

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: CS/SB 830

INTRODUCER: Transportation Committee and Senator Baker

SUBJECT: HSMV Records/Public Disclosure

DATE: March 13, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

Florida's driver license and motor vehicle records contain personal information about licensees and motor vehicle owners. Personal information includes, but is not limited to, an individual's social security number, driver identification number, name, address, telephone number, and medical or disability information.

The committee substitute (CS) revises the public records exemption that withholds from public disclosure information contained in motor vehicle records held by the Department of Highway Safety and Motor Vehicles (DHSMV). The CS amends s. 119.0712, F.S., to provide personal information contained in a motor vehicle record that identifies an individual is confidential and exempt from public disclosure requirements. The CS also defines personal information to include an identification card number and emergency contact information. The CS provides for the release of personal information held by DHSMV for purposes of complying with specified federal laws.

In addition, the CS includes the creation of a two tiered system for personal information contained within the records of DHSMV and places additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information.

The creation of the two tiered system for personal information is being sought at the urging of the United States (U.S.) Department of Justice in order to conform Florida's law to federal law and in order to avoid any potential civil penalties that may be imposed by the U.S. Attorney General for noncompliance.

This CS substantially amends s. 119.0712 of the Florida Statutes.

II. Present Situation:

Motor vehicle records contain personal information about drivers and motor vehicle owners. Personal information includes, but is not limited to, an individual's "social security number, driver identification number, name, address, telephone number, and medical or disability information, but does not include information on vehicular crashes, driving violations, and driver status."

Drivers Privacy Protection Act

Congress enacted the Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA is a federal law prohibiting the release of "personal information" contained in state motor vehicle records, unless the release is otherwise specifically authorized.

The DPPA further requires states comply with its provisions by 1997. Florida came into compliance with DPPA (1994) in 1997, when ch. 97-185, L.O.F., became law. However in 1999, Congress changed a provision in the DPPA from an "opt out" alternative to an "opt in" alternative (see Public Law 106-69, 113 Stat. 1025, (October 9, 1999.)). Under DPPA (1999), states may not imply consent from a driver's failure to take advantage of a state-afforded opportunity to block disclosure, but must rather obtain a driver's affirmative consent to disclose the driver's personal information. Florida did not amend the state's public records laws to conform to DPPA (1999) until May 13, 2004 (see ch. 2004-62 L.O.F.).

In 2000, Congress changed a provision in the DPPA to limit the circumstances under which states may disclose "highly restricted personal information" (see Public Law 106-346, 114 Stat. 1356, (October 23, 2000.)). The DPPA (2000) defines highly restrictive personal information to mean an individual's photograph or image, social security number, or medical or disability information. Correspondence received by DHSMV from the U.S. Department of Justice has questioned Florida's compliance and "strongly urges Florida to conform its public laws to ensure there is no question that it is in full compliance with this important provision."

Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to \$5,000 per day. In addition, DPPA provides for a criminal fine and civil remedy against any person who knowingly violates the DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States District Court.

Availability of Motor Vehicle Records

Unless specifically exempted by law, DHSMV is required to make all motor vehicle records available to the public (see s. 119.07 (1) (a), F.S.). Section 119.0712(2), F.S., provides the term "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 DHSMV. There are numerous exceptions allowing for disclosure. Personal information is available for the following purposes:

1. 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 and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.
2. For use by any government agency, including any court of 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.
3. 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 nonowner records from the original owner records of motor vehicle manufacturers.
4. For uses in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. 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.
5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:
 - a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.
 - b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney; however the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
 - c. Investigation by any person in connection with any filed proceeding; however the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.
 - d. Execution or enforcement of judgments and orders.
 - e. Compliance with an order of any court.

6. 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.
7. 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, anti-fraud activities, rating, or underwriting.
8. For use in providing notice to the owners of towed or impounded vehicles.
9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection. Personal information obtained based on an exempt driver's record may not be provided to a client who cannot demonstrate a need based on a police report, court order, or a business or personal relationship with the subject of the investigation.
10. 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 49 U.S.C. ss. 31301 et seq.
11. For use in connection with the operation of private toll transportation facilities.
12. For bulk distribution for surveys, marketing, or solicitations when the department has obtained the express written consent of the person to whom such personal information pertains.
13. For any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record.
14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.
15. For any other uses if the person to whom the information pertains has given express consent on a form prescribed by DHSMV. Such consent shall remain in effect until it is revoked by the person on a form prescribed by DHSMV.

Social Security Numbers (SSNs)

While there are numerous statutory provisions authorizing or requiring collection of SSNs, there are numerous exemptions for SSNs also. Particularly, the exemption found in s. 119.071(5), F.S., is the general exemption for SSNs. This exemption does not supersede other SSN exemptions existing prior to May 13, 2002, or created thereafter.¹ The subsection contains a legislative acknowledgment of the historic purpose for the SSN but also notes the SSN has become a unique numeric identifier. The provision recognizes the SSN can be used to perpetuate fraud and to acquire sensitive personal, financial, medical and familial information, the release of which could cause great financial or personal harm to the individual. The exemption also expressly limits agency collection of SSNs, stating:

¹ Section 119.071(5)(a)10. F.S.

An agency shall not collect an individual's social security number unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security number collected by an agency must not be collected until and unless the need for social security numbers has been clearly documented.

Agency recordkeeping requirements for agencies using the SSN also are established in the subsection. An agency collecting SSNs must segregate them on a separate page from the rest of the record, or as otherwise appropriate, so the SSN may be redacted easily. Further, an agency must provide a person with a statement of the purpose for which the SSN is being collected and used upon request, at the time of, or prior to, the actual collection. A SSN collected by an agency for a particular purpose may not be used by that agency for any purpose other than the purpose stated.

Under the provisions of s. 119.071(5)(a)3., F.S., all social security numbers held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. As such, an agency may not release a SSN except as provided in statute or pursuant to court order. The provision permits disclosure to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Further, disclosure of SSNs to a commercial entity engaged in the performance of a commercial activity as defined in s. 14.203, F.S.,² is authorized, provided the SSNs will be used only in the normal course of business for legitimate business purposes.³ A verified, written request signed by an authorized officer, employee or agent of the commercial entity is required.⁴

Full-Face Photographic or Digital Image Licenses

Currently, all driver's licenses issued by the DHSMV must bear a full-face photograph or digital image of the licensee. Specifically, s. 322.142, F.S., authorizes the DHSMV, upon receipt of the required fee, to issue to each qualified applicant for an original driver's license a color photographic or digitally imaged driver's license bearing a full-face photograph or digital image of the licensee. The requirement of a full-face photograph or digital image of the identification cardholder may not be waived, regardless of the provisions of ch. 761, F.S.⁵

² Section 14.203(1)(a), F.S., defines "commercial activity" to mean an activity that provides a product or service that is available from a private source.

³ A "legitimate business purpose is defined to include verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying or retrieving information; and use in research activities. A legitimate business purpose does not include the bulk sale of social security numbers to the general public or the distribution of such numbers to any customer not identifiable by the distributor.

⁴ Section 92.525, F.S., provides for verification of written documents under penalty of perjury, which is a felony of the third degree. Sections 775.082 and 775.083, F.S., provide for a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000.

⁵ Chapter 761, F.S., provides that the state must not substantially burden a person's exercise of religion unless the state demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. A person whose

Section 322.142(4), F.S., specifies digitized driver's license photographs (images) are available for DHSMV administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; 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 in Title IV-D cases; or 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, and the identification of fraudulent or false claims, and are exempt from the provisions of s. 119.07(1), F.S.

Medical and Disability Information

Section 322.125, F.S., provides reports received or made by the Medical Advisory Board (Board) or its members for the purpose of assisting DHSMV in determining whether a person is qualified to be licensed are for the confidential use of the Board or DHSMV and may not be divulged to any person except the licensed driver or applicant or used as evidence in any trial, and are exempt from the provisions of s. 119.07(1), F.S., except the reports may be admitted in proceedings under s. 322.271 or s. 322.31, F.S.

Section 322.126, F.S., provides the reports authorized by this section are confidential and exempt from the provisions of s. 119.07(1), F.S., and must be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle on the highways of this state. In addition, no report forwarded under the provisions of this section shall be used as evidence in any civil or criminal trial or in any court proceeding.

Emergency Contact Information

This service allows an individual who holds a current Florida driver license or identification card to provide emergency contact information to law enforcement in the event of an emergency. According to DHSMV's website, this information may save crucial time if ever it becomes necessary to contact family members, or other loved ones.

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state,

religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding.

or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law⁶ specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency⁷ records are available for public inspection. The term “public records” is defined in s. 119.011(11), F.S., to include:

. . . 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 the official business by any agency.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁸ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁹

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c), of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record

⁶Chapter 119, F.S.

⁷The term “agency” is defined in s. 119.011(2), F.S., 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.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁰ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2 of the fifth year, unless the Legislature re-enacts the exemption. Section 119.15(4)(a), F.S., requires a law that enacts a new exemption, or substantially amends an existing exemption, to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. Paragraph (b) provides that an exemption is substantially amended if:

“the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following specific questions:

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

Section 119.15(6)(b), F.S., provides that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, 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:

1. The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. The exemption protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, or

¹⁰ Attorney General Opinion 85-62.

¹¹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

cause unwarranted damage to the good name or reputation of such individuals, or jeopardize the safety of such individuals. However, in exemptions under this provision, only information that would identify the individuals may be exempted; or

3. The exemption protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

While the standards in the Open Government Sunset Review Act of 1995 may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹² The Legislature is only limited in its review process by constitutional requirements.

III. Effect of Proposed Changes:

Section 1 of the CS amends s. 119.0712, F.S., to provide the personal information contained in a motor vehicle record is confidential. The CS includes identification card numbers and emergency contact information within those motor vehicle records held by DHSMV which are confidential and exempt from requirements for public disclosure. Also, the CS provides for the release of personal information held by DHSMV for purposes of complying with specified federal laws.

In addition, the CS includes the creation of a two tiered system for personal information contained within the records of DHSMV and places additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information.

Specifically, the CS provides notwithstanding s. 119.0712(2)(b), F.S., without the express consent of the person to whom such information applies, the following information contained in motor vehicle records may only be released as specified in this paragraph:

1. Social security numbers may be released only as provided in subparagraphs (b)2., 5., 7., and 10.
2. An individual's photograph or image may be release only as provided in s. 322.142, F.S.
3. Medical disability information may be released only as provided in ss. 322.125 and 322.126, F.S.
4. Emergency contact information held by DHSMV may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.

¹² *Straughn v. Camp*, 293 So.2n 689, 694 (Fla. 1974).

The CS also makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2012, unless reviewed and reenacted by the Legislature.

Section 2 of the CS provides a public necessity statement as required by Art. I. s. 24(c), State Constitution, to justify the exemption from public records laws. The CS is needed, according to the public necessity statement, to make personal information in an individual's motor vehicle record confidential and exempt and to conform to federal law. The public necessity statement also states the personal information contained in the state's motor vehicle records could be used to invade the personal privacy of the person identified in the records or could be used for other purposes, such as solicitation, harassment, stalking, and intimidation. Therefore, limiting access will protect the privacy of persons who are identified in those records and minimize the opportunity for invading that privacy.

Section 3 provides the act shall take effect July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The CS revises public records exemption that withholds from public disclosure information contained in motor vehicle records held by DHSMV. The creation of a two tiered system for personal information contained within the records of DHSMV places additional restrictions on the availability and use of social security numbers, photographs and images, medical information, and emergency contact information.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The creation of the two tiered system for personal information is being sought at the urging of the U.S. Department of Justice in order to conform Florida's statute to the federal law and avoid any potential civil penalty that may be imposed by the Attorney General for noncompliance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation (Foundation) took the opportunity to review CS/SB 830 relating to the creation of a two tiered system for maintenance of personal information held by DHSMV. The Foundation has stated they “understand that a federal requirement mandates such a change and thus (the Foundation) will not oppose the legislation in its current form.”

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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