

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: SPB 7110

SPONSOR: For the consideration of the Banking and Insurance Committee

SUBJECT: Public Records (Motor Vehicle Crash Victims)

DATE: February 11, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## 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. The exemption contains exceptions for various parties identified by statute.

The SPB re-enacts the public records exemption and expands it to include uniform traffic citations associated with crashes and crash investigations. The SPB also 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.

This SPB includes recommendations in the Banking and Insurance Committee interim project report, *Florida's Motor Vehicle No-Fault Law* (2006-102). Senate Bill 712 by the Transportation Committee reenacts this particular public records exemption, without change (other than deleting the repeal provision), pursuant to that committee's interim project, *Open Government Sunset Review of s. 316.066(3)(c), Crash Reports* (2006-225).

This SPB substantially amends the following sections of the Florida Statutes: 316.003, 316.066

## II. Present Situation:

### Public Records; Exemptions

Section 24(a), Art. I of the Florida Constitution states, “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.”

Section 24(c), Art. I of the Florida Constitution permits the Legislature to create exemptions from the public records law. However, the bill creating the exemption must contain a statement of public necessity that justifies the exemption, and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”<sup>1</sup>

Under s. 119.15(2), F.S., an exemption may be maintained only if: “(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals; (b) The exemption is necessary for the effective and efficient administration of a governmental program; or (c) The exemption affects confidential information concerning an entity.”

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

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

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is

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<sup>1</sup> Section 119.15(3)(b), F.S.

sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption 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.”

The exemption 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.”<sup>2</sup>

### **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 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.

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<sup>2</sup> Section 119.15(4)(b), F.S.

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.<sup>3</sup>

### **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.<sup>4</sup> 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

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<sup>3</sup> Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000).

<sup>4</sup> Chapter 2005-177, L.O.F. (CS/SB 1118)

preparing victims compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance.”<sup>5</sup>

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.

### **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

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<sup>5</sup> Section 316.003(85), F.S.

proposed 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 proposed 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% from 2002-2003 to 2004-2005. The exemption is necessary to fight automobile insurance fraud.

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

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

Yes, the proposed bill expands and re-enacts a public records exemption.

**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 SPB includes recommendations of the Banking and Insurance Committee interim project report, *Florida's Motor Vehicle No-Fault Law (2006-102)*. There are two other proposed committee bills related to this interim project (which address different subject areas), SPB 7094 (motor vehicle insurance) and SPB 7108 (health care clinics).

Senate Bill 712 by the Transportation Committee reenacts the public records exemption for crash reports without change (other than deleting the repeal provision), pursuant to that committee's interim project, *Open Government Sunset Review of s. 316.066(3)(c), Crash Reports (2006-225)*.



## **VIII. Summary of Amendments:**

None.

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

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