

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

Ensure lower taxes – The bill creates a five million dollar fine for violation of the exemption by a commercial entity.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms¹ to qualified persons.² The license is valid in Florida for five years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.³

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph⁴ of the applicant.⁵ The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms;
- A warning that the application is executed under oath; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.⁶

From 2005 to 2006, the department received 30,267 new applications and 34,182 renewal applications. Of those, the department issued 29,235 new licenses and 34,093 renewal licenses.⁷

Information submitted as part of the application process is a public record. In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

Effect of Bill

The bill creates a public records exemption for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. It provides for retroactive application of the public records exemption.

¹ Concealed weapon or concealed firearm means a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun. Section 790.06(1), F.S.

² *Id.*

³ Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of \$25. *Id.*

⁴ The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

⁵ Section 790.06(5), F.S.

⁶ Section 790.06(4), F.S.

⁷ "Concealed Weapon / Firearm Summary Report," viewed February 15, 2006, http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

The Division of Licensing of the department must release the information:

- With the written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by a law enforcement agency in connection with the performance of lawful duties, this also includes access to an automated database maintained by the department and containing the confidential and exempt information.
- To a commercial entity, provided that the information will only be used to support law enforcement agencies or federal homeland security agencies in connection with their lawful duties.

A commercial entity that releases such information to an entity other than a law enforcement agency or a federal homeland security agency is subject to a fine of five million dollars. The fine is enforceable by the Department of Legal Affairs of the Office of the Attorney General. It is payable in equal amounts to the Law Enforcement Trust Fund within the Department of Agriculture and Consumer Services and the Law Enforcement Trust Fund within the Department of Law Enforcement.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates s. 790.0601, F.S., to create a public records exemption for personal identifying information of an applicant for or holder of a concealed weapon or firearm license.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill could increase state revenues if a commercial entity violates the exemption and is required to pay the five million dollar fine.

2. Expenditures:

This bill could create a fiscal impact on the Department of Agriculture and Consumer Services (department), because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, the department could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an impact on a commercial entity violating this exemption, as that entity will have to pay a five million dollar fine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Governmental Operations Committee Meeting

At the February 22, 2006, meeting of the Governmental Operations Committee members raised concerns regarding access to information made confidential and exempt by the bill. Members were concerned that child protective service workers and local government employees (such as code enforcement officers) would not have access to information regarding whether a person had a license to carry a concealed weapon or firearm. As a means of safety, members believed these employees currently conduct a concealed weapons check prior to going to a residence to perform their lawful duties.

Other Comments: Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state,

county, or municipal record. Furthermore, the Open Government Sunset Review Act⁸ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Governmental Operations Committee

On February 22, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment narrowed the public records exemption by removing the confidentiality for the license number. It removed the exemption for the name, address, and social security number because it was redundant of personal identifying information. In addition, the strike-all amendment provided for retroactive application, conformed the public necessity statement to the public records exemption, and placed the exemption in chapter 790, F.S., which is the weapons and firearms chapter.

State Administration Committee

On March 29, 2006, the State Administration Council adopted an amendment and reported the bill favorably with committee substitute. The amendment created an exception to the exemption for a commercial entity, provided the entity only used the confidential and exempt information to support law enforcement agencies or federal homeland security agencies. A commercial entity violating this requirement would be subject to a five million dollar fine.

⁸ Section 119.15, F.S.