

**The Florida Senate**  
**PROFESSIONAL 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 Operations Committee

BILL: CS/SB 830

INTRODUCER: Transportation Committee and Senators Baker and Bullard

SUBJECT: HSMV Records/Public Disclosure

DATE: March 15, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	<b>Fav/CS</b>
2.	Rhea	Wilson	GO	<b>Favorable</b>
3.				
4.				
5.				
6.				

**I. Summary:**

Motor vehicle records contain personal information about licensees, motor vehicle owners, and identification cards issued by the Department of Highway Safety and Motor Vehicles. Section 119.0712(2), F.S., makes exempt personal information contained in a motor vehicle record that identifies the subject of that record. "Personal information" includes, but is not limited to, a social security number, driver identification number, name, address, telephone number, and medical or disability information. This personal information *must be* released for statutorily-specified uses. The committee substitute amends the exemption to:

- Make personal information both *confidential and* exempt;
- Expressly include identification card numbers within "personal information;"
- Expressly include emergency contact information within "personal information;"
- Create a two-tiered system for release of personal information within motor vehicle records by placing additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information;
- Makes it subject to the Open Government Sunset Review Act and repeals it October 2, 2012, unless it is reviewed and reenacted by the Legislature.

The creation of the two-tiered system for personal information is being sought at the urging of the United States (U.S.) Department of Justice to conform Florida's law to the Drivers Privacy Protection Act (DPPA) and to avoid any potential civil penalties that may be imposed for noncompliance.

This bill amends s. 119.0712(2) of the Florida Statutes.

## II. Present Situation:

**Public Records** - Article I, s. 24(a), of the State Constitution provides:

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. . . .

In addition, the Public Records Act<sup>1</sup> specifies conditions under which public access must be provided by an agency. 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.

Unless specifically exempted, all agency<sup>2</sup> records are available for public inspection. The term “public records” is defined in s. 119.011(11), F.S., to include:

. . . 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 the official business by any agency.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>3</sup> Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.<sup>4</sup>

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c), of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

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<sup>1</sup>Chapter 119, F.S.

<sup>2</sup>The term “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.”

<sup>3</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. 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.<sup>5</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>6</sup>

The Open Government Sunset Review Act establishes a review and repeal process for exemptions to public records or meetings requirements. 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 of the fifth year, unless the Legislature re-enacts the exemption.

Section 119.15(4)(a), F.S., requires a law that enacts a new exemption, or substantially amends an existing exemption,<sup>7</sup> to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

**Motor Vehicle Records** - The Department of Highway Safety and Motor Vehicles (DHSMV)<sup>8</sup> holds motor vehicle records that contain personal information about drivers and motor vehicle owners. “Motor vehicle record” means

. . . any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles. . . .<sup>9</sup>

Currently, all driver’s licenses issued by the DHSMV must bear a full-face photograph or digital image of the licensee. Specifically, s. 322.142, F.S., authorizes the DHSMV, upon receipt of the required fee, to issue to each qualified applicant for an original driver’s license a color photographic or digitally imaged driver’s license bearing a full-face photograph or digital image of the licensee. The requirement of a full-face photograph or digital image of the identification cardholder may not be waived, regardless of the provisions of ch. 761, F.S.<sup>10</sup>

Section 322.142(4), F.S., specifies digitized driver’s license photographs (images) are available for DHSMV administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity

<sup>5</sup> Attorney General Opinion 85-62.

<sup>6</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>7</sup> Section 119.15(4) (b), F.S., provides that 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>8</sup> The department is statutorily-created in s. 20.24, F.S. The head of the department is the Governor and Cabinet. The department consists of a Division of Florida Highway Patrol; Division of Driver Licenses; and a Division of Motor Vehicles.

<sup>9</sup> Section 119.0712(2), F.S.

<sup>10</sup> Chapter 761, F.S., provides that the state must not substantially burden a person’s exercise of religion unless the state demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding.

and establishing, modifying, or enforcing support obligations in Title IV-D cases; or to 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, and are exempt from the provisions of s. 119.07(1), F.S.

Section 322.125, F.S., provides reports received or made by the Medical Advisory Board (Board) or its members for the purpose of assisting DHSMV in determining whether a person is qualified to be licensed are for the confidential use of the Board or DHSMV and may not be divulged to any person except the licensed driver or applicant or used as evidence in any trial, and are exempt from the provisions of s. 119.07(1), F.S., except the reports may be admitted in proceedings under s. 322.271 or s. 322.31, F.S.

Section 322.126, F.S., provides the reports authorized by this section are confidential and exempt from the provisions of s. 119.07(1), F.S., and must be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle on the highways of this state. In addition, no report forwarded under the provisions of this section shall be used as evidence in any civil or criminal trial or in any court proceeding.

The DHSMV allows an individual who holds a current Florida driver license or identification card to provide emergency contact information to law enforcement in the event of an emergency. According to DHSMV's website, this information may save crucial time if ever it becomes necessary to contact family members, or other loved ones.

**Exemption for Personal Information in Motor Vehicle Records** - Under Article I, s. 24 of the State Constitution, and s. 119.071(1)(a), F.S., the DHSMV is required to make all motor vehicle records available to the public unless the Legislature has enacted an exemption to protect the record. Section 119.0712(2), F.S., makes exempt personal information contained in a motor vehicle record that identifies the subject of that record. "Personal information" is defined by the section to include, but not be limited to, the subject's ". . . social security number,<sup>11</sup> driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular crashes, driving violations, and driver status."

There are numerous exceptions to the exemption for motor vehicle records that require disclosure. Personal information is available for the following purposes:

1. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle

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<sup>11</sup> While there are numerous statutory provisions authorizing or requiring collection of SSNs, there are numerous exemptions for SSNs also. Section 119.071(5), F.S., is a general exemption for SSNs but *by the express terms of the exemption, it does not supersede other SSN exemptions existing prior to May 13, 2002, or created thereafter.*<sup>11</sup> Thus, if a specific exemption for SSNs exists, the requirements of that exemption control, not the general exemption. As a result, the exemption for SSNs in s. 119.0712(2), F.S., controls for motor vehicle records.

Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.

2. For use by any government agency, including any court of law enforcement 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.
3. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
4. For uses in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
  - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - b. If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:
  - a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.
  - b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney; however the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
  - c. Investigation by any person in connection with any filed proceeding; however the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
  - d. Execution or enforcement of judgments and orders.
  - e. Compliance with an order of any court.
6. For use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
7. For use 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.

8. For use in providing notice to the owners of towed or impounded vehicles.
9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection. Personal information obtained based on an exempt driver's record may not be provided to a client who cannot demonstrate a need based on a police report, court order, or a business or personal relationship with the subject of the investigation.
10. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. ss. 31301 et seq.
11. For use in connection with the operation of private toll transportation facilities.
12. For bulk distribution for surveys, marketing, or solicitations when the department has obtained the express written consent of the person to whom such personal information pertains.
13. For any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record.
14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.
15. For any other uses if the person to whom the information pertains has given express consent on a form prescribed by DHSMV. Such consent shall remain in effect until it is revoked by the person on a form prescribed by DHSMV.

**Drivers Privacy Protection Act** - Congress enacted the Drivers Privacy Protection Act (DPPA)<sup>12</sup> as part of the Violent Crime Control and Law Enforcement Act of 1994. Section 2721 of the DPPA provides

- (a) In General – Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.
- (b) Permissible Uses – Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National

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<sup>12</sup> 18 U.S.C. s. 2721 *et seq.*

Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act, and may be disclosed as follows . . . .

The DPPA further requires states comply with its provisions by 1997. Florida came into compliance with DPPA (1994) in 1997, when ch. 97-185, L.O.F., became law; however, in 1999, Congress changed a provision in the DPPA from an “opt out” alternative to an “opt in” alternative.<sup>13</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 did not amend the state’s public records laws to conform to DPPA (1999) until May 13, 2004.<sup>14</sup>

In 2000, Congress changed a provision in the DPPA to limit the circumstances under which states may disclose “highly restricted personal information.”<sup>15</sup> The 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.”

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

### III. Effect of Proposed Changes:

**Section 1** of the CS amends s. 119.0712(2), F.S., to make personal information in a motor vehicle record confidential and exempt. Additionally, the bill modifies the definition of “personal information” by expressly including identification card numbers and emergency contact information. Also, the CS provides for the release of personal information held by DHSMV to comply with the federal Drivers Privacy Protection Act (DPPA).<sup>16</sup>

In addition, the CS includes the creation of a two tiered system for personal information contained within the records of DHSMV and places additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information.

Specifically, the CS provides that notwithstanding s. 119.0712(2)(b), F.S., without the express consent of the person to whom such information applies, the following information contained in motor vehicle records may only be released as specified in this paragraph:

1. Social security numbers may be released only as provided in subparagraphs (b)2., 5., 7., and 10.

<sup>13</sup> See, Public Law 106-69, 113 Stat. 1025, (October 9, 1999).

<sup>14</sup> See, ch. 2004-62 L.O.F.

<sup>15</sup> See, Public Law 106-346, 114 Stat. 1356, (October 23, 2000).

<sup>16</sup> 18 U.S.C. s. 2721 *et seq.*

2. An individual's photograph or image may be release only as provided in s. 322.142, F.S.
3. Medical disability information may be released only as provided in ss. 322.125 and 322.126, F.S.
4. Emergency contact information held by DHSMV may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

The CS makes the exemption subject to the Open Government Sunset Review Act and it will repeal October 2, 2012, unless reviewed and reenacted by the Legislature.

**Section 2** of the CS provides a public necessity statement as required by Art. I. s. 24(c), State Constitution, to justify the exemption from public records laws. The CS is needed, according to the public necessity statement, to make personal information in an individual's motor vehicle record confidential and exempt and to conform to federal law. The public necessity statement also states the personal information contained in the state's motor vehicle records could be used to invade the personal privacy of the person identified in the records or could be used for other purposes, such as solicitation, harassment, stalking, and intimidation. Therefore, limiting access will protect the privacy of persons who are identified in those records and minimize the opportunity for invading that privacy.

**Section 3** provides the act shall take effect July 1, 2007.

#### IV. Constitutional Issues:

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

None.

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

Article I, s. 24 of the State Constitution provides that

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. . . .

The Legislature enacted s. 119.0712(2), F.S., which made personal information in motor vehicle records exempt. The exemption contains multiple exceptions to the exemption.

The Federal Drivers Privacy Protection Act (DPPA),<sup>17</sup> prohibits a state department of motor vehicles, and any officer, employee, or contractor thereof from knowingly

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<sup>17</sup> 18 U.S.C. s. 2721 *et seq.*

disclosing or otherwise making available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record. Like the state exemption, exceptions are provided and personal information may be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.

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>18</sup> the state must keep the records confidential.<sup>19</sup>

If DPPA clearly prohibits release of personal information contained in state motor vehicle records, then it would appear to be unnecessary to expressly provide for the current public records exemption in statute, except to protect emergency contact information. Emergency contact information does not appear to fall under the definition of “personal information” as defined in DPPA and an express exemption for this would be required under Article I, s. 24 of the State Constitution.

**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.

<sup>18</sup> Article VI of the U.S. Constitution.

<sup>19</sup> *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-211 (1824). *See, e.g., Cipollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1992); *Morales v. TWA*, 112 S.Ct. 2031 (1992); *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977).

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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

None.

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