

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 863 Motor Vehicle Crash Reports
SPONSOR(S): Transportation & Highway Safety Subcommittee; Kerner
TIED BILLS: HB 865 **IDEN./SIM. BILLS:** CS/SB 876

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|----------|--|
| 1) Transportation & Highway Safety Subcommittee | 14 Y, 0 N, As CS | Thompson | Miller |
| 2) Transportation & Economic Development Appropriations Subcommittee | 12 Y, 0 N | Perkins | Davis |
| 3) Economic Affairs Committee | 17 Y, 0 N | Thompson | Creamer |

SUMMARY ANALYSIS

CS/HB 863 revises motor vehicle crash report access requirements. Currently, crash reports are confidential and exempt from public record disclosure requirements for a period of 60 days after the date they are filed. However, they are available to various entities, including but not limited to, the parties involved in the crash and their legal and insurance representatives, prosecutors, law enforcement, the Department of Transportation, and legitimate news media such as radio and television stations licensed by the Federal Communications Commission, qualified newspapers, and free newspapers of general circulation.

A person attempting to access a crash report within the 60 day period is required to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

The bill revises the crash report access requirement relating to filing written sworn statements within the 60-day confidential and exempt period. The bill requires a written sworn statement for each individual crash report requested.

The bill does not create a new or expand an existing public record exemption; thus, it does not require a two-thirds vote for final passage, nor is it required to meet any other requirements for public record exemptions under Article I, s. 24(a) of the State Constitution.

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

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crash Reports

Section 316.066, F.S., requires a Florida Traffic Crash Report, either long or short form to be completed by law enforcement and submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) in the event of a motor vehicle crash.

A long form must be completed and submitted to DHSMV within ten days after law enforcement completes the investigation of a crash that:

- Resulted in death, personal injury or any indication of pain or discomfort of any parties involved in the crash;
- Involved a violation of damage to property pursuant to s. 316.061(1), F.S., or driving under the influence pursuant to s. 316.1932; F.S.;
- Rendered a vehicle inoperable to a degree that required a wrecker to remove it from the crash scene; or
- Involved a commercial motor vehicle.¹

The long form must include the following information:

- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of investigating officer; and
- Respective parties insurance companies.²

In any crash for which a long form is not required by this section and which occurs on the public roadways of this state, the law enforcement officer is required to complete a short-form crash report or provide a driver exchange-of-information form, to be completed by all drivers and passengers involved in the crash. Both the short-form crash report and the driver exchange-of-information form require the identification of each vehicle that the drivers and passengers were in.³

The short form must include the following information:

- Date, time, and location of crash;
- Description of vehicles involved;
- Names and addresses of parties involved, including all drivers and passengers, and the identification of vehicles;
- Names and addresses of witnesses;
- Name, badge number, and law enforcement agency of investigating officer; and
- Respective parties insurance companies.⁴

Both long and short form crash reports prepared by law enforcement must be submitted to the department and may be maintained by the law enforcement officer's agency.⁵

¹ s. 316.066(1)(a), F.S.

² s. 316.066(1)(b), F.S.

³ s. 316.066(1)(c), F.S.

⁴ Id.

⁵ s. 316.066(1)(f), F.S.

Crash Report Public Record Exemption

Section 316.066, (2)(a), F.S., provides a public record exemption for motor vehicle long and short form crash reports that is effective for a period of 60 days after the date the report is filed. Specifically, crash reports that reveal the following information and that are held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes, are confidential and exempt⁶ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Identity,
- Home or employment telephone number;
- Home or employment address;
- Other personal information concerning the parties involved in the crash.

Exceptions to the Crash Report Exemption

Section 316.066, (2)(b), F.S., authorizes crash reports held by an agency to be made immediately available to:

- Parties involved in the crash;
- The legal representatives of the parties involved in the crash;
- The licensed insurance agents of the parties involved in the crash;
- The insurers or insurers to which they have applied for coverage of the parties involved in the crash;
- Persons under contract with such insurers to provide claims or underwriting information;
- Prosecutorial authorities;
- Law enforcement agencies;
- Department of Transportation;
- County traffic operations;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices under ss. 50.11 and 50.031, F.S.; and
- Free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.

Section 316.066, (2)(c), F.S., allows any local, state, or federal agency that is authorized to have access to crash reports by any provision of law to be granted such access in the furtherance of the agency's statutory duties.

Crash Report Access Requirements

Section 316.066, (2)(d), F.S., requires a person attempting to access a crash report within the 60 days after the date the report was filed to:

- Present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access; and
- File a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

However, this provision also allows, in lieu of requiring a written sworn statement, an agency to provide crash reports by electronic means to third-party vendors under contract with one or more insurers. Such contracts must state that the information will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for such solicitation.

⁶ There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Florida Attorney General Opinion 85-62. If instead, the record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

This authorization is effective only during the period of time the information remains confidential and exempt. A copy of the contract must be furnished to the agency as proof of the vendor's claimed status.⁷

Personal Injury Protection Fraud

In a statewide Grand Jury report on insurance fraud relating to Personal Injury Protection coverage, the Fifteenth Statewide Grand Jury found the individuals called "runners" would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal solicitations and the commission of a variety of frauds, including insurance fraud. The runners generally work for attorneys, auto body shops, or health care professionals.⁸

According to the Grand Jury report:

Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.⁹

According to the report:

Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.¹⁰

Proposed Changes

The bill requires a written sworn statement for each individual crash report requested within the 60-day confidential and exempt period.

Specifically, the bill amends s. 316.066(d), F.S., requiring that when a person accesses a crash report, within the required 60-day period after the filing of the report, presenting a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information, filing a written sworn statement with the state or local agency in possession of the information, such written sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested.

B. SECTION DIRECTORY:

Section 1: amends s. 316.066, F.S., relating to written reports of crashes.

Section 2: provides an effective date of July 1, 2014.

⁷ s. 316.066(2)(d), F.S.

⁸ The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at:

<http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument>

(Last viewed 3/16/14).

⁹ Id.

¹⁰ Id.

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:

Requiring a written sworn statement for each individual crash report requested within the 60-day confidential and exempt period may help protect crash victims and their families from illegal Personal Injury Protection solicitations. This may negatively impact the entities soliciting crash victims or engaged in a business that profits from the sale of crash victim information.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Transportation and Highway Safety Subcommittee adopted one amendment to HB 863 before reporting it favorably as a committee substitute. The amendment removed the requirement for DHSMV to provide a PIP solicitation notice to those involved in a traffic crash. This analysis is drafted to the committee substitute as reported favorably by the Transportation & Highway Safety Subcommittee.