



### **Driver's Privacy Protection Act**

Congress enacted the Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA is a federal law prohibiting the release of "personal information" contained in state motor vehicle records, *unless the release is otherwise specifically authorized*. The DPPA further requires that states comply with its provisions by 1997. Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to \$5,000 per day.

Florida came into compliance with the DPPA in 1997, when chapter 97-185, Laws of Florida, became law (s. 119.07(3)(bb), F.S.).

### **Availability of Motor Vehicle Records**

Unless specifically exempted by law, DHSMV is required to make all motor vehicle records available to the public (see s. 119.07 (1)(a), F.S.) Individuals may request their personal information be withheld from public disclosure. However, the information may still be released for specified purposes. Current and former law enforcement personnel, correctional officers, and statewide prosecutors may opt to have personal information held exempt from public disclosure.

Personal information is available for the following purposes:

1. 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 the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.
2. 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.
3. 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.
4. For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
  - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

- b. 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.
5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:
  - a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.
  - b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney.
  - c. Investigation by any person in connection with any filed proceeding.
  - d. Execution or enforcement of judgments and orders.
  - e. Compliance with an order of any court.
6. 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.
7. 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.
8. For use in providing notice to the owners of towed or impounded vehicles.
9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this paragraph. 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 a business or personal relationship with the subject of the investigation.
10. 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 the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. App. 2710 et seq.
11. For use in connection with the operation of private toll transportation facilities.
12. For bulk distribution for surveys, marketing, or solicitations when the department has implemented methods and procedures to ensure that:
  - a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

b. The information will be used, rented, or sold solely for bulk distribution for survey, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have timely requested that they not be directed at them.

13. 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.

14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.

Notwithstanding these exemptions from public disclosure, s. 322.142, F.S. (1998 Supp.), specifically prohibits DHSMV from releasing driver license photographs and digital images except for law enforcement purposes. However, this section was amended in 1998 to authorize DHSMV to release all driver license photographs, digital images, and other driver's license and state identification card information if such information is used solely for the prevention of fraud (see Ch. 98-223).

### **Public Records Law**

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose

is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation 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.

**III. Effect of Proposed Changes:**

The bill revises the exemption from public records requirements for personal information contained in motor vehicle records held by DHSMV. Personal information in *all* motor vehicle records would be exempt from public disclosure, unless the information is used for specified business or government purposes. An individual would no longer have the option of either keeping the motor vehicle record “open” for public inspection or having the record “closed” and exempt from public disclosure.

Business and governmental entities would continue to have access to the records pursuant to the exceptions authorized under current law. Also, DHSMV’s authority to release driver’s license and state identification card information for the prevention of fraud is not affected by the bill. Personal information would continue to be public record under most circumstances.

The bill also contains a public necessity statement for the revised exemption.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

This bill amends s. 119.07, F.S., to exempt personal information in *all* motor vehicle records from public disclosure, unless the information is used for specified business or government purposes. An individual would no longer have the option of either keeping the motor vehicle

record “open” for public inspection or having the personal information contained in the motor vehicle records exempt from public disclosure.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

As a result of this bill some individuals and businesses may not have access to certain personal information in driver licenses and motor vehicle records.

**C. Government Sector Impact:**

During FY 1997-98, DHSMV collected approximately \$25 million from the sale of driving and motor vehicle records. DHSMV estimates implementation of this bill will not significantly affect the continued sale of these records since a majority of the records presently sold fall within the current exceptions authorized by law. The sale of title and registration information to private requestors, of which an estimated \$150,000 is received annually, could result in an indeterminate revenue decrease to the Highway Safety Operating Trust Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

On November 10, 1998, DHSMV agreed to sell Florida driver’s license information to Image Data, LLC. Paragraph 7 of the agreement specifies the agreement automatically terminates if a court order results in DHSMV being prohibited from providing the information to Image Data, LLC. On February 1, 1999, DHSMV terminated the agreement with Image Data, LLC, pursuant to paragraph 7. This was the only agreement DHSMV has entered to sell Florida license photographs.

**VIII. Amendments:**

None.