

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2416

SPONSOR: Judiciary Committee, Transportation Committee and Senator Sebesta

SUBJECT: Motor Vehicle Registration Records/Public Records

DATE: April 22, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) revises a public records exemption that withholds from public disclosure information contained in driver license records to provide that such information is not disclosable unless the licensee requests that such information be disclosed. Additionally, social security numbers and medical and disability information are further restricted to limit disclosure to certain entities or in certain circumstances.

This CS also revises the citation to the federal Driver=s Privacy Protection Act to reflect recent amendments.

This CS amends s. 119.07(3)(aa), Florida Statutes.

II. Present Situation:

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 Apersonal information≡ contained in state motor vehicle records, unless the release is otherwise specifically authorized.

Personal information is described as Ainformation that identifies an individual, including an individual=s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver status.≡ The DPPA defines motor vehicle records as Aany record that pertains to a motor vehicle operator=s permit,

motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.≡

DPPA required that states comply with its provisions by 1997 and Florida did so with the enactment of ch. 97-185, L.O.F. Any state department of motor vehicles that has a policy or practice of substantial noncompliance is subject to a civil penalty of up to \$5,000 per day. In addition, DPPA provides for a criminal fine and civil remedy against any person who knowingly violates the DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States district court.

For certain individuals, the Legislature has already allowed personal information contained in motor vehicle records to be exempt from public disclosure. For example, current and former law enforcement personnel, correctional officers, and statewide prosecutors may opt to have certain personal information held exempt from public disclosure. *See* s. 119.07(3), F.S.

However, information contained in driver license records held by the Department of Highway Safety and Motor Vehicles (DHSMV) can be withheld from public disclosure only when the licensee makes a written request to “opt out.” Note that choosing to “opt out” does not remove the information entirely from public disclosure, as there are numerous exceptions allowing for disclosure, including:

- Motor vehicle theft, driver safety, motor vehicle emissions, and motor vehicle product alterations, recalls, or advisories;
- Legitimate business inquiries to verify personal information to prevent fraud;
- Civil, criminal, administrative, or arbitral proceedings in any court or agency or before any self-regulatory body;
- Insurance in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;
- Notice to owners of towed or impounded vehicles; and
- Use by any licensed private investigative agency or licensed security service.

Section 119.07(3)(aa), F.S.

Public Records Law

Article I, s. 24(a), of the Florida Constitution, expresses Florida’s public policy regarding access to government records in providing:

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(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from open government requirements. 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.

Section 119.07(1)(a), F.S., provides every person who has custody of a public record must 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 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:

Section 1 amends s. 119.07(3)(aa), F.S., to provide that holders of Florida driver licenses will not have to "opt out" to ensure that identifying information contained in driver license records is withheld from public disclosure. Additionally, social security numbers and medical and disability information are further restricted to limit disclosure to the following entities or in the following circumstances:

- government agencies;
- activities associated with administrative, arbitration, civil, and criminal actions;
- insurance investigations;
- employer investigations relating to a holder of a commercial driver's license; and
- any use the licensee expressly consents to in a writing submitted to the DHSMV.

This CS also provides that driver license information can be distributed for surveys, solicitations or marketing purposes only when the license holder expressly consents to the release of the information for that purpose.

This CS provides that the restrictions contained in s. 119.07(3)(aa), F.S., do not impair the use of organ-donation information found on a driver license nor impair the administration of organ-donation initiatives in this state.

This CS also revises the citation to the federal Driver's Privacy Protection Act to reflect recent amendments.

This CS makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.

Section 2 provides a public necessity statement.

Section 3 provides that this act takes effect on becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This CS amends a current public records exemption to provide that information on holders of Florida driver licenses will not be disclosed unless the holder of the license authorizes the disclosure. The operation of the bill expands the application of an existing exemption by withholding from public disclosure additional information contained in driver license records.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Citizens will not have to go through the process of “opting out” of public disclosure identifying information held by the DHSMV in driver license records. There may be an impact on private entities that collect and aggregate information obtained from public agencies.

C. Government Sector Impact:

This CS will reduce revenues generated by the sale of identifying information contained in driver license records held by the DHSMV. The department estimated in 1999 that a similar version of this bill would negatively impact the Highway Safety Operating Trust Fund by approximately \$1.6 million.

The department also indicates that it would have to expend funds to modify the Driver License Software System.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.