



# The Florida Senate

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Committee on Children, Families, and Elder Affairs

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## OPEN GOVERNMENT SUNSET REVIEW OF SECTION 409.25661, F.S., RELATING TO INSURANCE CLAIM DATA EXCHANGE INFORMATION

### Issue Description

Section 409.25659, F.S., requires the Department of Revenue (DOR or 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 public-records exemption was created in 2004 and during the 2009 and 2010 Regular Sessions, the Legislature extended the repeal date of the exemption in order to provide DOR ample time to determine the success of the federal Deficit Reduction Act of 2005.<sup>1</sup> This exemption stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

### Background

#### 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.<sup>2</sup> In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level.<sup>3</sup> Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act<sup>4</sup> specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency<sup>5</sup> records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, ... tapes, photographs, films, sounds 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 at the moment they become records.<sup>6</sup>

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. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an

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<sup>1</sup> See chs. 2009-119 and 2010-73, Laws of Fla.

<sup>2</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>3</sup> FLA. CONST. art. I, s. 24.

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

<sup>6</sup> *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>8</sup> If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.<sup>9</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>10</sup> provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. 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.<sup>11</sup> An identifiable public purpose is served 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. An identifiable public purpose is served if the exemption:

- 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 information would be defamatory to such individuals 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 combination 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 information would injure the affected entity in the marketplace.<sup>12</sup>

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>13</sup>

### Insurance Claim Data Exchange

Section 409.25659, F.S., was established during the 2004 Regular Session to provide for the identification of claims<sup>14</sup> on liability insurance which could potentially be applied to child support arrearages in Title IV-D cases.<sup>15</sup>

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<sup>7</sup> FLA. CONST. art. I, s. 24(c).

<sup>8</sup> *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

<sup>9</sup> *Id.* at 54.

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(6)(b), F.S.

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

<sup>13</sup> Section 119.15(6)(a), F.S.

The department was directed by statute to develop and operate a data match system to 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.<sup>16</sup> This data can only be used for purposes of child support enforcement.<sup>17</sup>

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

- 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 one of the two options mentioned above.<sup>18</sup>

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.<sup>19</sup>

In 2004, DOR contacted most of the top 25 insurers in the state to begin implementation of the statute. However, during this time insurers were responding to claims resulting from damage caused by the 2004 hurricane season so DOR decided to postpone working on the insurance claim data exchange initiative.<sup>20</sup>

In February 2006 Congress passed the Deficit Reduction Act of 2005 (the Act), 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.<sup>21</sup> A federal workgroup was established to implement this provision. The department monitored the activities of the federal workgroup charged with implementing the nationwide insurance data match program and began implementing the changes necessary to receive data from the federal program.<sup>22</sup>

In November 2008, DOR began data matching activities with the federal program and began issuing income deduction notices on matches.<sup>23</sup> Between November 2008 and October 2009, the department received 2,996 data

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<sup>14</sup> A “claim” is considered 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. Section 409.24659(1), F.S.

<sup>15</sup> Chapter 2004-334, Laws of Fla. The term “Title IV-D” refers to state-run child support enforcement programs which are funded through grants provided for by the Social Security Act of 1975. Title IV of the Social Security Act covers grants to states for the purpose of providing aid and services to needy families with children and for child-welfare services. Part “D” of that law covers child support and the establishment of paternity.

<sup>16</sup> Section 409.25659(2), F.S.

<sup>17</sup> Section 409.25659(5), F.S.

<sup>18</sup> Section 409.25659(2)(a)-(c), F.S.

<sup>19</sup> Conversation with representatives from the Fla. Dep’t of Revenue (July 12, 2011).

<sup>20</sup> Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review Regarding Noncustodial Parents Owing Past-Due Child Support*, 4 (Interim Report 2009-202) (Sept. 2008), available at [http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-202cf.pdf](http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-202cf.pdf) (last visited June 15, 2011).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> E-mail from Debbie Thomas, Dep’t of Revenue, to staff of the Senate Committee on Children, Families, and Elder Affairs (June 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

matches from the federal program.<sup>24</sup> Of those matches, 422 were previously made by the department through other means.<sup>25</sup> According to department representatives, approximately \$2 million has been collected since the department implemented the federal matching program.<sup>26</sup>

During the 2009 Regular Session, there was discussion over whether the federal voluntary insurance data match program would replace the state's voluntary program. The department sent 84 letters to Florida-based insurance companies from November 2009 through February 2010 inviting them to participate in the voluntary state program. The department received responses from two companies, both of which stated they do not handle personal liability insurance. In February 2011, DOR sent an additional 135 letters to Florida-based insurance companies and as of June 1, 2011, they had received only three responses, including one from Citizens Property Insurance Corporation (Citizens).<sup>27</sup> The department has been working with Citizens to design a data match system and by 2012, DOR should begin receiving data from Citizens.<sup>28</sup> The department continues to encourage voluntary participation in the state insurance claim data match through annual contact letters to Florida-based insurers.<sup>29</sup>

The department 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>30</sup>

### Public-Records Exemption for Insurance Claim Data Exchange

Section 409.25661, F.S., provides that information obtained by DOR during an insurance claim data exchange pursuant to s. 409.25659, F.S., is confidential and exempt from public disclosure until the department determines whether a match exists. If a match does exist, the matched data is no longer considered confidential and exempt and becomes available for public disclosure unless otherwise exempt. If a match does not exist, the information must be destroyed.

This public-records exemption was created in 2004 and during the 2009 and 2010 Regular Sessions, the Legislature extended the repeal date of the exemption to provide DOR with ample time to determine the success of the provisions contained in the federal Deficit Reduction Act of 2005. This exemption stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

## Findings and/or Conclusions

Section 409.25659, F.S., requires the Department of Revenue (DOR or department) to develop and operate a data match system with insurers for purposes of collecting past-due child support. An insurer may provide information to DOR by accessing a data file from DOR and conducting a data match of all non-custodial parents who have a claim with the insurer and who owe past due child support; by providing the required data for each claim maintained by the insurer to DOR; or by authorizing an independent organization to perform one of the previously mentioned functions. To date, the department has not begun using the state data match system, but it is working with Citizens Property Insurance Corporation (Citizens) to begin data matching within the next year. The department currently uses the federal data match program and the Child Support Lien Network (CSLN)<sup>31</sup> to

<sup>24</sup> Governmental Affairs Policy Committee, The Florida House of Representatives, *House of Representatives Staff Analysis HB 7091* (Mar. 5, 2010), available at <http://archive.flsenate.gov/data/session/2010/House/bills/analysis/pdf/h7091.GAP.pdf> (last visited July 13, 2011).

<sup>25</sup> *Id.*

<sup>26</sup> Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

<sup>27</sup> Dep't of Revenue, *CSE Insurance Data Match Public Records Exemption* (June 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>28</sup> Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

<sup>29</sup> Dep't of Revenue, *supra* note 27.

<sup>30</sup> E-mail from Debbie Thomas, Dep't of Revenue, to staff of the Committee on Children, Families, and Elder Affairs (June 24, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>31</sup> The Child Support Lien Network (CSLN) houses a database of 3.7 million delinquent child support obligors owing over \$80 billion in past-due support which is updated on a monthly basis by participating states. The database is used to intercept insurance settlements to pay delinquent child support obligations. Currently, the network has 30 participating states. Child Support Lien Network, <http://www.childsupportliens.com/> (last visited July 20, 2011).

identify individuals with open liability claims who also have an outstanding child support obligation in the state. Upon full implementation, the state program will work similarly to the federal program and CSLN. For example, under the current CSLN program DOR creates a file each month of obligor parents and places that data on a file transfer protocol (FTP) where CSLN retrieves the file and inputs the data into a master table. Then CSLN extracts data of open claims from the insurance services organization (ISO); performs a search to determine if any matches exist; conducts a quality assurance test on the match; and then sends the match back to Florida. The department then imports the file into its database and performs another quality assurance test on it to verify that the match is to the appropriate person. The department then sends the insurer an income deduction notice detailing how much money needs to be paid to DOR.<sup>32</sup> According to the department, another option would be for the insurance company to send files of every open claim to DOR and then the department would go through the files to see if there were any matching claims to persons who owed child support.<sup>33</sup> In this situation, the department could acquire information of a sensitive nature on persons who do not have any ties to child support. If such information was made public it could cause unwarranted damage to the reputation of the individual.

In reviewing the public-records exemption under the Open Government Sunset Review Act, Senate professional staff of the Children, Families, and Elder Affairs Committee found there is a public necessity in continuing to keep confidential and exempt the information obtained by the department during an insurance claim data exchange pursuant to s. 409.25659, F.S. This public-records exemption appears to serve a public purpose by maintaining the confidentiality of certain information. Specifically, the following information is protected under the public-records exemption from public disclosure:

- Name;
- Address;
- Date of birth;
- Social security number or other taxpayer identification number; and
- Claim number.<sup>34</sup>

In 2004, the Legislature found it was a public necessity that the information obtained by DOR during the insurance claim data exchange process be confidential and exempt until such time as DOR determines whether a match is made regarding a person who owes past-due child support. Specifically, the Legislature stated:

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 government has collected such information. 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. Insurers might be less likely to provide the department with information regarding insurance claims if the insurer believes such information will be made available for public disclosure.<sup>35</sup>

The department continues to encourage voluntary participation in the state insurance claim data match through annual contact letters to Florida based insurers, and, according to DOR, "[i]nsurance providers would be less inclined to participate in any matching without the exemption."<sup>36</sup>

## Options and/or Recommendations

Senate professional staff recommends that the Legislature reenact the public-records exemption established in s. 409.25661, F.S., which makes certain personal information obtained by the Department of Revenue (DOR or

<sup>32</sup> Conversation with representatives from the Fla. Dep't of Revenue (July 12, 2011).

<sup>33</sup> *Id.*

<sup>34</sup> Section 409.25659(2), F.S.

<sup>35</sup> Chapter 2004-339, Laws of Fla.

<sup>36</sup> Dep't of Revenue, *supra* note 27.

department) during an insurance claim data exchange exempt from disclosure. This recommendation is made in light of the information gathered during the Open Government Sunset Review which indicates that there is a public necessity in maintaining the confidential nature of personal information gathered by the department relating to persons having open liability claims with participating insurers. Additionally, the department reports that insurance providers may be less likely to participate in the insurance claim data exchange program without the exemption, making the exemption vital to the effective administration of the program.