

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-06 OGSR Personal Injury Protection and Property Damage Liability Insurance Policies

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1232

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.

Current law provides that personal identifying information of an insured or former insured and an insurance policy number, regarding personal injury protection and property damage liability insurance policies, held by the Department of Highway Safety and Motor Vehicles (DHSMV) is confidential and exempt from public records requirements. Upon receipt of a written request and a copy of a crash report, DHSMV must release the policy number for a policy covering a vehicle involved in a motor vehicle accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident. The law provides for retroactive application of the public record exemption.

The bill reenacts the 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 Act¹ 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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

No-Fault Motor Vehicle Insurance

Under a no-fault insurance system, medical and other benefits are provided without regard to fault in return for limitations on lawsuits for non-economic damages.

In Special Session C of 2007, the Legislature passed CS/HB 13C, which revived and reenacted the Florida Motor Vehicle No-Fault Law (No-Fault Law), effective January 1, 2008.⁴ The No-Fault Law requires every owner and registrant of a motor vehicle that is required to be licensed and registered in this state to maintain \$10,000 worth of first-party insurance known as personal injury protection,⁵ and \$10,000 worth of property damage liability coverage.⁶

Insurers must notify the named insured, in writing, that a cancellation or nonrenewal of the required policies will be reported to the Department of Highway Safety and Motor Vehicles (DHSMV), and that failure to maintain such coverage will result in the loss of registration and driving privileges in this state. Also, the notification must include the amount of the reinstatement fees. The insurer, however, is not civilly liable for failing to provide notice.⁷

To ensure compliance with the No-Fault Law, every insurer issuing either of the required policies must report information regarding renewal, cancellation, or nonrenewal to DHSMV within 45 days of the

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

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

⁴ Chapter 2007-324, L.O.F.; codified as ss. 627.730 - 627.7405, F.S.

⁵ See ss. 627.733 and 627.736, F.S.

⁶ Section 324.022, F.S.

⁷ See s. 324.0221(1)(b), F.S.

effective date or within 30 days of the issuance of a new policy. The failure of an insurer to file the proper reports to DHSMV constitutes a violation of the Florida Insurance Code.⁸ DHSMV only uses the information for enforcement and regulatory purposes.

Public Record Exemption under Review

Current law provides that personal identifying information of an insured or former insured and an insurance policy number, regarding personal injury protection and property damage liability insurance policies, held by DHSMV is confidential and exempt⁹ from public records requirements. Upon receipt of a written request and a copy of a crash report,¹⁰ DHSMV must release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

- Any person involved in the accident;
- The attorney of any person involved in the accident; or
- A representative of the insurer of any person involved in the accident.¹¹

The law provides for retroactive application of the public record exemption.¹²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.¹³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information of an insured or former insured and an insurance policy number held by DHSMV. It also codifies in law the original effective date of the exemption for purposes of determining when retroactive application took effect.

B. SECTION DIRECTORY:

Section 1 amends s. 324.242, F.S., to reenact the public record exemption for the Florida Motor Vehicle No-Fault Law.

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.

⁸ See s. 324.0221(1)(a), F.S.

⁹ 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).

¹⁰ Sections 316.065, 316.066, and 316.068, F.S., provide crash report requirements.

¹¹ Section 324.242(2), F.S.

¹² Section 324.242(3), F.S.

¹³ Section 324.242(4), F.S.

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:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.