

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 Transportation

BILL: SB 1046

INTRODUCER: Senator Galvano

SUBJECT: Public Records/Motor Vehicle Crash Reports

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1046 creates a public record exemption restricting access to personal information contained in traffic crash reports.

Current law allows radio and television stations licensed by the Federal Communication Commission, newspapers qualified to publish legal notices, and certain free newspapers to request information contained in traffic crash reports. The bill requires and clarifies that these outlets may continue to make requests of traffic crash reports. However, the reports must be requested on an individual basis and may not contain home, cellular, employment, or other telephone numbers, or the home or employment addresses of any of the parties involved in the crash.

The exemption is subject to repeal on October 2, 2019 unless reviewed and reenacted. Also provided is a statement of public necessity as required by the Florida Constitution.

II. Present Situation:

Currently, s. 316.066, (2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

Crash reports held by an agency may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and

television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.,^{1,2} and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Any local, state, or federal agency that is authorized to have access to crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties.

A person attempting to access a crash report within the 60 days after the date the report was filed must present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt. In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

Public Records Laws

The Florida Constitution 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.³ The records of the legislative, executive, and judicial branches are specifically included.⁴

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁵ guarantees every person's right to inspect and

¹<http://www.flsenate.gov/Laws/Statutes/2013/50.011>

²<http://www.flsenate.gov/Laws/Statutes/2013/50.031>

³ FLA CONST., art. I, s. 24(a).

⁴ Id.

⁵ Chapter 119, F.S.

copy any state or local government public record⁶ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷

Only the Legislature may create an exemption to public records requirements.⁸ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁹ 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 provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹² It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹³ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.

III. Effect of Proposed Changes:

Section 1, amends s. 316.066, F.S., and prohibits radio and television stations licensed by the Federal Communications Commission, and newspapers qualified to publish legal notices, and certain free newspapers from obtaining personal information – home telephone, cellular, employment, or other telephone number of their home or employment address. Traffic crash report requests must be filed on an individual basis.

⁶ 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)).

⁷ Section 119.07(1)(a), F.S.

⁸ 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).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² Section 119.15, F.S. 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 (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹³ Section 119.15(3), F.S.

Under the bill, this public records exemption is subject to repeal on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2, provides that personal contact information contained in a motor vehicle crash report be exempt from public records disclosure. It is public necessity that personal information by radio, television stations, and newspapers be restricted for the 60-day period after the filing date of traffic crash reports. The restriction is to combat widespread insurance fraud that occurs when information is unlawfully used to contact the parties involved in a crash. Moreover, the exemption prohibits access by newspapers, television, and radio stations to addresses and telephone numbers of the parties involved in crashes to protect the parties from those who would unlawfully solicit and make claims against their personal injury protection insurance policies.

This act shall take effect on the same date that SB 876 or HB 865 or similar 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:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill expands a public necessity state, it requires a two-third vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands a new public records exemption, it includes a public necessity statement.

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. Statutes Affected:

This bill substantially amends s. 316.066 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.