

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 Committee on Rules

BILL: SB 1046

INTRODUCER: Senator Galvano

SUBJECT: Public Records/Motor Vehicle Crash Reports

DATE: April 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Everette</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 1046 expands a public record exemption restricting access to certain personal information contained in traffic crash reports obtained by the media.

Current law allows radio and television stations licensed by the Federal Communication Commission, newspapers qualified to publish legal notices, and certain free newspapers to request information contained in traffic crash reports. The bill requires and clarifies that these outlets may continue to make requests of traffic crash reports. However, for a period of 60 days after a report is filed, a crash report must be requested on an individual basis, and may not contain home, cellular, employment, or other telephone numbers, or the home or employment addresses of any of the parties involved in the crash.

The exemption is subject to repeal on October 2, 2019 unless reviewed and reenacted. Also provided is a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public records exemption and requires a two-thirds vote of the Legislature for passage.

II. Present Situation:

PIP Fraud

In a statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that 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. These runners generally work for attorneys, auto body shops, or health care professionals.¹

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.

.....
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.²

Crash Reports

Currently, s. 316.066(2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

Closing access to crash reports for 60 days helps protect crash victims and their families from illegal personal injury protection (PIP) solicitation.

The law also provides several exceptions to this public records exemption. Crash reports may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the 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

¹ 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 March 27, 2014).

² *Id.*

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.³

The exemption does not prevent state and federal government agencies acting in furtherance of their duties from having access to information in crash reports.⁴

A person attempting to access a crash report within 60 days after the date the report is filed must present identification and file a written sworn statement stating that confidential and exempt information contained in a crash report will not be used for commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt. The vendor must provide a copy of the contract to the agency.⁵

The law does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information.⁶

Criminal Penalties for Illegal Use of Crash Report Information:

Current law provides criminal penalties for malfeasant use of crash reports.

- Section 316.066(3)(c), F.S., provides that anyone, knowing that he or she is not entitled to obtain confidential and exempt information in a crash report, who obtains or attempts to obtain such information commits a third degree felony.
- Section 316.066(3)(d), F.S., provides that anyone who knowingly uses confidential and exempt information in a crash report in violation of a filed written sworn statement or contractual agreement commits a third degree felony.
- Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.⁷
- Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment

³ Section 316.066(2)(b), F.S. This section also provides that “the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.”

⁴ Section 316.066(2)(c), F.S.

⁵ Section 316.066(2)(d), F.S.

⁶ Section 316.066(2)(e), F.S.

⁷ Section 817.234(c), F.S.

directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.⁸

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.⁹ The records of the legislative, executive, and judicial branches are specifically included.¹⁰

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹¹ guarantees every person's right to inspect and copy any state or local government public record¹² at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹³

Only the Legislature may create an exemption to public records requirements.¹⁴ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁷

⁸ Section 817.505(4), F.S.

⁹ FLA CONST., art. I, s. 24(a).

¹⁰ Id.

¹¹ Chapter 119, F.S.

¹² Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

¹³ Section 119.07(1)(a), F.S.

¹⁴ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁷ FLA. CONST., art. I, s. 24(c).

General Public Records Exemption for Victims of Crimes and Accidents

There is a general public records exemption for police reports protecting victims of crimes and accidents. This law provides that no one may use confidential or exempt information contained in accident reports to solicit victims or disclose that information to a third party who would solicit victims while records are confidential or exempt.¹⁸ This prohibition does not apply to publication by the media.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act), s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴

¹⁸ Section. 119.105, F.S.

¹⁹ Section. 119.105, F.S.

²⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ *Id.*

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- 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? If so, how?
- Is the record or meeting protected by another exemption?

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

III. Effect of Proposed Changes:

Section 1 amends the current public records exemption for crash reports by prohibiting radio and television stations, and newspapers qualified to publish legal notices, and certain free newspapers from obtaining the personal and work addresses and phone numbers of individuals involved in an accident. The media will not have access to this information for 60 days. The identities of the individuals in a crash report are not included in this exemption and remain accessible to the media.

In addition, traffic crash report requests must be filed on an individual basis. This measure would eliminate bulk public records requests being made for crash reports.

Under the bill, this public records exemption is subject to repeal on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides that personal contact information contained in a motor vehicle crash report be exempt from public records disclosure. It is public necessity that personal information by radio, television stations, and newspapers be restricted for the 60-day period after the filing date of traffic crash reports. The restriction is to combat widespread insurance fraud that occurs when information is unlawfully used to contact the parties involved in a crash. Moreover, the exemption prohibits the media's access to addresses and telephone numbers of the parties involved in crashes in order to protect the parties from those who would unlawfully solicit and make claims against their personal injury protection insurance policies.

This act shall take effect on the same date that CS/SB 876 or HB 865 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

• Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

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

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill substantially amends an exception to the current public records exemption, it expands the exemption and therefore it requires a two-third vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill expands an existing public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The last paragraph in s. 316.066(2), F.S., and CS/SB 876 (which amends s. 316.066(2), F.S.) is paragraph “(e).” This bill is currently drafted to create s. 316.066(2)(g) and will have to be amended to become s. 316.066(2)(f).

The public necessity statement appears to be facially constitutional, in that the public necessity statement justifies, with specificity, the necessity for the exemption and the exemption is no broader than is necessary to accomplish its purpose.²⁶ The public necessity statement provides that this exemption is necessary in order to protect the public from insurance fraud and

²⁶ Article 1, Section 24, of the Florida Constitution provides in pertinent part:

The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

illicit solicitations, thus implying that unscrupulous actors are using lawful media access for illicit purposes. It is unclear if the public necessity statement is not legally sufficient because it does not explicitly articulate the nexus between the media's lawful access to information in crash reports and the unlawful use of confidential and exempt information by unscrupulous actors.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.