

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 Governmental Oversight and Accountability

BILL: CS/SB 350

INTRODUCER: Health Policy Committee and Senator Abruzzo

SUBJECT: Public Records/Yellow Dot Critical Motorist Medical Information Program

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Favorable
2.	Peterson	Stovall	HP	Fav/CS
3.	Kim	McVaney	GO	Pre-meeting
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 350, which is tied to CS/SB 262, creates a public records exemption for personal identifying information of a person who participates in a yellow dot critical motorist medical information program. A yellow dot critical motorist medical information program creates a mechanism for providing medical and emergency contact information to emergency medical responders in the event of a motor vehicle accident or medical emergency. Program participants receive a yellow dot to place on their vehicle's rear window, which alerts law enforcement or emergency medical responders to look for a yellow folder in the glove box that contains the medical information.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

The yellow dot critical motorist medical information program is a means to alert first responders at an accident scene to search for information about the injured person—especially if the person is unable to speak. The program, which began in Connecticut in 2002, has now been adopted in other states, including seven Florida counties.¹

CS/SB 262 creates specific authorization for counties to implement a program, as follows. After completing an application, the participant will receive a yellow dot decal to place on the vehicle rear window (or clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's information. The form, which is to be placed inside the folder, includes the following information about the participant:

- Name;
- Photograph;
- Emergency contact information of not more than two people;
- Medical information, including medical conditions, recent surgeries, allergies and medications;
- Preferred hospital; and,
- Contact information for not more than two physicians.

The participant's signature on the form authorizes release of the information for the purposes authorized by the bill. These include: to identify the participant; to determine whether the participant has a medical condition that would impede communication; to access the medical information form; and to ensure that information about current medications and conditions may be considered during emergency medical treatment.

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.² The records of the legislative, executive, and judicial branches are specifically included.³

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁴ guarantees every person's right to inspect and

¹ Broward, Miami/Dade, Orange, Osceola, Palm Beach County, Polk, and St. Lucie. My Yellow Dots Program Information Exchange, http://www.myyellowdots.com/florida_yellow_dot.php (last visited Jan. 30, 2014).

² FLA CONST. art. I, s. 24(a).

³ *Id.*

⁴ Chapter 119, F.S.

copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶

Only the Legislature may create an exemption to public records requirements.⁷ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁸ 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 provisions⁹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁰

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.¹¹ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹² 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:

The bill creates a public records exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by a county.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

⁵ 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 “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)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁶ Section 119.07(1)(a), F.S.

⁷ 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).

⁸ FLA. CONST., art. I, s. 24(c).

⁹ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ 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.).

¹² Section 119.15(3), F.S.

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states the exemption is necessary to protect the privacy and prevent victimization of program participants and to prevent embarrassment, in the event the identity of the participant were to be correlated to his or her medical records and that information disclosed.

The bill takes effect on the same date CS/SB 262 or similar legislation authorizing a yellow dot critical motorist medical information program takes effect, if adopted during the 2014 Session. CS/SB 262 takes effect July 1, 2014.

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 creates a new public records exemption, it requires a two-thirds 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. This bill creates a new public records exemption; therefore, 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:

According to the bill sponsor, a participant receives a blank form which he or she populates with the specified information, including the medical information, and places it in the folder in the glove box. However, CS/SB 262 contains language that implies the medical information is transmitted to the county on the application. The county, in turn, sends the participant the yellow dot decal, yellow dot folder, and yellow dot form populated with the medical information provided by the participant. CS/SB 262 may need to be amended to clarify whether medical information is transmitted to the county on the application.¹³

If the medical information is not transmitted, then information that a county receives as a result of the program may be limited to information needed to distribute the program materials—most likely, participant name and mailing address. The statement of necessity, however, describes the risk that a participant's identity could be correlated to his or her medical records—disclosure of which could embarrass the participant. CS/SB 262 limits the use of the information to emergency medical responders. Section 401.30, F.S., requires emergency medical personnel to maintain records of emergency calls for inspection by the Department of Health. In addition, the emergency medical personnel must give the hospital a copy of the patient care record for each patient who is transported. Records of emergency calls which contain patient examination or treatment information are confidential and exempt from the public records law and may not be disclosed without the consent of the person to whom they pertain, except for limited purposes described in law, including treatment.¹⁴ Thus, emergency medical responders would be expressly prohibited from disclosing information about the patient's medical history. It appears the statement of necessity should be amended to remove the language related to disclosure of medical records (lines 40 – 47).

CS/SB 262 and CS/SB 350 appear to conflict. According to CS/SB 262, the application form states that information will only be disclosed to authorized law enforcement personnel, public safety and emergency services agencies as well as hospitals. However, CS/SB 350 makes a record kept by a county exempt from public disclosure, not *confidential* and exempt. Exempt records may be disclosed by a records custodian at his or her discretion.¹⁵

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

¹³ SB 262 was not referred to the Senate Health Policy Committee.

¹⁴ Section 401.30(4), F.S.

¹⁵ See footnote 7.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 11, 2014:

The CS corrects the Open Government Sunset Review repeal date to October 2, 2019.

- B. **Amendments:**

None.

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