

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1121 Pub. Rec./Crash Reports and Traffic Citations
SPONSOR(S): Commerce Committee and Government Operations Subcommittee and Tourism,
Infrastructure & Energy Subcommittee, Brannan
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1614

FINAL HOUSE FLOOR ACTION: 115 Y's 1 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1121 passed the House on March 8, 2022, as CS/CS/SB 1614.

Under current law, motor vehicle crash reports held by agencies that regularly receive or prepare motor vehicle crash reports are exempt from disclosure as public records for 60 days after the reports have been filed. The law provides a list of entities that may receive crash reports during that 60-day period. Under current law, traffic citations are considered public records.

The bill revises the public record exemption for written crash reports to:

- Provide that personal information contained in a crash report remains exempt from disclosure after the 60-day exemption period for the entire report has expired.
- Provide that the exemption applies to crash reports held by any agency subject to the public record law.
- Revise the list of entities to which the reports may be made available.
- Require certain entities to enter into memoranda of understanding in order to obtain crash reports.
- Revise conditions required to access the reports.
- Exempt certain computerized crash report data.
- Require an agency to make a redacted crash report available to the media.

The bill also creates a public record exemption for certain driver information contained in a traffic citation and authorizes the release of this information as provided in the federal Driver Privacy Protection Act.

The bill provides that these public record exemptions are subject to repeal under the Open Government Sunset Review Act unless the Legislature reviews and reenacts the exemptions by October 2, 2027.

The bill provides a public necessity statement for each exemption as required by the Florida Constitution.

The bill was approved by the Governor on June 20, 2022, ch. 2022-198, L.O.F., and will become effective on March 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Public Records

Article I, s. 24(a) of the Florida 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 exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.¹

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.⁴

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

Federal Driver Privacy Protection Act

Motorist personal information, when held by the Department of Highway Safety and Motor Vehicles (DHSMV) in motor vehicle records, is confidential pursuant to the federal Driver Privacy Protection Act (DPPA).⁵ Personal information covered by the DPPA includes: social security number, driver license or identification card number, name, address, telephone number and a person's medical or disability information.⁶

Under DPPA, personal information in motor vehicle and driver license records may be released for the following purposes:⁷

¹ Art. I, s. 24(c), FLA. CONST.

² S. 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ *Id.*

⁵ 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.

⁶ Department of Highway Safety and Motor Vehicles (DHSMV), *Privacy Statement Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on Jan. 28, 2022).

⁷ 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S. ; Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) available at <https://www.flhsmv.gov/pdf/forms/90511.pdf> (last visited Jan. 28, 2022) and HSMV 90510 (Revised 03/19) available at <https://www.flhsmv.gov/pdf/forms/90510.pdf> (last visited Jan. 28, 2022).

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities; and removal of non-owner records from the original owner records of motor vehicle manufacturers;
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, to verify the accuracy of personal information submitted by the individual, and if such information is incorrect, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a court;
- For use in research activities and producing statistical reports;
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted by DPPA;
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll facilities;
- For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing, or solicitations if the state has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the state that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Information that is not covered by DPPA is non-personal information. Under Florida law, such non-personal information contained in motor vehicle and driver license records, such as vehicular crash records, driving violations, and driver status information is considered public information.⁸

Motor Vehicle Crash Reports in Florida

Florida law requires written reports of motor vehicle crashes, which must contain the following information:

- The date, time, and location of the crash.
- A description of the vehicles involved.
- The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.
- The names and addresses of witnesses.
- The name, badge number, and law enforcement agency of the officer investigating the crash.
- The names of the insurance companies for the respective parties involved in the crash.⁹

⁸ DHSMV, *supra* note 6.

⁹ Ss. 316.066(1)(b) and (c), F.S.

An investigating law enforcement agency must submit a written crash report to DHSMV within 10 days after completing the investigation of a traffic crash that results in death or personal injury, involves a violation of leaving the scene or driving under the influence, renders a vehicle inoperable to a degree that a wrecker must remove it from the scene, or involves a commercial motor vehicle.¹⁰ Approximately 94 percent of crash reports are submitted by law enforcement agencies to DHSMV electronically, while about six percent of reports are submitted to DHSMV on paper and must be scanned and converted into an electronic format.¹¹

Crash reports contain various personal information about the parties to a crash, witnesses, and others whose property is damaged in a crash, including names, addresses, telephone numbers, dates of birth, driver license numbers, and certain insurance information.¹²

In 2001, the Legislature limited access to crash reports during the 60-day period after a crash report is filed.¹³ During that 60-day period, crash reports may only be released 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, and certain newspapers.¹⁴

Additionally, any local, state, or federal agency authorized by law to have access to crash reports must be granted such access in the furtherance of its statutory duties.¹⁵

To access a crash report within the 60-day time frame, a person must demonstrate his or her qualifications to access that information and file a written sworn statement with the state or local agency in possession of the information stating that information from the report will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt.¹⁶

According to the public necessity statement supporting this exemption, the 60-day exemption was created to protect the public from unscrupulous individuals who promote the filing of fraudulent insurance claims by obtaining such information immediately after a crash and exploiting the individual at a time of emotional distress.¹⁷

The Florida Highway Patrol (FHP)¹⁸ routinely receives public records requests for its crash reports. In addition, DHSMV routinely makes crash reports available to the public through the Florida Crash Portal.¹⁹ The portal comprises crash reports transmitted by FHP, county sheriff offices, local police departments, and other law enforcement agencies throughout the state. Crash reports provided by DHSMV are subject to a statutory fee of \$10 per report.²⁰

To facilitate releasing crash reports to authorized persons within the 60-day exemption period, DHSMV has prescribed a Sworn Statement to Obtain Traffic Crash Report Information (DHSMV Form 94010).²¹

¹⁰ S. 316.066(1)(a), F.S.

¹¹ Department of Highway Safety and Motor Vehicle (DHSMV), Agency Analysis of 2022 Senate Bill 1614 p.2 (Jan 14, 2022).

¹² See, e.g., DHSMV, *Uniform Traffic Crash Report Manual (90010S)* (Rev. Feb. 5, 2019), available at <https://www.flhsmv.gov/pdf/courts/crash/CrashManualComplete.pdf>. (last visited Jan. 28, 2022).

¹³ Ch. 2001-163, Laws of Fla.

¹⁴ S. 316.066(2)(b), F.S.

¹⁵ S. 316.066(2)(c), F.S.

¹⁶ S. 316.066(2)(d), F.S.

¹⁷ Ch. 2001-163, Laws of Fla.

¹⁸ The Florida Highway Patrol is a division of DHSMV.

¹⁹ DHSMV, *Florida Crash Portal*, at <https://www.flhsmv.gov/traffic-crash-reports> (last visited Jan. 28, 2022).

²⁰ S. 321.23(2)(a), F.S.; DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.

²¹ See DHSMV, *Sworn Statement to Obtain Traffic Crash Report Information (HSMV Form 94010)*, available at <https://www.flhsmv.gov/pdf/forms/94010.pdf>. (last visited Jan. 28, 2022).

In lieu of the printed form, users of the Florida Crash Portal may electronically submit the sworn statement when obtaining a crash report through the portal.²²

In addition to providing crash reports in their original format, crash reports transmitted to the Florida Crash Portal are maintained in a computerized database. The database contains all of the original report elements except for the law enforcement officer's narrative description of the crash and any crash diagrams.²³

In 2021, 671,993 crash reports were completed in Florida, which included information on 1,839,532 individuals (drivers, passengers, witnesses, and pedestrians).²⁴

Uniform Traffic Citations

Under Florida law, DHSMV has the duty of prescribing and providing to every traffic enforcement agency in the state prenumbered traffic citation books.²⁵ In lieu of using printed citation books, traffic enforcement agencies may produce uniform traffic citations by electronic means.²⁶ FHP is among the agencies who routinely prepare citations electronically.²⁷

Traffic citations contain various personal information about drivers who are issued citations, including their names, dates of birth, addresses, telephone numbers, and driver license numbers.²⁸

Traffic enforcement agencies, including FHP, submit traffic citations to the clerks of court. The clerks routinely provide searchable traffic court dockets on their Internet websites, which typically allow for viewing and downloading of unredacted copies of uniform traffic citations.²⁹

Electronic citation data is also transmitted to the clerks through the Comprehensive Case Information System maintained by the Florida Association of Court Clerks and Comptrollers, Inc.³⁰ Uniform traffic citation, arrest, disposition, and criminal financial obligation files are electronically transmitted by the clerks to DHSMV through the Traffic Citation Accounting and Transmission System. These files are used by DHSMV to post court dispositions to the driver history records of individual drivers.³¹

Under current law, all traffic citations, including all personal identifying information on the citations, is a public record and can be freely distributed.

In 2021, 2,428,821 traffic citations were issued in Florida.³²

Effect of the Bill

Motor Vehicle Crash Reports

²² DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.

²³ *Id.*

²⁴ E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan. 14, 2022)

²⁵ S 316.650(1)(a), F.S.

²⁶ S 316.650(1)(c), F.S.

²⁷ DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).

²⁸ See, e.g., DHSMV, *Uniform Traffic Citation Procedures Manual* (Rev. Nov. 2019), available at <https://www.flhsmv.gov/pdf/courts/utc/UTCCombinedManual.pdf>. (last visited Jan. 28, 2022).

²⁹ DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).

³⁰ See s 28.2405, F.S.

³¹ DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).

³² E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan 14, 2022)

The bill provides that crash reports that reveal personal information³³ concerning the parties involved in a crash, and that are held by an agency,³⁴ are confidential and exempt³⁵ from public record laws for a period of 60 days after the report is filed. However, an agency is authorized to make the crash reports available immediately to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers, underwriters, victim services programs, any federal, state, or local governmental agency or any private person or entity acting on behalf of such agency.

Crash reports held by an agency that do not contain the home or employment street addresses, driver license or identification card numbers, dates of birth, and home and employment telephone numbers of the parties involved in the crash shall also be made immediately available to radio and television stations licensed by the Federal Communications Commission (FCC)³⁶ and newspapers qualified to publish legal notices.³⁷ In addition, a crash report may be made available to any third party acting on behalf of a person or entity authorized to access a crash report as long as the third party only discloses the crash report to the person on whose behalf the third party has sought the report.

The bill authorizes, pursuant to a memorandum of understanding (MOU), an agency to provide data derived from crash reports to a third party solely for the purpose of identifying vehicles involved in crashes if such data does not reveal the identity, home or employment telephone number, or home or employment address, or other personal information of the parties involved in the crash.

The bill removes the 60-day requirement from the date the report is filed in which individuals must present photographic identification, proof of status, or other identification that demonstrates his or her qualifications and a written sworn statement to access a crash report. The bill provides that in lieu of a written sworn statement, an agency may provide crash reports to third-party vendors under contract with an insurer by electronic means pursuant to an MOU.

The bill provides that after 60 days from when the crash report is filed, a crash report held by an agency may be made available to any person or entity eligible to access crash reports within the 60 days as well as any person or entity with any of the permissible uses or who abides by the resale and redisclosure requirements in the DPPA.³⁸

The bill provides that if crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential and exempt from public record requirements. However, 60 days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information, pursuant to an MOU, to

³³ The bill defines "personal information" as defined in 18 U.S.C. s. 2725(3), to mean, 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, but does not include information on vehicular accidents, driving violations, and driver's status.

³⁴ The bill 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 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. See s. 119.011, F.S.

³⁵ There is a difference between records the Legislature designates 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 statute. See Op. Att'y Gen. Fla. 04-09 (2004).

³⁶ The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the Commission is the federal agency responsible for implementing and enforcing America's communications law and regulations. Federal Communications Commission, *About the FCC*, available at <https://www.fcc.gov/about/overview> (last visited Feb. 9, 2022).

³⁷ See ss. 50.011 and 50.031, F.S., for qualifications to publish legal notices.

³⁸ See 18 U.S.C. s. 2721(b) and (c).

eligible entities or to any person or entity with any of the permissible uses or who abides by the resale and redisclosure requirements in the DPPA.

These exemptions stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature, pursuant to the Open Government Sunset Review Act.

The bill removes obsolete statutory language prohibiting some free newspapers from receiving certain crash report information. This language was repealed on October 2, 2019, under the Open Government Sunset Review Act since this part of the public records exemption was not saved from repeal through reenactment by the Legislature.

The bill revises current penalty provisions and provides that use of confidential and exempt information in violation of an MOU is a third-degree felony. In addition, the bill creates penalties for a person who obtains a crash report, or crash data, and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted by DPPA. The person is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

- Actual damages, but not less than liquidated damages in the amount of \$2,500.
- Punitive damages upon proof of willful or reckless disregard of the law.
- Reasonable attorney fees and other litigation costs reasonably incurred.
- Such other preliminary and equitable relief as the court determines to be appropriate.

However, these penalties do not apply to radio and television stations licensed by the FCC and newspapers qualified to publish legal notices.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Crash reports reveal significant personal information concerning parties, passengers, and witnesses to a crash.
- Use of the Internet and related technologies allows those with malicious purposes to exploit the use of personal information, such as a party's, passenger's, or witness' date of birth, driver license number, and address, threatening privacy and security.
- Increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information.
- Personal information, when held by DHSMV in motor vehicle records, is confidential pursuant to the federal DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to personal information contained in crash reports.
- When crash reports and computerized crash report data are made available to the public, because they comprise much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal DPPA are undermined, eroding the privacy and safety of motorists.

Uniform Traffic Citations

The bill provides that driver information contained in a traffic citation is exempt from public record laws. The bill defines the term "driver information" to mean a driver's date of birth, driver license or identification card number, address (excluding the five-digit zip code), telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

An agency may release driver information in accordance with any of the permissible uses listed in DPPA in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S.

This exemption applies retroactively to records already held by an agency. This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Uniform traffic citations reveal significant personal information about drivers issued a citation.
- Use of the Internet and related technologies allows those with malicious purpose to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist's privacy and security.
- A driver's personal information, when held by DHSMV in driver license and motor vehicle records, is confidential pursuant to DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to driver information contained in uniform traffic citations.
- When driver information contained in uniform traffic citations is made available to the public, the protections afforded by federal DPPA are undermined, eroding the privacy and safety of motorists.

Effective Date

The bill has an effective date of March 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Under current law, DHSMV-provided crash reports are subject to a statutory fee of \$10 per report.³⁹ It is not known how many crash reports subject to the statutory fee would be exempt from disclosure as public records under the bill.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on various state agencies because state agency staff responsible for complying with public record requests may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each state agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on local government agencies because agency staff responsible for complying with public record request may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each agency.

³⁹ S. 321.23(2)(a), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None.