

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/CS/SB 1614

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee and Senator Harrell

SUBJECT: Public Records/Motor Vehicle Crashes/Traffic Citations

DATE: February 10, 2022      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Vickers</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1614 amends s. 316.066, F.S., to (i) expand a current public records exemption related to personal information in a crash report; and (ii) make crash report data in a computerized database confidential and exempt from public inspection and copying requirements. The bill also amends s. 316.650, F.S., to make driver information contained in a uniform traffic citation (UTC) exempt from public record inspection and copying requirements.

The exemption for personal information in a crash report is expanded under the bill by enlarging the definition of agency.<sup>1</sup> The bill makes crash report data in a computerized database confidential and exempt from public inspection and copying requirements. The bill designates certain governmental and third-party entities to whom a crash report may be made immediately available. The bill permits a crash report to be immediately available to the media<sup>2</sup> provided that it does not contain any of the following information related to the parties involved in the crash:

- The home or employment street address;
- Driver license number or identification card number;

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<sup>1</sup> The bill provides that agency has the same meaning as that term is defined in s. 119.011, F.S., rather than, as under current law, meaning only those agencies that “regularly receive[] or prepare[] information from or concerning the parties to motor vehicle crashes.” See s. 316.066(2)(a), F.S.

<sup>2</sup> Radio and television stations licensed by the Federal Communications Commissions and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S.

- Date of birth; and
- Home and employment telephone numbers.

The bill permits a crash report to also be made available to any third party acting on behalf of a person or entity authorized under law to access the crash report, except that the third party may disclose the crash report only to the person or entity authorized to access the crash report on whose behalf the third party has sought the report.

The bill provides that crash reports may be made available 60 days after the report is filed to any person or entity eligible to access crash reports under the bill or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

The bill makes driver information in a UTC exempt from public records inspection and copying requirements. The bill defines the term “driver information” to mean a driver’s date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The bill excludes the driver’s name from the definition.

The bill specifically provides authority for an agency to release driver information in a UTC in accordance with the exemptions in the Driver’s Privacy Protection Act (DPPA) of 1994 and in the same manner that prescribed by s. 119.0712(2)(b), F.S., which governs the release of personal information in a motor vehicle record.

The bill provides additional 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 under 18 U.S.C. s. 2721(b) 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; or
- Such other preliminary and equitable relief as the court determines to be appropriate.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement for each exemption as required by the State Constitution.

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

The bill takes effect March 1, 2023.

## II. Present Situation:

### Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>3</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>4</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>5</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>6</sup> Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>7</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>8</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>9</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

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<sup>3</sup> FLA. CONST. art. I, s. 24(a).

<sup>4</sup> *Id.*

<sup>5</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>6</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>7</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

<sup>8</sup> Section 119.011(12), F.S., defines “public record” 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>9</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>10</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>11</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>12</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>13</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>14</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>15</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>16</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>17</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>18</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>19</sup> public records or open meetings exemptions, with specified exceptions.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

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<sup>10</sup> Section 119.07(1)(a), F.S.

<sup>11</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>12</sup> FLA. CONST. art. I, s. 24(c).

<sup>13</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>14</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>15</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>16</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>17</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>18</sup> Section 119.15, F.S.

<sup>19</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>20</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>23</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>24</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>25</sup>

The Act also requires specified questions to be considered during the review process.<sup>26</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>27</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>28</sup>

### **Driver Privacy Protection Act of 1994**

To obtain a driver's license or register a vehicle, state departments of motor vehicles require an individual to disclose detailed personal information, including name, home address, telephone number, social security number and medical information. The Drivers Privacy Protection Act of 1994<sup>29</sup> (DPPA) was enacted to address two concerns (i) the growing threat from stalkers and criminals who could acquire personal information from state departments of motor vehicles; and (ii) to address the concern related to the common practice of some states of selling personal information to business engaged in direct marketing and solicitation. To address these concerns, the DPPA "establishes a regulatory scheme that restricts the States' ability to disclose a driver's

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<sup>23</sup> Section 119.15(6)(b)1., F.S.

<sup>24</sup> Section 119.15(6)(b)2., F.S.

<sup>25</sup> Section 119.15(6)(b)3., F.S.

<sup>26</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>27</sup> See generally s. 119.15, F.S.

<sup>28</sup> Section 119.15(7), F.S.

<sup>29</sup> 18 U.S.C. §§ 2721-2725.

personal information from motor vehicle records without the driver's consent."<sup>30</sup> The DPPA defines "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles."<sup>31</sup> "[P]ersonal information" is "information that identifies an individual, including [a] ... driver identification number, name, address ..., [or] telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status."<sup>32</sup>

The DPPA's disclosure ban is subject to the following 14 exceptions for which personal information may be disclosed:

- 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 Federal, State, or local 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, including survey research; 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, but only -
  - To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - If such information as so submitted is not correct or is no longer correct, 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 Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- 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 under this subsection.
- 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 transportation 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.

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<sup>30</sup> See [Reno v. Condon, 528 U.S. 141, 144 \(2000\)](#).

<sup>31</sup> 18 U.S.C. § 2725(1).

<sup>32</sup> *Id.* § 2725(3).

- 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.
- 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 the DPPA is non-personal information contained in motor vehicle and driver license records, such as vehicular crash records, driving violations, and driver status information. This information is considered public.<sup>33</sup>

### **The DPPA Protections Incorporated into Florida's Public Records Laws**

Section 119.0712(2)(a) and (b), F.S., specifically incorporate the DPPA protections relating to personal information contained in a motor vehicle record held by the Department of Highway Safety and Motor Vehicles (DHSMV) into the state's public records law. Additionally, state law restrictions extend beyond the DPPA to restrict access to emergency contact information contained in a motor vehicle report and email addresses collected by the DHSMV.<sup>34</sup>

### **Crash Reports**

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.<sup>35</sup>

Pursuant to s. 316.066(2)(a), F.S., 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 the crash are confidential and exempt for a period of 60 days after the report is filed.<sup>36</sup> This exemption applies to crash reports held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes. During the 60 day period, crash reports may be released to those provided for in law, including but not limited to, the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, and law enforcement

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<sup>33</sup> Florida Department of Highway Safety and Motor Vehicles, *Privacy Statement Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on January 13, 2022).

<sup>34</sup> Section 119.0712(2)(c) and (d), F.S.

<sup>35</sup> Section 316.066(a) and (b), F.S.

<sup>36</sup> Section 316.066, F.S.

agencies.<sup>37</sup> Additionally, any local, state, or federal agency authorized by law to have access to crash reports must be granted access in furtherance of its statutory duties.<sup>38</sup>

After the 60 day period, all crash report data is released as public record, including all personal information. DHSMV routinely makes crash reports available to the public through the Florida Crash Portal.<sup>39</sup> The portal comprises crash reports transmitted by the Florida Highway Patrol (FHP), county sheriff's officers, local police departments, and other law enforcement agencies throughout the state.

In 2020, more than 595,000 crash reports were submitted to the DHSMV, which was a significant decrease from 2019, when more than 740,000 reports were submitted.<sup>40</sup>

### **Uniform Traffic Citations**

Under Florida law, DHSMV has the duty of prescribing and providing to every traffic enforcement agency in the state pre-numbered traffic citation books.<sup>41</sup> In lieu of using printed citation books, traffic enforcement agencies may produce uniform traffic citations (UTCs) by electronic means.<sup>42</sup> FHP is among the agencies who routinely prepare citations electronically.

UTCs contain various personal information about drivers who are issued citations, including their names, dates of birth, addresses, telephone numbers, and driver license numbers.<sup>43</sup>

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. 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.<sup>44</sup> The UTCs, arrest, disposition, and criminal financial obligation files are electronically transmitted by the clerks to DHSMV through the Traffic Citation Accounting and Transmission System.

Under current law, all traffic citations, including all personal identifying information on the citations, is a public record and can be freely distributed. In 2020, more than 2 million citations were issued by Florida law enforcement agencies.<sup>45</sup>

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<sup>37</sup> Section 316.066(2)(b), F.S. permits the immediate availability of crash reports to the 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, and certain newspapers.

<sup>38</sup> Section 316.066(2)(c), F.S.

<sup>39</sup> FLHSMV, Florida Crash Portal, at <https://www.flhsmv.gov/traffic-crash-reports> (last visited Jan. 18, 2022)

<sup>40</sup> Email from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, *FLHSMV Legislation* (October 8, 2021)(on file with the Senate Committee on Transportation).

<sup>41</sup> Section 316.650(1)(a), F.S.

<sup>42</sup> Section 316.650(1)(c), F.S.

<sup>43</sup> See FLHSMV, Uniform Traffic Citation Procedures Manual (Rev. Nov. 2019), available at <https://www.flhsmv.gov/pdf/courts/utc/UTCCCombinedManual.pdf>. (last visited Jan. 26, 2022)

<sup>44</sup> See s. 28.2405, F.S.

<sup>45</sup> See *supra* note 39.

### III. Effect of Proposed Changes:

**Section 1** amends s. 316.066, F.S., to provide that personal information held by an agency *as defined in s. 119.011*<sup>46</sup> are confidential and exempt.<sup>47</sup> (emphasis added). Current law makes this information confidential and exempt when held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes.

This section revises the listing in current law of those to whom a crash report may be made immediately available. This section provides that, in addition to the parties involved in their crash and their representatives,<sup>48</sup> that the crash report may be made immediately available to:

- Victim services programs; and
- Any federal, state, or local governmental agency or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, but not for redistribution to any person or entity not provided in law.

This section makes a crash report immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., provided that it does not contain any of the following information related to the parties involved in the crash:

- The home or employment street address;
- Driver license number or identification card number;
- Date of birth;
- Home and employment telephone numbers.

This section permits a crash report to also be made available to any third party acting on behalf of a person or entity authorized under this section to access the crash report, except that the third party may disclose the crash may disclose the crash report only to the person or entity authorized to access the crash report under this section on whose behalf the third party has sought the report.

This section provides that an agency is not prevented, pursuant to a memorandum of understanding, from providing 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.

This section provides that crash reports may be made available 60 days after the report is filed to any person or entity eligible to access crash reports under the bill or in accordance with any of

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<sup>46</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 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.

<sup>47</sup> Current law makes the exemption applicable only to “an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes.”

<sup>48</sup> Including 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.

the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

This section makes crash report data entered in a computerized database held by an agency confidential and exempt from public records requirements. Specifically, 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 report data is confidential and exempt. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to eligible entities under this section or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data must be provided pursuant to a memorandum of understanding.

This section provides for the repeal of the exemption pursuant to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

This section provides for additional 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 under 18 U.S.C. s. 2721(b) 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; or
- Such other preliminary and equitable relief as the court determines to be appropriate.

The section provides that the above penalty provisions do not apply to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031.

**Section 2** amends s. 316.650, F.S., to make driver information contained in a uniform traffic citation (UTC) held by an agency exempt<sup>49</sup> from public records inspection and copying requirements. This applies to driver information held by an agency before, on, or after the effective date of the bill.

The section defines the term “driver information” to mean a driver’s date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The section excludes the driver’s name from the definition.

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<sup>49</sup> When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

The section permits an agency to release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b), which are:

- 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 Federal, State, or local 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, including survey research; 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, but only -
  - To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - If such information as so submitted is not correct or is no longer correct, 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 Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- 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 under this subsection.
- 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 that is required under chapter 313 of title 49.
- For use in connection with the operation of private toll transportation 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.
- 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.

Any such release of driver information must conform to that prescribed by s. 119.0712(2)(b), F.S., which governs the release of personal information in a motor vehicle record and be pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

The public records exemption for driver information is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 3** contains a public necessity statement identifying a public purpose for each exemption.

The public necessity statement justifying the exemption for crash reports that reveal personal information provides that:

- Crash reports reveal significant personal information, not only about drivers involved in a crash but also about motor vehicle owners, motor vehicle passengers, and other witnesses and about owners of nonvehicle property damaged in a crash.
- Use of the Internet and related technologies allows those with malicious purposes to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist 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.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information, however, 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 motor vehicle records, the protections afforded by the DPPA are undermined, eroding the privacy and safety of motorists.

The public necessity statement justifying the exemption for driver information states:

- UTCs reveal significant personal information about drivers issued a citation.
- Use of the Internet and related technologies allow 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 motorists' privacy and security.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to driver information contained in UTCs.
- When driver information contained in UTCs is made available to the public, because it comprises much of the same personal information contained in motor vehicle records, the protections afforded by the DPPA are undermined, eroding the privacy and safety of motorists.

The bill takes effect March 1, 2023.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

**B. Public Records/Open Meetings Issues:****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 bill creating or expanding an exemption to the public records requirements. This bill expands a public records exemption related to personal information in a crash report and makes crash report data in a computerized database confidential and exempt. The bill also makes driver information contained in a uniform traffic citation exempt from public records requirements. Thus, the bill requires a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for each exemption.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to:

- Protect personal information - the home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash - in a crash report and in computerized crash report data; and
- Protect driver information - the driver's date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number - contained in a uniform traffic citation.

The exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector entities which currently acquire and use personal information and driver information to generate revenue, may be negatively impacted by the provisions of the bill.

C. Government Sector Impact:

Government entities may incur costs related to the redaction of personal information in a crash report, computerized crash report data, and a uniform traffic citation in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.066 and 316.650.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Governmental Oversight and Accountability on February 10, 2022:**

The committee substitute:

- Maintains the 60 day time limitation in current law on the public record exemption related to personal information in a crash report.
  - Expands this exemption by enlarging the definition of the term “agency” to be that as provided in chapter 119.

- A crash report to be released to certain parties within the 60 day exemption period.
- A redacted crash report to be made available within the 60 day exemption period to certain parties.
- Authorizes the release of crash reports after the 60 day exemption period in accordance with the permissible uses provided under the Driver's Privacy Protection Act (DPPA) of 1994 and pursuant to DPPA's resale and redisclosure requirements.
- Creates a public records exemption for data in a computerized database confidential and exempt from public inspection and copying requirements.
- Provides additional penalties for a person who knowingly discloses or knowingly uses exempt personal information in a crash report. This penalty provision does not apply to the media.
- Makes driver information in a uniform traffic citation exempt from public record inspection and copying requirements.
- Authorizes the release of driver information in accordance with any of the permissible uses provided under the DPPA and pursuant to the DPPA's resale and redisclosure requirements.
- Delays the effective date of the bill until March 1, 2023.

**CS by Transportation on January 18, 2022:**

The committee substitute:

- Clarifies current practice with respect to third parties acting on behalf of entities exempt from the public record exemption. Third parties acting on behalf of persons or entities who are authorized access to crash reports under this legislation may continue to access the report. The third party may only redisclose the report to the entity they are acting on behalf of; and
- Removes conflicting language regarding disclosing crash reports to third parties, and clarifies that crash reports may not be redisclosed for solicitation.

**B. Amendments:**

None.