

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 865 Pub. Rec./Motor Vehicle Crash Reports

SPONSOR(S): Economic Affairs Committee; Government Operations Subcommittee; Transportation & Highway Safety Subcommittee; Kerner

TIED BILLS: CS/HB 863 **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee	13 Y, 0 N, As CS	Stramski	Williamson
3) Economic Affairs Committee	17 Y, 0 N, As CS	Thompson	Creamer

SUMMARY ANALYSIS

Currently, crash reports are confidential and exempt from public record requirements for a period of 60 days after the date the reports are filed. However, an exception to the exemption allows access by various entities, including, but not limited to, the parties involved in the crash and their legal and insurance representatives, prosecutors, law enforcement, the Department of Transportation, and certain news media, including, but not limited to, 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.

The bill revises the exception to the public record exemption for motor vehicle crash reports, by providing further access restrictions for 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.

Specifically, the bill only allows these free newspapers to access a crash report within the authorized 60 day period after the date the crash report was filed, if the free newspaper:

- Distributes a minimum of 7,500 copies by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run;
- Has the intention of being of general distribution and circulation; and
- Contains news of general interest with a minimum of ten pages per publication.

However, the bill prohibits such newspapers from accessing the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash, if the newspaper requests ten or more crash reports within a 24 hour period, that are exempt because the authorized 60 day period has not elapsed.

The bill provides that the revised exception to the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill further restricts access to motor vehicle crash reports and thereby expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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.¹

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 Act² 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Crash Report Public Record Exemption

Section 316.066, (2)(a), F.S., provides that crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in a crash and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt³ from public records requirements for a period of 60 days after the date the report is filed.

Exceptions to the Crash Report Exemption

Section 316.066(2)(b), F.S., authorizes crash reports held by an agency to be made immediately

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *Williams v. City of Minneola*, 575 So.2d 683 (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).

available to:

- Parties involved in the crash, their legal representatives, their licensed insurance agents, and their insurers or insurers to which the parties have applied for coverage, including persons under contract with such insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Law enforcement agencies;
- 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.; 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.

Section 316.066(2)(c), F.S., allows any local, state, or federal agency that is authorized to have access to crash reports by any provision of law to be granted such access in the furtherance of the agency's statutory duties.

Crash Report Access Requirements

Section 316.066(2)(d), F.S., requires a person attempting to access a crash report within the 60 days after the date the report was filed to:

- 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.

However, this provision also allows an agency to provide crash reports by electronic means to third-party vendors under contract with one or more insurers in lieu of requiring a written sworn statement. Such contracts must state that the information will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for such solicitation. This authorization is effective only during the period of time the information remains confidential and exempt. A copy of the contract must be furnished to the agency as proof of the vendor's claimed status.⁴

The primary policy reason for closing access to these crash reports for 60 days to persons or entities not specifically listed appears to be protection for crash victims and their families from illegal personal injury protection (PIP) solicitation.

PIP Fraud

In a recent statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.⁵

⁴ Section 316.066(2)(d), F.S.

⁵ The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at:

<http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument>

(Last viewed March 27, 2014).

STORAGE NAME: h0865e.EAC

DATE: 4/14/2014

According to the Grand Jury report:

Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.

Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.⁶

Proposed Changes

The bill revises the exception to the public record exemption for motor vehicle crash reports, by providing further access restrictions for 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.

Specifically, the bill only allows these free newspapers to access a crash report within the authorized 60 day period if the free newspaper:

- Distributes a minimum of 7,500 copies by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run;
- Has the intention of being of general distribution and circulation; and
- Contains news of general interest with a minimum of ten pages per publication.

However, the bill prohibits such newspapers from accessing the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash, if the newspaper requests ten or more crash reports within a 24 hour period that are exempt because the 60 day period has not elapsed.

The bill provides that this revised exception to the exemption that restricts access to certain information is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: amends s. 316.066, F.S., relating to the public record exemption for written reports of crashes.

Section 2: provides a public necessity statement.

Section 3: provides an effective date contingent upon the passage of HB 863 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁶ *Id.*

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Prohibiting access to the phone numbers and addresses of crash victims in motor vehicle crash reports may help protect crash victims and their families from illegal PIP solicitations. This may have a negative fiscal impact to the entities soliciting crash victims or engaged in a business that profits from the sale of crash victim information.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes. Staff responsible for complying with public record requests could require training related to the revision of the public record exemption. In addition, such agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of a government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill further restricts access to motor vehicle crash reports and thereby expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill further restricts access to motor vehicle crash reports and thereby expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill prohibits radio, newspapers, and television stations from having access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in a crash.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DRAFTING COMMENTS: Paragraph Created

The bill creates a new paragraph (g) to s. 316.066, F.S. However, s. 316.066, F.S. only has paragraphs (a) through (e). Accordingly, this bill ought to create a new paragraph (f).

OTHER COMMENTS: Protection of Victims of Crimes or Accidents

Section 119.105, F.S., allows every person to examine nonexempt or nonconfidential police reports. This statute prohibits the use of such reports for any commercial solicitation. Violations of this statute are punishable as a first degree misdemeanor, or a third degree felony for willful and knowing violations.⁷

OTHER COMMENTS: Solicitation

Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.⁸

OTHER COMMENTS: Patient Brokering

Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.⁹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Transportation and Highway Safety Subcommittee adopted one amendment to HB 865 before reporting it favorable as a committee substitute. The amendment was technical and revised the public necessity statement to specifically address the excepted entities and the types of contact information that are addressed in the public record exemption.

On March 31, 2014, the Government Operations Subcommittee adopted one amendment to the bill and reported it favorable as a committee substitute. The amendment corrected the citation to the statutory paragraph being created by the bill.

On April 11, 2014, the Economic Affairs Committee adopted one amendment to CS/CS/HB 865 before reporting it favorably as a committee substitute. The amendment revised the exceptions to the public record exemption to provide minimum distribution and content requirements that free newspapers must meet in order to access a crash report within the authorized 60 day period; and prohibits such newspapers from accessing phone numbers and home addresses that are contained in a crash report if the newspaper requests ten or more crash reports within a 24 hour period.

This analysis is drafted to the committee substitute as adopted by the Economic Affairs Committee.

⁷ Section 119.10, F.S.

⁸ Section 817.234(c), F.S.

⁹ Section 817.505(4), F.S.