by law.

According to DHSMV, this CS will require contracted programming modifications to the Driver License and Motor Vehicle Software Systems at an estimated cost of \$9,151.

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.
