

**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 Committee on Rules

BILL: SB 628

INTRODUCER: Senator Joyner

SUBJECT: Driver Licenses

DATE: March 15, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	<b>Favorable</b>
2.	Everette	Eichin	TR	<b>Favorable</b>
3.	Brown	Phelps	RC	<b>Favorable</b>
4.				
5.				
6.				

**I. Summary:**

SB 628 allows judges and certain employees of the state courts system to access copies of driver’s licenses held by the Department of Highway Safety and Motor Vehicles (department). Currently, the department has no duty to share copies of driver’s licenses with the judicial branch.

This bill substantially amends section 322.142, Florida Statutes.

**II. Present Situation:**

**Driver’s Licenses**

The Department of Highway Safety and Motor Vehicles (department) must issue qualified applicants a driver’s license at the time that the licensee successfully passes the required examinations and pays a fee.<sup>1</sup>

The driver’s license must contain:

- A color photograph or digital image of the licensee.
- The name of the state.
- An identification number uniquely assigned to the licensee.
- The licensee’s full name, date of birth, and residence address.
- The licensee’s gender and height.
- The dates of issuance and expiration of the license.

<sup>1</sup> Sections 322.14(1)(a) and 322.142(1), F.S.

- A signature line.
- The class of vehicle authorized and endorsements or restrictions.<sup>2</sup>

The department is authorized to maintain a film negative or print file pictures of licensees. The department must keep a record of the digital image and licensee signature, along with identifying data to retrieve the record.<sup>3</sup>

This information is exempt from disclosure requirements under public records laws. However, the file and digital record may be released for the following purposes:

- For the issuance of duplicate licenses; and
- For administrative purposes of the department.<sup>4</sup>

Records can also be released to the following parties for specific purposes:

- Law enforcement agencies.
- Department of Business and Professional Regulation.
- Department of State.
- Department of Revenue.
- Department of Children and Family Services.
- Department of Financial Services.<sup>5</sup>

The most recent change to this public records exemption was in 2010, when the exemption was narrowed. The Legislature authorized the Department of Children and Family Services to have access to the records for additional purposes related to public assistance and public assistance fraud investigations.<sup>6</sup>

### **The Office of State Courts Administrator**

The Office of State Courts Administrator (OSCA) requested the changes provided in this bill. OSCA indicates a need for this legislation as follows:

By department policy, judges have access to [driver's license] photographs, and by past practice, some court-related employees have access. However, neither judges nor court-related employees are specifically delineated for access in the applicable statute. The [Department of Highway Safety and Motor Vehicles] has begun to interpret the statute more strictly, resulting in some court-related employees being unable to access the photographs.

The courts' Judicial Inquiry System (JIS) draws information from a number of data sources. Specifically, JIS offers the judiciary access to a streamlined dashboard in

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<sup>2</sup> Section 322.14 (1)(a) and (b), F.S.

<sup>3</sup> Section 322.142(4), F.S.

<sup>4</sup> Section 322.142 (4), F.S.

<sup>5</sup> Section 322.142 (4), F.S.

<sup>6</sup> Section 1, ch. 2010-207, L.O.F. (CS/SB 962).

which a user may query multiple data sources through a single point of entry. One of the data sources that may be accessed through JIS is the system containing driver's license photographs maintained by DHSMV. However, some judges and court-related employees also may access the DHSMV system directly.<sup>7</sup>

According to OSCA, judges have had access to the records based on the statute's authority for release to law enforcement agencies. Still, OSCA is concerned that the department is more strictly interpreting the public records exemption for driver's license records, and judges are not currently authorized in the exemption to receive records. Additionally, the other judicial branch employees have encountered resistance in accessing these records.

### **Public Records**

The Florida Constitution specifies requirements for public access to government records. It provides every person 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 of persons acting on their behalf.<sup>8</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>9</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S.,<sup>10</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>11</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>12</sup>

Only the Legislature may create an exemption to public records.<sup>13</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>14</sup>

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<sup>7</sup> Office of the State Courts Administrator, *White Paper: Legislative Issue: Driver's License Photographs* (2013) (on file with the Senate Committee on Judiciary).

<sup>8</sup> FLA. CONST., Art. I, s. 24(a).

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

<sup>10</sup> Chapter 119, F.S.

<sup>11</sup> Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" to mean as "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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

<sup>12</sup> Section 119.07(1)(a), F.S.

<sup>13</sup> FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>14</sup> FLA. CONST., Art. I, s. 24(c).

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>15</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>16</sup>

### III. Effect of Proposed Changes:

This bill narrows the public records exemption for copies of driver's license files and digital records by expressly authorizing the following parties to receive copies as part of the official work of a court:

- A justice or judge of the state.
- An employee of the state courts system who holds a position that is designated in writing for access by the Supreme Court Chief Justice or a chief judge of a district or circuit court, or his or her designee.
- A government employee who performs functions for the state court system in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or their designee.

This bill updates obsolete references to the Department of Children and Family Services to the Department of Children and Families.<sup>17</sup>

The bill takes effect July 1, 2013.

### IV. Constitutional Issues:

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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

This bill narrows an existing public records exemption. It complies with the requirements of s. 24(c), Article I of the Florida Constitution. Because the bill does not create a new exemption, it does not require a statement of public necessity or two-thirds vote approval of each house for passage as required by s. 24(c), Article I of the Florida Constitution.

#### C. Trust Funds Restrictions:

None.

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<sup>15</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>16</sup> FLA. CONST., Art. I, s. 24(c).

<sup>17</sup> Chapter 2012-84 (SB 2048).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

An insignificant positive fiscal impact may be associated with this bill in that the courts and OSCA employees may have easier access to these records.

**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.