

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 Criminal Justice Committee

BILL: SB 604

INTRODUCER: Criminal Justice Committee

SUBJECT: Open Government Sunset Review of Section 790.0601, F.S., Personal Identifying Information of Applicant or Licensee, Concealed Weapon or Firearm

DATE: February 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill reenacts a public records exemption for “personal identifying information” contained in records maintained by the Department of Agriculture and Consumer Services (DACCS) concerning applicants for and recipients of a concealed weapons permit. The bill provides that the exempt information may be provided with the written consent of the applicant, upon written request of a law enforcement agency, or by court order upon a showing of good cause.

The bill reenacts section 790.0601 of the Florida Statutes.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created

thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law¹ specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” 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 official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge....”²

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (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.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995³ 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.”⁴

Section 119.15(6)(a), F.S.,⁵ requires, as part of the review process, the consideration of the following questions:

- 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?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, 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?

¹ Chapter 119, F.S.

² *Shevin, Byron, Hairless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

³ Section 119.15, F.S.

⁴ Section 119.15(3)(b), F.S.

⁵ Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- 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.”
- The exemption “[p]rotects 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 “[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 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.”⁶

Exempt Personal Identifying Information

Social Security numbers,⁷ credit and debit cards,⁸ and bank account⁹ information are exempt from public disclosure. Additionally, personal information contained in a motor vehicle record that identifies the subject in the record is exempt from disclosure.¹⁰ Exempt information includes driver’s license and identification card numbers.¹¹

Concealed Weapons License

A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.¹² The Department of Agriculture and Consumer Services (DACS) is statutorily authorized to issue a license to carry a concealed weapon to those applicants who qualify.¹³

There is no other governmental agency that collects this particular information from applicants, and it cannot be obtained by the public from another source. The information is not protected by another exemption, nor do multiple exemptions for the same type of information exist.

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

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.071(5)(a)3, F.S.

⁸ Section 119.071(5)(b), F.S.

⁹ *Id.*

¹⁰ Section 119.0712(2), F.S.

¹¹ *Id.*

¹² Section 790.06(1), F.S.

¹³ *Id.*

attesting to the applicant's completion of a firearms course, and a full frontal view color photograph¹⁴ of the applicant.¹⁵ 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 ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.¹⁶

There are currently over 750,000 valid license-holders in Florida.¹⁷ It is these persons whose personal information is currently protected by the public records exemption under review.

In Chapter 2006-102, Laws of Florida, which created the exemption, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law states:

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing of the Department of Agriculture and Consumer Services be made confidential and exempt from public records requirements, with certain exceptions. The carrying of a concealed weapon in the state by members of the general public requires an individual to obtain a license from the Department of Agriculture and Consumer Services. The applicant for a license to carry a concealed weapon or firearm must state that he or she seeks a concealed weapon or firearms license as a means of lawful self-defense. The knowledge that someone has applied for or received a license to carry a concealed weapon or firearm can very easily lead to the conclusion that the applicant or licensee has in fact armed himself or herself. This knowledge defeats the purpose behind the authorization to carry a concealed weapon or firearm. If the applicant or licensee had intended for the general public to know he or she was carrying a weapon or firearm, he or she would have applied for a regular weapon or firearms permit rather than a license to carry a concealed weapon or firearm. The Legislature has found in prior legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second

¹⁴ 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.

¹⁵ Section 790.06(5), F.S.

¹⁶ Section 790.06(4), F.S.

¹⁷ "Concealed Weapon / Firearm Summary Report," viewed September 21, 2010
http://licgweb.doacs.state.fl.us/stats/cw_monthly.html.

Amendment right to keep and bear arms as guaranteed under the United States Constitution. Release of personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm could be used to harass an innocent person based solely on that person's exercised right to carry a concealed weapon or firearm. Further, such information could be used and has been used to identify individuals who have obtained a license to carry a concealed weapon or firearm for the purpose of making the identity of the applicant or licensee publicly available via traditional media and the Internet. Once again, such public disclosure contradicts the purpose of carrying a concealed weapon or firearm. Therefore, the Legislature finds that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to chapter 790, Florida Statutes, must be held confidential and exempt from public records requirements.

The above-referenced statement of public purpose conveys the 2006 Legislature's concern with protecting information of a sensitive personal nature concerning individuals. Although not directly stated, the language adopted by the Legislature invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a *concealed* firearm or weapon and *making public* that individual's *personally identifying information*. The inference that can be drawn from the statement of public purpose is that it is a *matter of personal safety* that an individual who carries a concealed firearm or weapon *keep the weapon's very presence out of the public view or scrutiny*, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

III. Effect of Proposed Changes:

This bill reenacts s. 790.0601, F.S., to provide a public record exemption for "personal identifying information" contained in records that are maintained by DACS concerning applicants for a license to carry a concealed weapon or individuals who have already received a concealed weapons permit. However, this information may be released:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon written request by law enforcement in connection with an active criminal investigation.

This bill reenacts the exemption by deleting its repeal date of October 2, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill reenacts a public records exemption to protect identifying information maintained by the Department of Agriculture and Consumer Services of applicants for and recipients of a concealed weapons permit.

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:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.