

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 42-C

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Public Records-Identifying Information Held by the Department of Highway Safety and Motor Vehicles

DATE: October 4, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates in s. 324.242, F.S., a public records exemption for personal identifying information of a person insured or formerly insured by a personal injury protection or property damage liability insurance policy that is held by the Department of Highway Safety and Motor Vehicles (DHSMV). Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The information to be held exempt will be the name, address, and driver's license number of the insured. The exemption will apply retroactively.

This bill creates, or repeals the following sections of the Florida Statutes: 324.242

II. Present Situation:

Public Records Law

Public Records – Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892. In 1992, Florida adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.¹ Article I, s. 24 of the State Constitution, provides that:

(a) 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 Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. 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 agency³ records are available for public inspection. The term, “public record,” is broadly defined to mean:

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 official business by any agency.⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

¹ Article I, s. 24 of the State Constitution.

² Chapter 119, F.S.

³ The word “agency” is defined in s. 119.011(2), F.S., to mean, “...any state, county, district, authority, or municipal officer, department, division, board, bureau, or other separate unit of government created or established by law...”

⁴ Section 119.011(11), F.S.

⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁶ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁷ Article I, s. 24(c) of the State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

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.¹¹ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act¹³ provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

- [a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- [p]rotects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- [p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁴

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Art. I, s. 24(c) of the State Constitution.

¹¹ Attorney General Opinion 85-62.

¹² *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15(4) (b), F.S.

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If yes, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Repealed Public Records Exemption in s. 627.736(9)(a)

This bill is designed to take the place of a public records exemption that formerly was found in s. 627.736(9)(a), F.S., that has been repealed as of October 1, 2007, pursuant to the repeal of the Florida Motor Vehicle No-Fault Law on that date. The exemption held confidential and exempt reports of cancellations, renewals, and new policies submitted by insurers to the DHSMV as required by that subsection. Representatives from the DHSMV indicated to committee staff that the following information was held confidential and exempt under the exemption: the name, address, drivers license number, insurance policy number of the insured; the name and company code number of the company that issued the policy; the year and make of the vehicle and the vehicle identification number; the status of the policy, its issuance or cancellation dates, and issue recall and cancellation recall dates; the vehicle added date; and the posted date. That exemption was enacted in 1988, and has never been subject to review pursuant to the current Open Government Sunset Review Act.

III. Effect of Proposed Changes:

Section 1. Creates s. 324.242, F.S., a public records exemption for personal identifying information of a person insured or formerly insured by a personal injury protection or property damage liability insurance policy that is held by the Department of Highway Safety and Motor Vehicles. Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The information to be held exempt will be the name, address, and driver's license number of the insured. The exemption will apply to such confidential and exempt information held by the DHSMV before, on, or after the effective date of this section.

The bill will apply only to personal identifying information of an insured, and thus cover less information than its predecessor exemption in s. 627.736(9)(a), F.S., which was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007. The prior exemption also covered information such as the name of the insurer, the insurance policy number, information regarding the vehicle such as its vehicle identification number, and other specified information. However, the proposed legislation will apply to personal identifying information held by the DHSMV regardless of why it is held, while the prior exemption only applied to information that is submitted by an insurer in the reports required by s. 627.736(9), F.S.

The exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Contains legislative findings on the public necessity of the exemption. The exemption is designed to protect the customer lists of insurers, which are traditionally considered proprietary business information because such lists could be used by competitors to solicit customers.

Section 3. The act is to take effect on the same date that SB 40-C or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

CS by Banking and Insurance Committee on October 4, 2007

Specifies that the bill is effective on the same date that SB 40-C or similar legislation becomes law, if both acts are adopted in the same legislative session or an extension thereof.

B. Amendments:

None.

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