

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 2116

INTRODUCER: Governmental Oversight and Productivity Committee and Banking and Insurance Committee

SUBJECT: Motor Vehicle Crash Reports/Public Records Exemption

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The public records exemption contained in s. 316.066(3), F.S., is scheduled for repeal on October 2, 2006, unless reviewed and saved from repeal through re-enactment by the Legislature. The public records exemption requires that motor vehicle crash reports that identify the parties to a car crash be kept confidential and exempt for a period of 60 days after the date the report is filed.

Senate Bill 2116 reorganizes and re-enacts the public records exemption. Senate Bill 2116, however, based upon recommendation in the Banking and Insurance Committee interim project report, *Florida's Motor Vehicle No-Fault Law (2006-102)*, expands the exemption so that it includes uniform traffic citations associated with crashes and crash investigations. Further, Senate Bill 2116 amends the definition of a victim services program (one of the parties permitted to have immediate access to crash reports by statute) to require that the program operate on a statewide basis, be qualified for nonprofit status under s. 501(c)(3) of the United States Internal Revenue Code, and have a valid consumer's certificate of exemption issued to the organization by the Florida Department of Revenue.

As the bill expands the records protected by the crash report exemption, it contains a statement of public necessity. Further, the bill requires a two-thirds vote of the membership to pass.

This bill substantially amends the following sections of the Florida Statutes: 316.003 and 316.066.

II. Present Situation:

Public Records – Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ The Florida Supreme Court has noted that ch. 119, F.S., the Public Records Act, was enacted

. . . to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people.²

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.³ Article I, s. 24 of the State Constitution, provides that:

(a) Every person⁴ 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. . . .

Unless specifically exempted, all agency⁵ records are available for public inspection. The term “public record” is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁷ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁸

Only the Legislature is authorized to create exemptions to open government requirements.⁹ Exemptions must be created by general law and such law must specifically state the public

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

³ Article I, s. 24 of the State Constitution.

⁴ Section 1.01(3), F.S., defines “person” to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁵ The word “agency” is defined in s. 119.011(2), F.S., to mean “... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(11), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁹ Article I, s. 24(c) of the State Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁰ A bill enacting an exemption¹¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹² A bill creating an exemption must be passed by a two-thirds vote of both houses.¹³

The Public Records Act¹⁴ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall 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.

If a record has been made exempt, the agency must redact the exempt portions of the record prior to releasing the remainder of the record.¹⁵ The records custodian must state the basis for the exemption, in writing if requested.¹⁶

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt.¹⁷ If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁹

In *Ragsdale v. State*,²⁰ the Florida Supreme Court held that the applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record. Quoting from *City of Riviera Beach v. Barfield*,²¹ a case in which documents were given from one agency to another during an active criminal investigation, the *Ragsdale* court refuted the proposition that inter-agency transfer of a document nullifies the exempt status of a record:

“We conclude that when a criminal justice agency transfers protected information to another criminal justice agency, the information retains its exempt status. We believe that such a conclusion fosters the underlying purpose of

¹⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹¹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹² Art. I, s. 24(c) of the State Constitution.

¹³ *Ibid.*

¹⁴ Chapter 119, F.S.

¹⁵ Section 119.07(1)(b), F.S.

¹⁶ Section 119.07(1)(c) and (d), F.S.

¹⁷ *WFTV, Inc., v. The School Board of Seminole, etc., et al*, 874 So.2d 48 (5th DCA), rev. denied 892 So.2d 1015 (Fla. 2004).

¹⁸ *Ibid* at 53; see also, Attorney General Opinion 85-62.

¹⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

²⁰ 720 So.2d 203 (Fla. 1998).

²¹ 642 So.2d 1135, 1137 (Fla. 4th DCA 1994).

section 119.07(3)(d), which is to prevent premature *public* disclosure of criminal investigative information since disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. In determining whether or not to compel disclosure of active criminal investigative or intelligence information, *the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests.* Had the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.” Although the information sought in this case is not information currently being used in an active criminal investigation, the rationale is the same; that is, that the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands. Thus, if the State has access to information that is exempt from public records disclosure due to confidentiality or other public policy concerns, that information does not lose its exempt status simply because it was provided to the State during the course of its criminal investigation.²²

It should be noted that the definition of “agency” provided in the Public Records Law includes the phrase “and any other public or private agency, person, partnership, corporation, or business entity *acting on behalf of any public agency*” (emphasis added). Agencies are often authorized, and in some instances are required, to “outsource” certain functions. Under the current case law standard, agencies are not required to have explicit statutory authority to release public records in their control to their agents. Their agents, however, are required to comply with the same public records custodial requirements with which the agency must comply.

The Open Government Sunset Review Act - The Open Government Sunset Review Act²³ provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

²² *Ragsdale*, 720 So.2d at 206 (quoting *City of Riviera Beach*, 642 So. 2d at 1137) (second emphasis added by *Ragsdale* court).

²³ Section 119.15, F.S.

- [a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- [p]rotects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- [p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²⁴

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If yes, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.²⁵ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Motor Vehicle Crash Reports: Public Records Exemption

Section 316.066(3)(a), F.S., requires law enforcement officers to file written reports of motor vehicle crashes. Those reports are public records. However, s. 316.066(3)(c), F.S., provides that crash reports revealing the identity, the home or employment telephone number, the home or employment address, or other personal information concerning parties involved in a crash, received or prepared by any agency which regularly receives or prepares information concerning

²⁴ Section 119.15(4) (b), F.S.

²⁵ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

the parties to motor vehicle crashes is confidential and exempt from public disclosure. This information is to remain confidential and exempt for 60 days after the date the report is filed.

Section 316.066(3)(c), F.S., also provides exceptions to the public records exemption. The crash reports may be made immediately available to the:

- Parties involved in the crash;
- Legal representatives of parties involved in the crash;
- Licensed insurance agents of parties involved in the crash;
- Insurers or insurers to which parties involved in the crash have applied for coverage;
- Persons under contract with insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation; and
- Victim services programs.

Additionally, any local, state, or federal agency authorized to have access to crash reports under a separate provision of law is granted access in the furtherance of the agency's duties.

The primary policy reason for closing access to these crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal solicitation by attorneys, which often leads to fraud. In its 2000 report on insurance fraud relating to personal injury protection coverage, the Fifteenth Statewide Grand Jury found the individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud.

In the statement of public necessity accompanying the creation of the public records exemption found in s. 316.066(3)(c), F.S., the 2001 Legislature identified as justification for the public records exemption: (1) to protect the privacy of persons that have been the subject of a motor vehicle crash and (2) to protect the public from unscrupulous individuals who promote the filing of fraudulent insurance claims by obtaining such information immediately after a crash and exploiting the individual at a time of emotional distress.

According to the Attorney General's Second Interim report of the Fifteenth Statewide Grand Jury, "probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive." The Grand Jury found the access to crash reports, which provide individuals with the ability to contact large numbers of potential clients, is a violation of Florida's prohibition of crash report use for

commercial solicitation purposes. According to the Grand Jury, virtually anyone involved in a car accident in the state is fair game to the intrusive and harassing tactics of solicitors.²⁶

Victim Services Programs

In recent years, victim services programs such as Mothers Against Drunk Driving, have formed to offer services to the victims of traffic crashes, and to their families. These programs supplement the victims services offered by the Attorney General's Office, some State Attorney's offices and judicial circuits, and by several county and local law-enforcement agencies. These victim services programs can provide counseling or emotional support, assistance with contacting agencies for assistance or information, or even short-term financial assistance, such as paying for a hotel room or air fare for a crash victim's out-of-town family. In 2005, the Legislature included victim services programs among those entities currently allowed to obtain crash reports at any time, i.e., within the 60-day non-disclosure period.²⁷ A victim services program is defined as "any community-based organization whose primary purpose is to act as an advocate for the victims and survivors of traffic crashes and for their families. The victim services offered by these programs may include grief and crisis counseling, assistance with preparing victims compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance."²⁸

Representatives from the Division of Insurance Fraud have indicated to staff that "runners" looking to illegally solicit accident victims have begun to pose as representatives of victim services organizations in order to obtain accident reports, and some parties have even started faux victim services programs as a front to enable them to have access to crash reports. As mentioned previously, when "runners" have access to crash reports, it usually leads to an illegal solicitation. Such illegal solicitations are often associated with many types of fraud, including insurance fraud.

Uniform Vehicle Citations Related to Vehicle Crashes

In addition to seeking access to motor vehicle crash reports, "runners" have also begun to use vehicle citations as a means of finding the identity of crash victims and making illegal contact with them. Certain citations are commonly given at the scene of an accident, and runners have begun to search for these citations, which also contain contact information of the driver who was cited. Though the cited driver is often the at-fault party in a crash, personal injury protection benefits are paid to injured parties without regard to fault. If a runner is part of a fraud ring, then personal injury protection benefits provide a potential target of \$10,000 in benefits. Despite reforms by the Legislature in 1998, 2001, and 2003, personal injury protection fraud continues to be a problem in Florida. Referrals to the Division of Insurance Fraud for personal injury protection fraud increased over 400 percent from 2002-2003 to 2004-2005. According to representatives from the Division of Insurance Fraud, much of that fraud is fueled by early access to crash reports and uniform traffic citations.

²⁶ Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000).

²⁷ Chapter 2005-177, L.O.F. (CS/SB 1118)

²⁸ Section 316.003(85), F.S.

Senate Interim Project Reports

The Banking and Insurance Committee interim project, *Florida's Motor Vehicle No-Fault Law* (2006-102), included the following recommendations (among others):

- Restrict access to police accident citation logs related to an accident, as current law provides for vehicle crash reports.
- Narrow the provision allowing “victim services programs” to have access to crash reports.

The Transportation Committee interim project report, *Open Government Sunset Review of s. 316.066(3)(c), Crash Reports* (2006-225), recommended that the current exemption be reenacted and amended to repeal the sunset provision. The report did not address the issues of restricting access to police accident citation logs or narrowing the definition of victim services programs.

III. Effect of Proposed Changes:

Section 1. Amends s. 316.003, F.S. Redefines “victim services program” for purposes of the public records exemption regarding crash reports contained in s. 316.066, F.S. Under the bill, the program must operate on a statewide basis, be qualified for non-profit status under s. 501(c)(3) of the United States Internal Revenue Code, and have a valid consumer’s certificate of exemption issued to the organization by the Department of Revenue. The additional restrictions will continue to allow organizations such as MADD (which meets these requirements) to have immediate access to crash reports. The changes are intended to make it difficult for “runners” to obtain crash reports and citations by claiming they are a member of one of these organizations, and should serve to prevent fraud rings from starting phony victim services organizations for the purpose of obtaining reports and citations.

Section 2. Amends s. 316.066, F.S. Expands the public records exemption contained in the section for vehicle crash reports to also include uniform traffic citations associated with automobile crashes and crash investigations. Because the bill acts as an expansion of the public records exemption, the exemption is subject to review pursuant to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through re-enactment by the Legislature.

Section 3. Provides Legislative findings regarding the necessity for expanding the public records exemption. The exemption for crash reports and uniform traffic citations is necessary to protect the public from unscrupulous individuals who promote the filing of fraudulent insurance claims by obtaining the contact information of persons involved in a car crash and exploit the crash victim at a time of emotional distress. The Second Interim Report of the Fifteenth Statewide Grand Jury on insurance fraud related to personal injury protection benefits found a “strong correlation” between illegal solicitation and a variety of frauds. The 2003 Senate Select Committee on Automobile Insurance/PIP reform found that despite reforms enacted in 1998 and 2001, fraud continues to permeate the PIP insurance market in Florida. Referrals to the Division of Insurance Fraud for PIP fraud increased over 400 percent from 2002-2003 to 2004-2005. The exemption is necessary to fight automobile insurance fraud.

Section 4. The bill will be effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill expands and re-enacts a public records exemption. As the exemption is expanded, it is subject to a two-thirds vote of the membership of both houses of the Legislature.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill includes recommendations of the Banking and Insurance Committee interim project report, *Florida's Motor Vehicle No-Fault Law* (2006-102). There are two other committee bills related to this interim project (which address different subject areas), SB 2114 (motor vehicle insurance) and SPB 2112 (health care clinics).

The CS/SB 712 by the Governmental Oversight and Productivity Committee and the Transportation Committee is identical to this bill.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
