

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 2242

INTRODUCER: Governmental Oversight and Productivity Committee and Senator Dockery

SUBJECT: Driver History Records/Jeffrey Klapatch Act

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/1 amendment</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Jeffrey Klapatch Act” and directs the Department of Highway Safety and Motor Vehicles (DHSMV) to implement a system allowing either parent of a minor, or a guardian, or other responsible adult who signed a minor’s application for a driver’s license, to have cost-free access to the minor’s driver history record through a secure website. The bill also provides for the termination of this access to the minor’s driver history records on the minor’s 18th birthday.

This bill substantially amends section 322.20 of the Florida Statutes.

II. Present Situation:

Section 322.09, F.S., requires every application for a driver’s license by a person under the age of 18 years to be signed and verified by the father, mother, or guardian; by a secondary guardian if the primary guardian dies before the minor reaches 18 years of age; or if there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under ch. 322, F.S., upon a person signing the application for a minor, unless such minor is married. Any negligence or willful misconduct of a minor when driving a motor vehicle on a highway will be imputed to the person who signed the license application. The signing adult is jointly and severally liable with the minor for any damages caused by the minor’s negligence or willful misconduct.

Motor vehicle records contain personal information about drivers and motor vehicle owners. Personal information is described as “information that identifies an individual, including but not limited to, 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.”¹ Personal information contained in a motor vehicle record that identifies the subject of that record is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, the personal information contained in motor vehicle records must be released for any of the following uses:

- Matters relating to motor vehicle or driver safety and theft;
- Use by a government agency in carrying out its duties, or use by someone acting on behalf of a government agency;
- Use in normal course of business by a legitimate business to verify accuracy of personal information or obtain correct information;
- Specified uses in connection with civil, criminal, administrative or arbitral proceedings;
- Use in research activities;
- Use by insurers in connection with claims;
- Use in providing notice to towed vehicles;
- Use by private investigators;
- Use by employers relating to verification of commercial driver’s licenses;
- Use in connection with operation of private toll transportation facilities;
- Distribution of surveys or marketing materials when consent is given;
- Use when consent is obtained;
- For any other use specifically authorized in law.

Under the exemption, personal information exempted from public disclosure may be disclosed by the department 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 such disclosure, the person, 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.

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. Driver history records are public records and are provided by the DHSMV or a contracted agent for the DHSMV. A person’s driving history of convictions, crashes, violations resulting in a person attending school in lieu of points being assessed and any sanctions are all public record and not covered under the DPPA.

Section 322.20, F.S., provides the DHSMV must maintain convenient records or notations, in order that the individual driver history record of each licensee is readily available for the consideration of the DHSMV upon application for renewal of a license and at other suitable times. With respect to crashes involving a licensee, the driver history record must not include any notation or record of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash.

¹ Section 119.0712(2), F.S.

This section also authorizes the DHSMV's Division of Driver Licenses, upon application of any person and payment of the proper fees, to search for records of the DHSMV, to make reports, and to make photographic copies of the departmental records and attestations.

Section 322.20(11)(a), F.S., authorizes DHSMV to charge certain fees for providing any one individual's driver history records to the public. For example, the DHSMV charges:

- \$3.10 for providing a transcript of any one individual's driver history record for the past 7 years or for searching for such record when no record is found to be on file; \$1.00 per page for providing a certified photographic copy of a document; and \$2.00 for assisting persons in searching any one individual's driver record at a terminal located at the department's general headquarters in Tallahassee.

The DHSMV must furnish this information without charge to any local, state, or federal law enforcement agency or court upon proof satisfactory to the DHSMV as to the purpose of the investigation. This information is made available by the DHSMV electronically to contracted private vendors providing it via the internet to the general public. A driver license number is required to obtain the driver record via the internet. In those cases, personal information is blocked prior to being provided to the requestor. Most vendors only provide the driver record to the holder of the driver record or a recipient authorized by the DPPA. The DHSMV provides this information via mail or walk-ins at the DHSMV headquarters. The DHSMV also contracts with some Clerk of Courts to provide the driver history record to the public.

Currently, the DHSMV also provides driver record status checks on all drivers via the DHSMV's website free of charge. These driver record status checks exhibit the validity of the driver's license and do not provide a record of citations and traffic infractions. A person may obtain a driver record status on any Florida driver record by providing a valid driver license number.

Jeffrey Klapatch, an 18-year old who resided in Lakeland, Florida, was killed in an accident while riding his motorcycle early in 2006. According to news reports, Mr. Klapatch was driving in excess of 100 miles per hour when he lost control on a curve. His mother, Robin Klapatch, a nurse at Lakeland Regional Medical Center, has started a motorcycle safety program called HEART (Help Educate Area Riders Together) and has already started talking to teenagers and Eagle Scouts about motorcycle safety.

III. Effect of Proposed Changes:

This bill creates the "Jeffrey Klapatch Act," and directs the DHSMV to implement a system allowing either parent of a minor, or a guardian, or other responsible adult who signed a minor's application for a driver's license, to have access to the minor's driver history record through a secure website. The internet access must be furnished at no cost, and will terminate on the minor's 18th birthday.

The bill will take effect January 1, 2007.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Section 119.0712(2), F.S., currently exempts personal information contained in a motor vehicle record that identifies the subject of that record. That provision also contains a list of exceptions to the exemption that grant certain agencies, persons and business entities access to the protected information. While the protected information is only exempt, and not confidential and exempt, the express provision of exceptions to the exemption prohibits provision of the protected information to anyone other than those listed.

The bill amends s. 322.20, F.S., to provide authority to a parent or guardian to view personal information that is protected under s. 119.0712(2), F.S. As such, it would be appropriate to add parents and guardians to the list of exceptions to the exemption provided in s. 119.0712(2), F.S.

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:

This bill does not specify DHSMV will allow access to the minor's driving history record at no cost to the person who signs giving parental consent for the minor's application for a driver's license. Since the bill does not specifically provide an exemption from the statutory fee for a driving history record, the DHSMV or its contracted service provider would charge a fee. According to the DHSMV, as of January 2, 2006, there were 386,226 licensed drivers under 18 years of age on file with the DHSMV.

According to DHSMV, this bill may have a minimal, but, indeterminate negative revenue impact on the Highway Safety Operating Trust Fund if the intent of the bill is to waive the fee for driver records provided over the Internet to parents or guardians. If the intent is for the DHSMV to provide the driving history information at no cost to the person who signed parental consent for the minor's driver's license, it will require programming modifications to the Driver License Software Systems. According to the DHSMV, this

would require contracted programming of 800 hours at \$185 per hour for a total of \$148,000.

VI. Technical Deficiencies:

See Public Records/Open Meetings Issues, *supra*.

VII. Related Issues:

Chapter 743, F.S., provides that under certain circumstances, the disability of nonage of a minor may be removed. The Legislature may wish to consider whether the access granted under this bill should cease if a minor has his or her disability of nonage removed.

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

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.
