

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 750

INTRODUCER: Governmental Oversight and Accountability Committee and Children, Families and Elder Affairs Committee

SUBJECT: Open Government Sunset Review/Insurance Claim Data

DATE: March 26, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Favorable
2.	Naf	Wilson	GO	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is the result of an Open Government Sunset Review performed by the Committee on Children, Families, and Elder Affairs.

Section 409.25659, F.S., requires the Department of Revenue (DOR or “the 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 This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature. This bill reenacts the exemption and schedules a new repeal date of October 2, 2010.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote.

This bill amends s. 409.25661, F.S.

II. Present Situation:

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 1892.¹ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³ records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sound 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.⁴

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.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁸ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

³ Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. 1, § 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Attorney General Opinion 85-62, August 1, 1985.

⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁰ Section 119.15, F.S.

exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the exemption meets one of three specified criteria and 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.¹² An exemption meets the statutory criteria if it:

- 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 ... would be defamatory ... 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 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 ... would injure the affected entity in the marketplace.¹³

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁴

Insurance Claim Data Exchange (s. 409.25659, F.S.)

As of May 2008, 466,231 noncustodial parents in Florida owed past-due child support.¹⁵ Statewide, almost 59 percent of child support cases are being paid in arrears.¹⁶ Section 409.25656, F.S., provides the Department of Revenue with the authority to levy any credit or personal property of an obligor for any past-due child support. This personal property includes bank accounts, vehicles, and insurance claim payments. Section 409.25659, F.S., was established during the 2004 Legislative Session to provide for the identification of claims on liability insurance¹⁷ which could potentially be applied to child support arrearages in Title IV-D cases.¹⁸

Section 409.25659, F.S., directed the department to develop and operate a data match system which would identify noncustodial parents who both owe past-due child support and 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

¹¹ Section 119.15(6)(b), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ Section 119.15(6)(a), F.S.

¹⁵ E-mail from Debbie Thomas, Analyst/Child Support Specialist, Department of Revenue, on file with the Committee on Children, Families, and Elder Affairs (August 6, 2008, 1:33 PM EDT).

¹⁶ *Id.*

¹⁷ Section 409.24659(1)(b), F.S., defines a claim as 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.

¹⁸ Chapter 2004-334, L.O.F. 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.

number for each noncustodial parent identified as having a claim.¹⁹ This data can only be used for purposes of child support enforcement.²⁰

Within the data match system, an insurer may provide DOR with this information in one of three ways:²¹

- 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 either of the two options mentioned above.

Public Records Exemption for Insurance Claim Data Exchange Information

Due to the variety of data submission methods allowed within the system, it is possible that DOR could receive personal information regarding persons who do not owe past-due child support. Therefore, s. 409.25661, F.S., provides that information obtained by DOR pursuant to s. 409.25659, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution until the department determines whether a match exists. If a match does exist, the match data is no longer considered to be confidential and exempt and becomes available for public disclosure.²² If a match is not made, the nonmatch information must be destroyed.²³

The Legislature found in 2004 that it is a public necessity that insurance claims information obtained by DOR pursuant to s. 409.25659, F.S., be made confidential and exempt until such time as the department determines whether a match is made with regards to a person who owes child support. 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 a government agency has collected such information.²⁴

The Legislative findings stated that 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.²⁵ The Legislative findings also noted that insurers might be less likely to provide the department with information regarding insurance claims if the insurer has concerns that such information will be made available for public disclosure.²⁶

¹⁹ Section 409.25659(2), F.S.

²⁰ Section 409.25659(5), F.S.

²¹ Section 409.25659(2)(a)-(c), F.S.

²² Section 409.25661(1), F.S.

²³ Section 409.25659(5), F.S.

²⁴ Chapter 2004-339, L.O.F.

²⁵ *Id.*

²⁶ *Id.*

The exemption thus appears to have an identifiable public purpose that meets the goal of protecting sensitive personal information as stated in s. 119.15(6)(b)2, F.S. This public purpose is compelling and cannot be accomplished without making the sensitive information exempt. Because the exemption is limited to sensitive personal information, it also appears to be no broader than necessary to meet the public purpose it serves.

Implementation of the Insurance Claim Data Exchange

The department reports that it does not currently match data files with insurance companies pursuant to s. 409.25659, F.S., which went into effect on October 1, 2004. According to DOR, upon enactment of the statute, the department immediately began taking steps to implement the statute by making contact with most of the top 25 insurers in the state. During this time, however, insurers were responding to claims resulting from damage caused during the 2004 hurricane season. Therefore, DOR decided to postpone work on the insurance claim data exchange program. The department did not attempt to re-initiate contact with the insurers and resume implementation activities due to the subsequent dedication of its resources to the statewide implementation of Phase I of the Child Support Enforcement Automated Management System (CAMS).²⁷

In February 2006, Congress enacted the Deficit Reduction Act of 2005. The act amended federal law to authorize 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 also allows HHS to furnish information resulting from the data matches to state agencies responsible for child support enforcement.²⁸

Due to the data exchange permissions provided for in the Deficit Reduction Act, DOR decided to postpone the resumption of implementation of the state program, choosing instead to monitor the results of a federal workgroup charged with implementing the nationwide insurance data match program in other states before implementing the federal program in Florida.²⁹

The department submitted its participation form for the federal program to the Federal Office of Child Support Enforcement on September 8, 2008 and began receiving matches on October 10, 2008. As of December 4, 2008, DOR had received 530 matches from the new program. Approximately 47 percent of these matches had already been received by the department through other means.³⁰

The department plans to integrate the federal data into CAMS on or after the statewide implementation of CAMS Phase II in March 2011.³¹

²⁷ Letter from Bob McKee, Deputy Executive Director, Department of Revenue, to PK Jameson, Staff Director, Senate Committee on Children, Families, and Elder Affairs (Sept. 5, 2008)(on file with committee staff).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Email from Debbie Thomas, Department of Revenue, to the Senate Committee on Children, Families, and Elder Affairs, (December 4, 2008, 8:21 AM)(on file with the committee).

³¹ *Id.*

III. Effect of Proposed Changes:

The bill reenacts and saves from repeal s. 409.25661, F.S., allowing certain information obtained through the state Insurance Data Exchange System to remain confidential and exempt from public disclosure.

The bill also schedules a new repeal date for the exemption of October 2, 2010, to allow for a review of the state insurance claim data exchange program to determine if it remains necessary after the success of the federal program can be assessed.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

This bill retains an existing public records exemption. This bill complies with the requirement of article I, section 24 of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The exemption may encourage insurers to voluntarily provide information regarding parents with claims to the insurers to the department, which could reduce costs associated with the collection of past-due child support.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department stated its concern that due to the recent implementation of the federal program, the repeal of the voluntary state program established in s. 409.25659, F.S., would eliminate Florida's ability to implement a state program if the federal program fails to gain sufficient insurance company participation. The department reported that it expects to be able to determine the success of the federal program by January 2010.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 26, 2009:

Instead of striking the automatic repeal language as the prior version of the bill did, the committee substitute schedules a new repeal date for the exemption of October 2, 2010, to allow for a review of the state insurance claim data exchange program to determine if it remains necessary after the success of the federal program can be assessed. The committee substitute also changes the effective date from October 1, 2009 to the date upon which the bill becomes law in order to allow the Division of Statutory Revision to certify the section for review in 2010.

- B. **Amendments:**

None.