

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB RBP 09-01 Highway Safety & Motor Vehicles/Lawsuit Settlement  
**SPONSOR(S):** Roads, Bridges & Ports Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Roads, Bridges & Ports Policy Committee		Brown	Miller
1)				
2)				
3)				
4)				
5)				

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**SUMMARY ANALYSIS**

PCB RBP-01 is the result of a proposed mediated settlement regarding *Mary Ann Collier, et al. v. Dickinson, et al.*, a pending lawsuit against the Department of Highway Safety and Motor Vehicles and three current and former employees of the Department. The lawsuit stems from Florida's release of certain driver's license information between 2000 and 2004, in violation of the federal Drivers' Privacy Protection Act.

The bill provides that any person who held a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, is eligible to receive a single \$1 credit on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010. Authority for the credit expires on July 1, 2011.

The bill has a non-recurring, negative fiscal impact of \$10.4 million to the General Revenue Fund, and has an Effective Date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### *Drivers' Privacy Protection Act*

The Drivers' Privacy Protection Act (DPPA)<sup>1</sup> requires all states to protect the privacy of personal information contained in an individual's motor vehicle record. This information includes the driver's name, address, phone number, Social Security number, driver identification number, photograph, height, weight, gender, age, certain medical or disability information, and in some states, fingerprints. It does not include information concerning a driver's traffic violations, license status or accidents.

The Act has a number of exceptions. A driver's personal information may be obtained from a state's Department of Motor Vehicles for any federal, state or local agency use in carrying out its functions; for any state, federal or local proceeding if the proceeding involves a motor vehicle; for automobile and driver safety purposes, such as conducting recall of motor vehicles; and for use in market research activities. Personal data is also available to licensed private investigators.

The Act imposes criminal fines for non-compliance and grants individuals a private right of action including actual and punitive damages, as well as attorney's fees.

The DPPA limits the use of a driver's motor vehicle record to certain purposes. These purposes are defined in 18 U.S.C. § 2721:

- Legitimate government agency functions.
- Use in matters of motor vehicle safety, theft, emissions, product recalls.
- Motor vehicle market research and surveys.
- "Legitimate" business needs in transactions initiated by the individual to verify accuracy of personal information.
- Use in connection with a civil, criminal, administrative or arbitral proceeding.
- Research activities and statistical reports, so long as personal information is not disclosed or used to contact individuals.
- Insurance activities.
- Notice for towed or impounded vehicles.

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<sup>1</sup> 18 U.S.C. 2721, *et seq.* (Public Law 103-322). Information in this section was adopted from the Electronic Privacy Information Center's survey of DPPA issues, available online at: <http://epic.org/privacy/drivers/> (last visited February 25, 2009).

- Use by licensed investigators or security service.
- Use by private toll transportation facilities.
- In response to requests for individual records if the State has obtained express consent from the individual.
- For bulk marketing distribution if State has obtained express consent from the individual.
- Use by any requestor where the requestor can show written consent of the individual.
- For any other legitimate State use if it relates to motor vehicle or public safety.

If an individual has not given consent to the release of a motor vehicle record, the DPPA limits sharing of information once it is obtained. Information may only be shared with other approved users only for permitted uses. In addition, records must be kept of each additional disclosure identifying each person or entity that is receiving the disclosure and for what purpose. The disclosure records must be kept for a period of 5 years.

### *Florida Lawsuit*

*Mary Ann Collier, et al. v. Dickinson, et al.*, Case No. 04-21351-DV-JEM (S.D. Fla.), is a potential class action lawsuit originally filed on June 7, 2004. The suit names present and former employees of the Department of Highway Safety and Motor Vehicles (DHSMV) as defendants and alleges the continued disclosure of personal information maintained by DHSMV obtained from motor vehicle and driver license records in violation of the DPPA. DHSMV is represented by Chesterfield Smith, Senior Assistant Attorney General, and each of the three named defendants is represented by attorneys appointed through the Department of Financial Services, Division of Risk Management.

The Federal law was effective June 1, 2000. However, Florida statute was not amended to conform with the federal requirements until September 30, 2004 when s. 119.0712(2), F.S. was amended to mirror DPPA. The above legal action led to the 2004 change in Florida law.

The initial complaint demanded approximately \$39 billion in liquidated damages, \$2,500 per release of information. The parties engaged in three separate mediation sessions. The mediated agreement reached on June 5, 2008 provides that all motor vehicle registrants who are class members (all natural persons who had a valid driver license, identification card or motor vehicle registration) would receive a \$1 credit on the renewal of their motor vehicle registration during the period of July 1, 2009 through June 30, 2010. The total amount of the credit would be approximately \$10.4 million.

There will also be equitable relief which includes changing the procedures of DHSMV regarding disclosure of personal information. DHSMV is required by the settlement agreement to maintain a website informing the public of their rights under DPPA.

In addition, the Division of Risk Management would pay each of the four named plaintiffs \$3,000 and attorneys' fees in the amount of \$2.85 million.

### Proposed Changes

PCB RBP-01 provides that any person who held a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004, is eligible to receive a single \$1 credit on a new or renewed motor vehicle registration between July 1, 2009, and June 30, 2010.

Section 320.08046, F.S., provides a \$1 surcharge on license taxes for all vehicles required to be registered in Florida. Of this \$1 surcharge, 58 percent is directed to the General Revenue Fund and 42 percent is directed to the Grants and Donations Trust Fund in the Department of Juvenile Justice, to fund community juvenile justice partnership grants. PCB RBP-01 identifies the General Revenue Fund portion of this surcharge as the funding mechanism for the estimated \$10.4 million in revenue not collected as a result of the settlement.

The provisions of the bill explicitly expire on July 1, 2011.

B. SECTION DIRECTORY:

**Section 1** Implements a litigation settlement; provides eligibility and procedures to collect the credit; provides a funding mechanism; provides an expiration of the provision.

**Section 2** Provides an Effective Date of July 1, 2009.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce the amount of revenue received from certain drivers when registering or renewing a motor vehicle in the state of Florida. The estimated reduction is \$10.4 million.

The bill redirects revenue authorized in s. 320.08046, F.S., which is currently designated to the General Revenue Fund, to fund the \$1 credit to implement the litigation settlement provisions of *Collier v. Dickinson* for the period July 1, 2009 through June 30, 2010.

This will result in a non-recurring revenue loss to the General Revenue Fund for the credit amount. The department estimates approximately 10.4 million driver license/ID card holders and/or motor vehicle registrants would be eligible to receive the credit.

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
License Tax Surcharge	\$10.4	\$0	\$0

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Floridians holding a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004 will receive a \$1 reduction on a new or renewed motor vehicle registration between July 1, 2009 and June 30, 2010.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**