

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.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: SB 886

INTRODUCER: Children, Families and Elder Affairs

SUBJECT: A review under the Open Government Sunset Review Act

DATE: February 8, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Favorable
2.	Fournier	McKee	FT	Favorable
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

Section 409.25659, F.S., requires the Department of Revenue (DOR or “the department”) to develop and operate a data match system in which an insurer may voluntarily provide DOR with the name, address, and, if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent who has a claim with the insurer and who owes past-due child support. Section 409.25661, F.S., provides that specified information regarding a noncustodial parent who owes past-due child support, collected by DOR pursuant to s. 409.25659, F.S., is confidential and exempt from public records. This exemption is subject to the Open Government Sunset Review Act. The paragraph stands repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts the exemption.

This bill substantially amends s. 409.25661, F.S.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sound recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁴

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act⁸ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.⁹ An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.¹⁰ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- 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 ... would injure the affected entity in the marketplace.¹¹

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹²

³ Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. 1, § 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Section 119.15, F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 119.15(6)(a), F.S.

Insurance Claim Data Exchange

The department reports that as of mid-July 2009, of the total Title IV-D caseload, there were 468,596 noncustodial parents eligible to be matched using the insurance claim data exchange.¹³ Section 409.25656, F.S., provides the Department of Revenue with the authority to levy any credit or personal property of an obligor for any past-due child support. This includes bank accounts, vehicles, and insurance claim payments. Section 409.25659, F.S., was established during the 2004 Legislative Session to provide for the identification of claims on liability insurance¹⁴ which could potentially be applied to child support arrearages in Title IV-D cases.¹⁵

The department was directed by statute to develop and operate a data match system which would identify noncustodial parents who owe past-due child support and who also have a claim with an insurer. This process allows insurers to voluntarily provide DOR with the name, address, and if known, date of birth and social security number or other taxpayer identification number for each noncustodial parent identified as having a claim.¹⁶ This data can only be used for purposes of child support enforcement.¹⁷

Within the data match system, an insurer may provide DOR with the needed information in one of three ways:¹⁸

- An insurer may provide the required data for each claim directly to DOR electronically so that the department can conduct a data match;
- An insurer may receive or access data from DOR and conduct a data match of all noncustodial parents who have a claim with the insurer and who owe past-due child support, and submit the match data regarding each noncustodial parent to DOR; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options mentioned above.

Due to the variety of data submission methods provided within the system, it would be possible for DOR to receive information on individuals having a claim with an insurer, who do not owe child support.

Section 409.25661, F.S., provides that information obtained by DOR pursuant to s. 409.25659, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution until the department determines whether a match exists. If a match does exist, the match data is no longer considered to be confidential and exempt, and becomes

¹³ Email from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (August 21, 2008, 11:29 AM EDT) (on file with the committee). According to this email, the total number of cases with orders for support, *i.e.*, Title IV-D and non-Title IV-D cases, is 605,226 as of June 30, 2009.

¹⁴ Section 409.24659(1)(b), F.S., defines a claim as an open, unresolved bodily injury claim on liability coverage in excess of \$3,000 in an insurance contract payable to an individual, or to a third party for the benefit of the individual, who is a Florida resident or who had an accident or loss that occurred in Florida or who has an outstanding child support obligation in Florida.

¹⁵ Chapter 2004-334, L.O.F.

¹⁶ Section 409.25659(2), F.S.

¹⁷ Section 409.25659(5), F.S.

¹⁸ Section 409.25659(2)(a)-(c), F.S.

available for public disclosure.¹⁹ If a match is not made, the nonmatch information must be destroyed.²⁰

In 2004, the Legislature found that it is a public necessity that insurance claims information obtained by DOR pursuant to s. 409.25659, F.S., be made confidential and exempt until such time as the department determines whether a match is made with regards to a person who owes child support. Such information regarding those persons who do not receive a match is personal and of a private nature. Gathering and maintaining personal information on persons for purposes of child support enforcement, when such persons do not owe child support, could be considered an intrusion into the right of one's privacy, especially since those persons are unaware that a government agency has collected such information.²¹

The Legislative findings stated that if such information is not made confidential and exempt until the time specified, the effective and efficient administration of the insurance claim data exchange program could be jeopardized.²²

The Legislative findings also noted that insurers might be less likely to provide the department with information regarding insurance claims if the insurer has concerns that such information will be made available for public disclosure.²³

Implementation of the Insurance Claim Data Exchange

The department did not immediately begin matching data files with insurance companies pursuant to s. 409.25659, F.S., which went into effect on October 1, 2004. According to DOR, in 2004, immediate steps were taken to implement the statute by making contact with most of the top 25 insurers in the state. During this time, insurers were responding to claims resulting from damage caused during the 2004 hurricane season, and consequently, DOR decided to postpone working on the insurance claim data exchange initiative. The department neither re-initiated contact with the insurers nor attempted to resume implementation activities due to resources being otherwise dedicated to the statewide implementation of Phase I of the Child Support Enforcement Automated Management System (CAMS).²⁴

In February 2006, Congress passed the Deficit Reduction Act of 2005 which authorized the Federal Department of Health and Human Services (HHS) to compare information concerning individuals owing past-due child support with information maintained by insurers concerning insurance claims, settlements, awards, and payments. The Act further allows HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.²⁵ A federal workgroup was established in order to implement this provision.

¹⁹ Section 409.25661(1), F.S.

²⁰ Section 409.25659(5), F.S.

²¹ Chapter 2004-339, L.O.F.

²² *Id.*

²³ *Id.*

²⁴ Letter from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (September 5, 2008) (on file with the committee).

²⁵ *Id.*

The department initially chose to monitor the activities of the federal workgroup charged with implementing the nationwide insurance data match program and to implement the system changes necessary to receive data from the federal program.²⁶ On September 8, 2008, the department submitted its participation form for the federal program to the federal office of Child Support Enforcement and began receiving matches on October 10, 2008.²⁷ The department has received 2,966 data matches from the federal program for the period of November 2008 through October 30, 2009. Of those matches the department reports that:²⁸

- 422 matches were ones where the Department had previously received match information from another source;
- 624 matches were not pursued for various reasons, including no jurisdiction, past-due amounts did not meet collection threshold, the parent receives SSI, or DOR involvement in the case has ended; and
- 1,920 matches resulted in lien actions being initiated.

Of those lien actions:²⁹

- 1,276 lien actions are pending final resolution, and
- 644 have been completed.

The department reports that it has collected approximately \$323,000 from non-custodial parents as of October 31, 2009.³⁰

III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 409.25661, F.S., allowing the information obtained through the Insurance Data Exchange System to remain confidential and exempt from public disclosure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill would retain the exemption specified in s. 409.25661, F.S., for specific information obtained by DOR through its Insurance Data Exchange System established

²⁶ *Id.*

²⁷ Email from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (December 4, 2008, 8:21 AM) (on file with the committee).

²⁸ Email from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (November 2, 2009) (on file with the committee).

²⁹ *Id.*

³⁰ *Id.* These collections are from lump sum settlements and wage withholdings.

pursuant to s. 409.25659, F.S., regarding an individual who has a claim against an insurance company

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the department, the federal program is still building its partnerships with personal liability insurance companies. Of the 207 companies currently participating in the federal program, none are Florida based. The department again reports, as it did when this exemption had its initial review, that it cannot determine whether or not the federal program will provide the needed match information for companies based or doing business in Florida until more companies begin actively matching with the federal program.³¹

The department reports that it continues to invite Florida insurers and out of state insurers doing business in Florida to enter into a data matching partnership with DOR. According to the department, this partnership was to benefit the state program described in s. 409.25659, F.S.³²

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

³¹ Letter from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (July 16, 2009) (on file with the committee).

³² Email from the Department of Revenue to the Senate Committee on Children, Families, and Elder Affairs (November 2, 2009) (on file with the committee).

B. Amendments:

None.

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