

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 671 Reemployment Assistance Fraud

**SPONSOR(S):** La Rosa

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N	Whittaker	Harrington
2) Transportation & Infrastructure Subcommittee	14 Y, 0 N	Johnson	Vickers
3) Government Accountability Committee	20 Y, 0 N	Whittaker	Williamson

### SUMMARY ANALYSIS

Florida's unemployment insurance program was created by the Legislature in 1937, and rebranded as the "reemployment assistance" program in 2012. The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws. The Department of Highway Safety and Motor Vehicles (DHSMV) holds motor vehicle records containing personal information about drivers and motor vehicle owners, including identification cards. A driver license issued by DHSMV must contain a color photograph and signature of the licensee. DHSMV must maintain a record of the digital image and signature of the licensee. Reproductions from the file are exempt from public disclosure and may only be issued for specified purposes. Current law allows DHSMV to release the images and signatures to certain governmental entities; however, DEO is not listed as an entity that may receive the information.

The bill permits DHSMV to provide the image file and signature of licensees to DEO pursuant to an interagency agreement to facilitate the validation of reemployment assistance claims and the identification of fraudulent or false claims for benefits.

The bill may have a negative fiscal impact on DHSMV due to costs associated with reprogramming its database to allow DEO access to driver records. It does not appear to have a fiscal impact on local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Reemployment Assistance

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.<sup>1</sup> The program is administered as a partnership of the federal government and the states.<sup>2</sup> States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act or the Social Security Act requirements.<sup>3</sup>

Florida's unemployment insurance program was created by the Legislature in 1937,<sup>4</sup> and rebranded as the "reemployment assistance" program in 2012.<sup>5</sup> The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws, primarily through its Division of Workforce Services.

An unemployed individual must apply to DEO for benefits using Florida's Online Reemployment Assistance System. The application process requires the claimant to provide his or her social security number and a secondary form of identification.<sup>6</sup> In order to receive benefits, an applicant must also meet certain monetary and nonmonetary eligibility requirements.<sup>7</sup>

###### Fraudulent Claims

When an unemployed individual files a claim for reemployment assistance, DEO validates the claimant's identity based on daily cross matches with external entities obtained through interagency agreements.<sup>8</sup> To further validate the claimant's identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>9</sup>

###### Motor Vehicle Records

DHSMV holds motor vehicle records containing personal information about drivers and motor vehicle owners. The term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by DHSMV.<sup>10</sup>

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<sup>1</sup> United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited March 9, 2017).

<sup>2</sup> There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, *Unemployment Insurance Program Description and Legislative History*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html> (last visited March 9, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> Chapter 18402, L.O.F.

<sup>5</sup> Chapter 2012-30, L.O.F.

<sup>6</sup> Rule 73B-11.013(6), F.A.C.

<sup>7</sup> Section 443.091, F.S.

<sup>8</sup> 2016 DEO Agency Bill Analysis for HB 1017 (on file with the Oversight, Transparency & Administration Subcommittee).

<sup>9</sup> DEO has an agreement with DHSMV through an interagency agreement (Memorandum of Understanding), which allows it to obtain limited information agreed upon in the Memorandum of Understanding. 2017 DHSMV Bill Analysis for HB 671 (March 6, 2017) at p. 2 (on file with the Oversight, Transparency & Administration Subcommittee).

<sup>10</sup> Section 119.0712(2)(a), F.S.

### Digital Imaged Licenses

A driver license must contain, in pertinent part, a color photograph or digital image of the licensee and the signature of the licensee.<sup>11</sup> DHSMV must maintain a record of the digital image and signature of the licensee, together with other data required for identification and retrieval.<sup>12</sup>

### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency<sup>13</sup> to provide access to public records.<sup>14</sup> Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records. As such, DHSMV is required to make all motor vehicle records available to the public unless the Legislature has enacted an exemption to protect the record.

### Public Record Exemptions for DHSMV Records

Section 119.0712(2), F.S., provides that personal information, including highly restricted personal information as defined in the Driver's Privacy Protection Act (DPPA),<sup>15</sup> contained in a motor vehicle record is confidential pursuant to DPPA. Such information may be released only as authorized by DPPA; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

DPPA is a federal statute requiring the states to restrict public access to state motor vehicle records. Although DPPA begins with a general prohibition against disclosure of personal information, 14 exceptions to the general prohibition follow.<sup>16</sup> In addition, states may adopt the permissible exceptions or may enact more restrictive measures than DPPA requires. However, states may not allow more permissible access to motor vehicle records than DPPA allows.

The Florida Statutes further restrict access to certain motor vehicle records in s. 322.142(4), F.S. The law provides that reproductions from the film negative or print file or record of the digital image and signature of the licensee are exempt from public records requirements. The law, however, provides for specific exceptions for specified purposes. Reproductions may be made:

- For DHSMV administrative purposes;
- For the issuance of duplicate licenses;
- In response to law enforcement agency requests;

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<sup>11</sup> Section 322.14 (1)(a) and (b), F.S.

<sup>12</sup> Section 322.142(4), F.S.

<sup>13</sup> Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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 agency.

<sup>14</sup> Section 119.011(2), F.S., defines the term "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.

<sup>15</sup> 18 U.S.C. s. 2721 *et seq.*; DPPA defines the term "personal information" as information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information. The term "highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information. Section 2725(3) and (4) of the DPPA.

<sup>16</sup> Section 2721(b)(1)-(14).

- To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the agencies;
- To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters;
- To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations;
- To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations and to verify identity and expedite the determination of eligibility for public assistance;
- To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse and to prevent health care fraud;
- To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code;
- To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin; and
- To the following persons for the purpose of identifying a person as part of the official work of the court:
  - A justice or judge of this state;
  - An employee of the state courts system who works 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 by his or her designee; or
  - A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Although the law provides access to various governmental entities, DEO does not currently have access to DHSMV records that contain a driver's image or signature.

### **Effect of the Bill**

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes DHSMV to disclose images and signatures of licensees to DEO pursuant to an interagency agreement.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 322.142, F.S., authorizing DHSMV to provide DEO with the image and signature of licensees.

Section 2. Provides and effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **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:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

According to DHSMV, it will need to alter its system programming in order for DEO to access driver records. DHSMV estimates that it may take up to 315 hours for programming and implementation and that such programming and implementation may cost DHSMV \$20,025.<sup>17</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>17</sup> 2017 DHSMV Bill Analysis for HB 671, March 6, 2017, at 3 (on file with the Oversight, Transparency & Administration Subcommittee).