

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-04 OGSR Insurance Claim Data Exchange Information

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Revenue (DOR) is required to develop and operate a data match system that identifies 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. The data can be used only for purposes of child support enforcement.

Current law provides that information obtained by DOR pursuant to the insurance claim data exchange is confidential and exempt from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# 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.

##### Insurance Claim Data Exchange

Current law requires the Department of Revenue (DOR) to develop and operate a data match system that identifies 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.<sup>4</sup> The data can be used only for purposes of child support enforcement.<sup>5</sup>

An insurer may provide DOR with the needed information in one of the following ways:

- An insurer may provide the required data for each claim directly to DOR electronically so it 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 to DOR the match data regarding each noncustodial parent; or
- An insurer may authorize an insurance claim data collection organization to complete either of the two options.<sup>6</sup>

Due to the variety of insurance claim data submission methods, it is possible for DOR to receive information on individuals who have a claim with an insurer and who do not owe child support.

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

<sup>2</sup> Section 24(c), Art. 1 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.

<sup>4</sup> Section 409.25659(2), F.S.

<sup>5</sup> Section 409.25659(5), F.S.

<sup>6</sup> Section 409.25659(2)(a) – (c), F.S.

### Implementation of the Insurance Claim Data Exchange

In 2004, DOR contacted 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. Therefore, DOR decided to postpone working on the insurance claim data exchange initiative at the request of those insurers.<sup>7</sup>

In February 2006, Congress passed the Deficit Reduction Act of 2005 (DRA). The DRA authorizes 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. It also allows HHS to furnish information resulting from data matches to state agencies responsible for child support enforcement.<sup>8</sup>

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.<sup>9</sup> For the period of November 2008 through October 2009, DOR received 2,996 data matches from the federal program. Of those matches, 422 already had been made by DOR through other means.<sup>10</sup> According to DOR, more than \$1.6 million has been collected since DOR implemented the federal matching program.<sup>11</sup>

During the 2009 Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. As such, DOR sent 84 letters to Florida based insurance companies, from November 2009 through February 2010, inviting them to participate in the voluntary state program. DOR received only two responses, both indicating the company does not handle personal liability insurance. DOR sent an additional 135 letters to Florida based insurance companies in February 2011. As of June 1, 2011, DOR had received three responses including one from Citizens Property Insurance Corporation.<sup>12</sup>

To date, DOR has not begun using the state data match system, but it is working with Citizens Property Insurance Corporation to begin data matching by 2012.<sup>13</sup> Upon full implementation, the state program will work similarly to the federal program. DOR reports that as of May 2011, the number of noncustodial parents eligible to be matched using the insurance claim data exchange is 448,965.<sup>14</sup>

### Public Record Exemption Review

Current law provides that information obtained by the Department of Revenue (DOR) pursuant to the insurance claim data exchange is confidential and exempt<sup>15</sup> from public records requirements until DOR determines if a match exists. If a match does exist, the match data is no longer confidential and exempt and is available for public disclosure. If a match is not made, then the nonmatch information must be destroyed.<sup>16</sup>

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<sup>7</sup> Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 3.

<sup>8</sup> Pub. L. No. 109-171.

<sup>9</sup> Senate Interim Report 2012-301 by the Committee on Children, Families, and Elder Affairs (September 2011), at 3.

<sup>10</sup> Staff analysis for HB 7091 (2010) by the Governmental Affairs Policy Committee, March 5, 2010, at 4.

<sup>11</sup> Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).

<sup>12</sup> *Id.*

<sup>13</sup> Citizens Property Insurance Corporation currently is not participating in the federal matching program.

<sup>14</sup> Meeting with staff of DOR, July 12, 2011.

<sup>15</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>16</sup> Section 409.25661(1), F.S.

Pursuant to the Open Government Sunset Review Act, the exemption was scheduled to repeal on October 2, 2009, and again on October 2, 2010; however, as a result of the Open Government Sunset Review during the 2008 and 2009 interims, the exemption repeal date was eventually delayed until October 2, 2012, in order to allow DOR time to determine the success of the federal data match program.

DOR has requested that the exemption be reenacted. According to DOR, maintaining the exemption for personal information obtained from insurers would allow data matching efforts to continue while keeping the information confidential and exempt for a limited period of time. Without the public record exemption, insurance providers would be less inclined to participate in any matching.<sup>17</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

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

Section 1 amends s. 409.25661, F.S., to reenact the public record exemption for information obtained by the Department of Revenue pursuant to the insurance claim data exchange.

Section 2 provides an effective date of October 1, 2012.

## **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.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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<sup>17</sup> Insurance Claim Data Exchange background information received from DOR, June 24, 2011 (on file with the Government Operations Subcommittee).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.