

**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 Governmental Oversight and Accountability

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BILL: CS/SB 1768

INTRODUCER: Banking and Insurance Committee and Senator Lee

SUBJECT: Public Records/Medical Payments Coverage and Liability Motor Vehicle Insurance Policies/Department of Highway Safety and Motor Vehicles

DATE: April 21, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1768 amends s. 324.242, F.S., to revise the public records exemption for information in personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill makes personal identifying information and insurance policy numbers of insureds confidential and exempt from public disclosure. The bill applies the public records exemption to medical payments coverage and motor vehicle liability insurance policies, instead of personal injury protection and property damage. The change is necessary because SB 1766, the linked substantive bill, repeals the Florida Motor Vehicle No-Fault Law, which requires personal injury coverage, and will create bodily injury liability financial responsibility requirements.

The bill will only take effect if SB 1766, or similar legislation, is adopted during this legislative session or an extension thereof and becomes law.

The public records exemption will be subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, a two-thirds vote from each chamber is required for passage.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory

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

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public record exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR 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.<sup>17</sup> 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 program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>23</sup>

### **Section 324.242, F.S., Exemption**

Every Florida registrant of a motor vehicle must obtain and provide proof of holding a motor vehicle insurance policy that includes \$10,000 in personal injury protection (PIP).<sup>24</sup> Additionally, s. 324.022, F.S., requires owners and operators of Florida-registered motor vehicles to maintain the ability to pay at least \$10,000 in property damage, which may be met by maintaining \$10,000 in property damage liability coverage.<sup>25</sup> A higher financial requirement is placed on commercial motor vehicles, taxicab owners and operators, for-hire passenger transportation vehicles, and registered vehicle owners or operators found guilty or that have plead *nolo contendere* to driving under the influence.<sup>26</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) is notified by insurers that supply policies with personal injury protection or property damage liability coverage of renewals, cancellations, and non-renewals of these policies within 45 days of their effective dates, as required by s. 324.0221, F.S. The insurer must also notify the named insured in writing of the cancellation or non-renewal of a policy and give notice of the consequences from the failure of maintaining PIP and property damage coverage, including the loss of registration, loss of driving privileges, and imposition of reinstatement fees. The records held by the DHSMV contain the insurance company code, the policy number, driver's license number, personal identifying information (name and address), and information identifying the vehicle, including the vehicle identification number and the make, model, and year of the vehicle.

Section 324.242, F.S., exempts from public records requirements personal identifying information, including the name, address, driver's license number of insureds and former insureds, and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies.<sup>27</sup> The exemption serves to protect sensitive personal information concerning individuals whose reputation or safety from identity theft would be jeopardized if the information were released. The exemption also protects confidential information used for business advantage against competitors. The disclosure of this information could injure insurance

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3. What is the identifiable public purpose or goal of the exemption?
  4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
  5. Is the record or meeting protected by another exemption?
  6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Section 627.733, F.S.

<sup>25</sup> Section 324.022, F.S.

<sup>26</sup> See ss. 324.023, F.S., and 324.032, F.S.

<sup>27</sup> The statutory predecessor to s. 324.242, F.S., was s. 627.736(9)(a), F.S., which was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007.

companies in the market since competitors would be able to solicit the business of their policyholders. The information exempted by s. 324.242, F.S., is neither obtainable by alternate means nor protected under other exemptions. However, under s. 324.242, F.S., the DHSMV must release the policy number for a vehicle involved in an accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident upon receipt of a written request and copy of the crash report.

### **SB 1766 (2017)**

SB 1768 is linked to SB 1766. SB 1766 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain \$10,000 Personal Injury Protection (PIP) coverage. SB 1766 replaces the PIP coverage mandate with a medical payments (MedPay) coverage mandate of \$5,000. MedPay coverage under SB 1766 provides substantially similar coverage to current PIP medical benefits, except that it provides reimbursement for 100 percent of covered medical losses, whereas PIP reimburses only 80 percent of covered medical losses.

SB 1766 enacts financial responsibility requirements for damages for liability on account of accidents arising out of the ownership, maintenance, or use of a motor vehicle. SB 1766 retains the \$10,000 financial responsibility requirement for property damage that is in current law.

The effective date of SB 1766 is January 1, 2018.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 324.242, F.S., to revise the public records exemption for personal identifying information of an insured or former insured as well as for insurance policy numbers in the current law for in personal injury protection and property damage liability policies held by the DHSMV. The bill applies the public records exemption for personal identifying information and insurance policy numbers to Medpay coverage and motor vehicle liability insurance policies. (Motor vehicle liability encompasses bodily injury liability and property damage liability insurance coverage.) The bill does not change what information the exemption holds confidential and exempt. The change is necessary because SB 1766 will repeal the Florida Motor Vehicle No-Fault Law which requires personal injury coverage, and will create bodily injury liability financial responsibility requirements.

The public records exemption will be subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** justifies the exemption through legislative findings that it is a public necessity to make certain information regarding bodily injury liability insurance and medical payments coverage policy held by the DHSMV confidential and exempt. The section states that it is imperative that automobile drivers be properly insured to ensure public safety on the roads and highways. Consequently, insurers must report to the DHSMV and verify the issuance, renewal, nonrenewal, or cancellation of motor vehicle insurance policies. The information includes the personal

identifying information of insureds and former insureds as well as insurance policy numbers. This information, if compiled, could create customer lists for each insurer in the state, which are traditionally considered proprietary business information. Further, public access to such information could be used to perpetuate fraud against an insured, put him or her at risk, or make the insured the target of uninvited solicitations from other insurers and others seeking to profit from motor vehicle accidents.

**Section 3** makes the act effective on the same date that SB 1766 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

#### **IV. Constitutional Issues:**

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

None.

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

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 records exemption.

The bill contains the public necessity statement required by Article I, s. 24(c) of the Florida Constitution for a newly-created or expanded public records or public meetings exemption.

##### **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:**

None.

**VII. Related Issues:**

The substantive bill, SB 1776, permits people to hold over their PIP insurance coverage after January 1, 2018, until they renew their insurance policies. After January 1, 2018, drivers and owners will be required to purchase Medpay coverage. SB 1778 may inadvertently remove the public records exemption for people who have PIP insurance coverage before they are required to switch to Medpay coverage.

**VIII. Statutes Affected:**

This bill substantially amends section 324.242 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.)

**CS by Banking and Insurance on April 13, 2017:**

Provides that the bill is effective on the date SB 1766, or similar legislation, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

- B. **Amendments:**

None.