

**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.)

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Prepared By: The Professional Staff of the Committee on Transportation

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BILL: SPB 7040

INTRODUCER: Transportation Committee

SUBJECT: Public Records/Electronic Mail Addresses/Department of Highway Safety and Motor Vehicles

DATE: March 5, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Eichin</u>	_____	<b>TR Submitted as Committee Bill</b>

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## I. Summary:

SB 7040 creates an exemption for certain customer e-mail addresses held by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill creates an exemption for e-mail addresses collected by the DHSMV for conducting driver license and motor vehicle record transactions.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

## II. Present Situation:

### Public Records Laws

The State 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.<sup>1</sup> The State Constitution states that the records of the legislative, executive, and judicial branches are all subject to public disclosure.<sup>2</sup>

Only the Legislature may create an exemption to public records requirements.<sup>3</sup> There is a difference between records the Legislature designates as ‘exempt’ from public records requirements and those the Legislature designates as ‘confidential and exempt.’ A record

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> FLA. CONST., art. I, s. 24(c).

classified as exempt from public disclosure may be disclosed under certain circumstances.<sup>4</sup> If the Legislature designates a record as confidential and exempt from public disclosure, a public records custodian may not release the record to anyone other than the persons or entities specifically designated in the statutory exemption.<sup>5</sup>

An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>6</sup> 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 provisions<sup>7</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>8</sup>

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>9</sup> 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.<sup>10</sup>

### **Public Records Status of E-mail Addresses and Agency Website Notice**

Under Florida law, e-mail addresses are public records.<sup>11</sup> Agency<sup>12</sup> websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send e-mail to the agency if they do not want their e-mail address released in response to a public records request.<sup>13</sup>

### **DHSMV**

The DHSMV is the custodian of motor vehicle records<sup>14</sup> containing personal information about drivers and motor vehicle owners. Florida's motor vehicle records contain personal information such as a driver's social security number, driver license number, name, address, telephone

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<sup>4</sup> *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)

<sup>5</sup> Op. Att'y Gen. Fla. 85-62 (1985)

<sup>6</sup> FLA. CONST., art. I, s. 24(c).

<sup>7</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>8</sup> FLA. CONST., art. I, s. 24(c).

<sup>9</sup> Section 119.15, F.S.

<sup>10</sup> Section 119.15(3), F.S.

<sup>11</sup> Section 119.011(12), F.S., defines "public records" as "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." See Attorney General Opinion 96-34, May 15, 1996.

<sup>12</sup> Section 119.011(2), F.S., defines "agency" 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."

<sup>13</sup> Section 668.6076, F.S.

<sup>14</sup> Section 119.0712(2)(a), defines the term "motor vehicle record" to mean "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles."

number, and medical or disability information. Additionally, the DHSMV is authorized to collect e-mail addresses from customers and use e-mail for notification when conducting certain driver license and motor vehicle transactions.<sup>15</sup>

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

Congress enacted the federal Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA prohibits the release and use of certain personal information from State motor vehicle records, and provides permissible uses and authorized disclosures of such information.<sup>16</sup> The DPPA defines "personal information" as information that identifies an individual, including the individual's:

- Photograph;
- Social security number;
- Driver identification number;
- Name;
- Address;
- Telephone number; and
- Medical or disability information.<sup>17</sup>

Section 119.0712(2), F.S., provides that "personal information" contained in a motor vehicle record, as defined by the DPPA, is confidential. This "personal information" may be released only as authorized by the DPPA. Furthermore, emergency contact information, including emergency contact e-mail addresses, contained in a motor vehicle record is confidential and exempt from the state's public records laws.<sup>18</sup> Without the express consent to whom such emergency contact information applies, the information may be released only to law enforcement agencies to contact those listed in the event of an emergency.<sup>19</sup>

### **E-mail Addresses and Crimes**

The DHSMV was the subject of an e-mail phishing incident in which fraudsters used the Department's name and e-mail address, DoNotReply@flhsmv.gov, to send e-mails containing transactional receipts to the public. The e-mails directed the recipient to visit a third party website, which may have contained computer programs designed to harm the user.<sup>20</sup>

The Better Business Bureau posted an alert on its website, as well, warning individuals of e-mail phishing scams. They specifically address e-mails containing confirmation messages for recent driver license and vehicle registration renewals appearing to come from the DHSMV.<sup>21</sup> The

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<sup>15</sup> See ss. 319.40(3), 320.95(2), and 322.08(8), F.S.

<sup>16</sup> 18 U.S.C. s. 2721.

<sup>17</sup> 18 U.S.C. s. 2725.

<sup>18</sup> Section 119.0712(2)(c), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Department of Highway Safety and Motor Vehicles, *Fraudsters Use Agency's Name and Email Address for Phishing Expedition- Highway safety agency warns of email spam*, Press Release, Feb. 7, 2013, available at <http://www.flhsmv.gov/news/pdfs/PR020713a.pdf> (Last visited on March 1, 2015).

<sup>21</sup> Better Business Bureau, *Phishing Email Poses as Florida DMV*, Feb. 22, 2013, <http://www.bbb.org/blog/2013/02/phishing-email-poses-as-florida-dmv/> (Last visited March 1, 2015).

e-mail includes a link directing the individual to a third-party website meant to download malware, which may be used to scan a computer for personal information that could be used for identity theft.

### III. Effect of Proposed Changes:

The bill makes customer e-mail addresses collected by the DHSMV exempt from the state's public records laws if the e-mail addresses are collected by the DHSMV specifically for:

- Sending a notification regarding motor vehicle titles, pursuant to s. 319.40(3), F.S.;
- Providing a renewal notice for a motor vehicle license or registration, pursuant to 320.95(2), F.S.; and
- Providing a renewal notice for a driver license or identification card, pursuant to 322.08(8), F.S.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity states the Legislature finds e-mail addresses are unique to an individual and, when combined with other personal identifying information, can be used for identity theft, consumer scams and invasive contacts. The public necessity statement provides that the exemption helps protect customers from this increased risk.

The bill takes effect on July 1, 2015.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

### IV. Constitutional Issues:

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

None.

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

##### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it requires a two-thirds vote for final passage.

##### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for customer e-mail addresses collected by the DHSMV; thus, it includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of DHSMV customers when those e-mail addresses are collected for the purposes named in the bill. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill provides greater consumer protection of DHSMV customer's e-mail addresses.

**C. Government Sector Impact:**

The bill may have a minimal fiscal impact on the DHSMV due to costs associated with training staff to comply with the new public records exemption, and redacting information prior to releasing a record.

To the extent this exemption encourages customers to choose to conduct driver license and motor vehicle record transactions via e-mail, the DHSMV will reduce the amount of money spent on postage.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0712 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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