



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **BACKGROUND**

##### 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 and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>1</sup> 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.

##### Drivers Privacy Protection Act

Congress enacted the Drivers Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. DPPA is a federal law prohibiting the release of personal information<sup>2</sup> contained in state motor vehicle records,<sup>3</sup> unless the release is specifically authorized.

States were required to comply with DPPA by 1997. Florida came into compliance with DPPA (1994) in 1997, with the enactment of chapter 97-185, L.O.F. In 1999, however, Congress changed DPPA from an "opt out" alternative to an "opt in" alternative.<sup>4</sup> Under DPPA (1999), 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

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> DPPA currently defines "personal information" 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. It does not include information on vehicular accidents, driving violations, and driver's status.

<sup>3</sup> DPPA currently defines "motor vehicle record" as any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.

<sup>4</sup> See Public Law 106-69, 113 Stat. 1025, (October 9, 1999).

did not amend the public records exemption for motor vehicle records to conform to DPPA (1999) until May 13, 2004.<sup>5</sup>

In 2000, Congress amended DPPA to limit the circumstances under which states may disclose “highly restricted personal information”.<sup>6</sup> DPPA (2000) defines highly restrictive personal information to mean an individual’s photograph or image, social security number, or medical or disability information. Correspondence received by DHSMV from the U.S. Department of Justice has questioned Florida’s compliance and “strongly urges Florida to conform its public laws to ensure there is no question that it is in full compliance with this important provision.”<sup>7</sup>

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 DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States District Court.

### Current Public Records Exemptions

Current law provides a public records exemption for personal information contained in a motor vehicle record that identifies the subject of that record.<sup>8</sup> Personal information includes: the subject’s social security number, driver identification number, name, address, telephone number, and medical or disability information. It does not include information relating to vehicular crashes, driving violations, and driver’s status. The exemption also provides for release of the information for limited purposes.<sup>9</sup>

Current law also provides a general public records exemption for social security numbers.<sup>10</sup> That exemption, however, does not apply to social security numbers contained in motor vehicle records.<sup>11</sup>

### **EFFECT OF BILL**

The bill expands the current public records exemption for personal information contained in a motor vehicle record that identifies the subject of that record. The exemption is expanded to include personal information that identifies an individual regardless of whether the individual is the subject of that record.

The exemption is further expanded to protect the release of emergency contact information that is made a part of the motor vehicle record. In addition, release of social security numbers,<sup>12</sup> photographs or images,<sup>13</sup> medical disability information,<sup>14</sup> and emergency contact information<sup>15</sup> is limited further.

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<sup>5</sup> See chapter 2004-62 L.O.F.

<sup>6</sup> See Public Law 106-346, 114 Stat. 1356, (October 23, 2000).

<sup>7</sup> Professional Staff Analysis and Economic Impact Statement (Florida Senate) of CS/SB 830, March 13, 2007, at 2. (on file with the Senate Transportation Committee and the House Committee on State Affairs)

<sup>8</sup> Section 119.0712(2), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 119.071(5)(a), F.S.

<sup>11</sup> Section 119.071(5)(a)10., F.S., provides that the general exemption for social security numbers does not supersede any other exemption for social security numbers existing prior to May 13, 2002, or created thereafter. Thus, the general exemption does not apply to social security numbers in motor vehicle records.

<sup>12</sup> Release of social security numbers is limited to use: by any government 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; in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulator body for certain purposes; 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; and by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver’s license.

<sup>13</sup> Release of an individual’s photograph or image is limited to: departmental administrative purposes; the issuance of duplicate licenses; responses to law enforcement agency requests; the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters; the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D

The bill provides for future review and repeal of the exemption on October 2, 2012. It also provides a public necessity statement as required by the State Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., expanding the public records exemption for motor vehicle records.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2007, effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on the Department of Highway Safety and Motor Vehicles, because staff responsible for complying with public records requests will require training related to the expansion of the current public records exemption. In addition, the department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The department, however, would absorb these costs as they are part of the day-to-day responsibilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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cases; or the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims. (See, s. 322.142, F.S.)

<sup>14</sup> Release of medical disability information is limited to: the licensed driver or applicant; use as evidence in any trial; use in proceedings under ss. 322.271 or 322.31, F.S.; and determine the qualifications of a person to operate a motor vehicle on the highways of this state. (See, ss. 322.125 and 322.126, F.S.)

<sup>15</sup> Emergency contact information may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

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.

Supremacy Clause of the United States Constitution

If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution,<sup>16</sup> the state must keep the records confidential. If DPPA clearly prohibits the release of personal information contained in state motor vehicle records, then the current public records exemption appears unnecessary. A public records exemption for the emergency contact information, however, is required as it does not appear to fall under the definition of "personal information" as defined in DPPA.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

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<sup>16</sup> Art. VI of the U.S. Constitution.