



## 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:

##### BACKGROUND

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

## Motor Vehicle Records

The Department of Highway Safety and Motor Vehicles (DHSMV) is the custodian of motor vehicle records<sup>4</sup> containing personal information<sup>5</sup> about drivers and motor vehicle owners.

## Emergency Contact Information

The DHSMV allows an individual who holds a current Florida driver license or identification card to provide emergency contact information. According to DHSMV, this information may save crucial time in those instances when it is necessary to contact family members or other loved ones.

Current law provides a public record exemption for personal information, which includes emergency contact information, contained in motor vehicle records.<sup>6</sup> Confidential and exempt<sup>7</sup> emergency contact information may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency.<sup>8</sup>

## Drivers Privacy Protection Act

Congress enacted the federal Drivers Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. Section 2721 of the DPPA provides that a “State department of motor vehicles, and any officer, employee, or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.”<sup>9</sup> The DPPA also provides permissible uses and provides for authorized disclosures.

Further, it requires states to comply with its provisions by 1997. Florida came into compliance with the DPPA (1994) in 1997;<sup>10</sup> however, in 1999, Congress amended the DPPA to change it from an “opt out” alternative to an “opt in” alternative. Under the 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 obtain a driver’s affirmative consent to disclose the driver’s personal information. Florida did not amend the State’s public record exemption for motor vehicle records to conform to the 1999 change until May 13, 2004. Although the State law was not amended, Florida was still required to comply with federal law. During the period 2000-2004, Florida continued to disclose driver and motor vehicle information in compliance with State law rather than adhering to the federal law.

Any state department of motor vehicles in substantial noncompliance with the DPPA is subject to a civil penalty of up to \$5,000 per day.<sup>11</sup> Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States District Court, which has, in fact, led to a lawsuit.<sup>12</sup>

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<sup>4</sup> Section 119.0712(2)(a), F.S., 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 the Department of Highway Safety and Motor Vehicles.”

<sup>5</sup> Section 119.0712(2)(a), F.S., provides that “personal information” includes, but is not limited to, “an individual's social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information, and emergency contact information.” It does not include information relating to vehicular crashes driving violations, and driver’s status.

<sup>6</sup> Section 119.0712(2)(b), F.S.

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985)

<sup>8</sup> Section 119.0712(2)(c)4., F.S.

<sup>9</sup> 18 U.S.C. s. 2721.

<sup>10</sup> Chapter 97-185, L.O.F.

<sup>11</sup> 18 U.S.C. s. 2723.

<sup>12</sup> *See Collier v. Dickinson, et al.* Case No. 04-21351-DV-JEM (S.D. Fla.) The initial complaint demanded approximately \$39 billion in damages or \$2,500 per release of information. The suit resulted in three separate mediation sessions. The mediated agreement reached on June 5, 2008, provides all motor vehicle registrants who are class members (all natural persons who had a valid driver license, identification card or motor vehicle registration) with a \$1 credit on the renewal of their motor vehicle registration during the

## Public Record Exemption under Review

Current Florida law provides a public record exemption for personal information contained in a motor vehicle record.<sup>13</sup> It also provides for authorized uses of the confidential and exempt information.<sup>14</sup>

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period of July 1, 2009, through June 30, 2010. The total amount of the credit is approximately \$10.4 million. Equitable relief also is provided which includes changing the procedures of DHSMV regarding disclosure of personal information. Additionally, DHSMV will maintain a website informing the public of their rights under the DPPA. The Division of Risk Management will pay each of the four named plaintiffs \$3,000, plaintiffs' attorney fees in the amount of \$2.85 million, and costs of publication totaling approximately \$20,000.00. This agreement was accepted by the Cabinet on August 12, 2008; however, the \$1 credit for the settlement class is contingent upon approval and appropriation by the Legislature. In addition, to this law suit, the U.S. Department of Justice filed an action to assess civil penalties in the amount of \$2,535,000 against the State of Florida, pursuant to 18 U.S.C. s. 2723(b), for violations of DPPA.

<sup>13</sup> Section 119.0712(2)(a), F.S.

<sup>14</sup> Section 119.0712(2)(b), F.S., authorizes the following uses:

- 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 Titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. ss. 1231 et seq.), the Clean Air Act (42 U.S.C. ss. 7401 et seq.), and chapters 301, 305, and 321-331 of Title 49, United States Code.
- 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 nonowner 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 court or agency or before any self-regulatory body for service of process by any certified process server, special process server, or other person authorized to serve process in this state; 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; 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; execution or enforcement of judgments and orders; or compliance with an order of any 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, anti-fraud 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. 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 business or personal relationship with the subject of the investigation.
- 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.
- For use in connection with the operation of private toll transportation facilities.
- For bulk distribution for surveys, marketing, or solicitations when the department has obtained the express consent of the person to whom such personal information pertains.
- 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.
- For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.
- For any other use if the person to whom the information pertains has given express consent in a format prescribed by the department. Such consent shall remain in effect until it is revoked by the person on a form prescribed by the department.

In 2007, the exemption was amended to create a two-tiered system for the release of personal information within motor vehicle records by placing additional restrictions on the availability and use of social security numbers, photographs and images, medical disability information, and emergency contact information.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

## **EFFECT OF BILL**

In order to alleviate any future conflicts between the State exemption and the DPPA, the bill removes codification of the federal law. Instead the bill makes it clear that personal information contained in a motor vehicle record is confidential pursuant to the DPPA by cross-referencing the federal protection under the DPPA. Further, it provides that the information may be released only as authorized by the federal act.

Finally, the bill maintains the public record exemption for emergency contact information.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.0712(2), F.S., to reenact the public record exemption for personal information contained in a motor vehicle record and for the emergency contact information.

Section 2 repeals s. 2 of chapter 2004-62, L.O.F., which provides for repeal of the exemption.

Section 3 provides an effective date of October 1, 2009.

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

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

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<sup>15</sup> Section 119.0712(2)(c), F.S.; Chapter 2007-94, L.O.F.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

None.