

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 987

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Slosberg

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**COMPANION (SB 628)
BILLS:**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 987 passed the House on April 24, 2013 as SB 628. The bill authorizes court related employees on official court business to access driver's license images and other data contained within the Department of Highway Safety and Motor Vehicles (DHSMV) Driver and Vehicle Information Database (DAVID).

Current law provides a public record exemption for reproductions from the DAVID database. The DAVID database contains a record of the digital image and signature on Florida driver's licenses. The exemption provides governmental exceptions to the exemption for the issuance of driver licenses, DHSMV administrative purposes, law enforcement agencies, the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Family Services, the Department of Financial Services, and District Medical Examiners.

Judges or court related employees are not among the entities specifically entitled to receive reproductions of driver's license photographs.

The bill authorizes the following persons to receive reproductions from the DAVID database 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; or
- 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.

The bill has no fiscal impact on state or local governments.

The bill was approved by the Governor on May 30, 2013, 2013-67, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Records

Article I, s. 24(a) of the State 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) of the State 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 addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If an exemption is created, or expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If an exemption is amended with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Driver's Licenses

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to issue to qualified applicants a driver's license at the time the licensee successfully passes the required examinations and pays a fee.⁴

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;
- A signature line; and
- The class of vehicle authorized and endorsements or restrictions.⁵

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Sections 322.14(1)(a) and 322.142(1), F.S.

⁵ Section 322.14 (1)(a) and (b), F.S.

DHSMV is authorized to maintain a film negative or print file, and is required to maintain a record of the digital image and signature of licensees, together with other data required for identification and retrieval. This information is contained within DHSMV's Driver and Vehicle Information Database (DAVID).

Section 322.142(4), F.S., provides that reproductions from the file or digital record contained within the DAVID database are exempt from public records requirements.⁶ However, exceptions are authorized. Reproductions are authorized for:

- The issuance of duplicate licenses;
- Administrative purposes of DHSMV;
- Law enforcement agencies;
- The Department of Business and Professional Regulation;
- The Department of State;
- The Department of Revenue;
- The Department of Children and Family Services;
- The Department of Financial Services; and
- District Medical Examiners.

Due to the sensitivity of information contained within the DAVID database, access given to state governmental entities is pursuant to interagency agreements with DHSMV. This allows DHSMV to restrict use of the DAVID database to only necessary persons at each agency.

The Office of State Courts Administrator

Current law does not include judges or court related employees among the entities specifically entitled to receive reproductions of driver's license photographs. According to the Office of State Courts Administrator (OSCA), DHSMV has a *policy* which allows judges to access the photographs in the same manner as law enforcement agencies, state attorney offices, and sworn officers.⁷ However, neither judges nor court-related employees are specifically delineated for access in the applicable statute.

According to OSCA, having access to driver's license photographs is important in helping to verify the identity of individuals interacting with the state courts system as part of the courts' official functions.⁸ For example, court staff prepares materials for use by courts which often require access to such photographs.⁹ OSCA provides that by past practice, DHSMV has afforded access to driver's license photographs to some court-related employees.¹⁰ In addition, some judges have had access to the photographs based on statutory authority for release of these photographs to law enforcement agencies.¹¹ Still, OSCA is concerned that DHSMV is more strictly interpreting the public records exemption for driver's license photographs and records which judges and court staff are not currently authorized in the exemption to receive.

Proposed Changes

The bill creates an additional governmental exception to the public record exemption for reproductions from the file or digital record contained within the DAVID database. Specifically, the bill authorizes the following persons to receive such reproductions as part of the official work of a court:

- A justice or judge of the state;

⁶ Section 119.07(1), F.S.

⁷ Office of the State Courts Administrator, *White Paper: Legislative Issue: Driver's License Photographs* (2013). (On file with the House Civil Justice Subcommittee).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

- 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; or
- 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.

The bill updates obsolete references to the Department of Children and Family Services to the current name, the Department of Children and Families,¹² and corrects the cross reference to s. 406.11, F.S., related to district medical examiner requirements.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Office of the State Courts Administrator (OSCA), "having access to driver license photographs facilitates and is critical to the work of the State Courts System." The bill may have an insignificant positive fiscal impact on the State Court System.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹² In 2012, the legislature revised the name of the Department of Children and Family Services to the Department of Children and Families. *See*, Chapter No. 2012-84; codified as s. 20.19, F.S.