

**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 686

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Public Records/Internet Identifiers

DATE: April 14, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 686 provides that electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority are exempt from public disclosure. This exemption applies to records held before, on, or after the effective date of the bill. However, a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier is registered in the Florida Department of Law Enforcement sexual offender and sexual predator registry.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a public necessity statement as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

This bill becomes effective at the same time that SB 684 or similar legislation takes effect.

## II. Present Situation:

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,<sup>1</sup> and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;<sup>2</sup>
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.<sup>3</sup>

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, (the date the modern registry became effective), from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.<sup>4</sup>

Sexual predators and sexual offenders are required to report certain information, including electronic mail addresses<sup>5</sup> and Internet identifiers.<sup>6</sup> The FDLE may provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sexual offender

<sup>1</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606-944.607, and 985.481-985.4815, F.S.

<sup>2</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>3</sup> Section s. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

<sup>4</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the supervision of the Department of Corrections, also define the term "sexual offender."

<sup>5</sup> An "electronic mail address" is defined in s. 775.21(2)(g), F.S., as having the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., defines an "electronic mail address" as a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

<sup>6</sup> Requirements to report electronic mail addresses and Internet identifiers and changes in this information are in: s. 775.21(6)(a), (e), and (g) and (8), F.S.; s. 943.0435(2)(a), (4)(e), and (14)(c), F.S.; s. 944.607(4)(a) and (13)(c), F.S.; and s. 985.4815(4)(a) and (13)(b), F.S.

registry to commercial social networking websites<sup>7</sup> or third parties designated by commercial social networking websites.<sup>8</sup> The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the FDLE.<sup>9</sup>

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders,<sup>10</sup> but the frequency of reregistration may differ.<sup>11</sup> Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ.<sup>12</sup>

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.<sup>13</sup> Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.

Florida's registry laws meet minimum requirements of the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA).<sup>14</sup> The SORNA attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National

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<sup>7</sup> For the purpose of s. 943.0437, F.S., the term "commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

<sup>8</sup> Section 943.0437(2), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Sexual predator reporting requirements are in s. 775.21(6) and (8), F.S. Sexual offender reporting requirements are in ss. 943.0435(2-4), (7-8), and (14), 944.607(4), (9), and (13), and 985.4815(4), (9), and (13), F.S.

<sup>11</sup> A sexual predator is required to reregister each year during the month of the predator's birthday and during every third month thereafter. Section 775.21(8), F.S. A sexual offender convicted of any listed offense in s. 943.0435(14)(b), F.S., must reregister in the same manner as a sexual predator. Any other sex offender must reregister each year during the month of the offender's birthday and during the sixth month following the offender's birth month. Section 943.0435(14)(a), F.S.

<sup>12</sup> See footnote 10.

<sup>13</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. "About Us" (updated October 1, 2016), Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on March 13, 2017). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. Offender searches and other information may be accessed from "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on March 13, 2017).

<sup>14</sup> 42 U.S.C. Sections 16911 *et seq.* The Department of Justice issued guidelines for the implementation of the SORNA. The final guidelines (July 2008) and supplemental guidelines (January 11, 2011) may be accessed at "Guidelines," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* <https://ojp.gov/smart/guidelines.htm> (last visited on March 13, 2017).

Sex Offender Public Website (NSOPW).<sup>15</sup> States may choose not to substantially implement the SORNA, but the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.<sup>16</sup> The DOJ has determined that Florida has substantially implemented the SORNA.<sup>17</sup>

### **Preliminary Injunction Precluding Enforcement of the Current Definition of Internet Identifier**

As previously noted, sexual predators and sexual offenders are required to report certain information, including Internet identifiers. The requirement to report Internet identifiers was created by the Legislature in 2014.<sup>18</sup> In 2016, the Legislature modified the original definition of “Internet identifier.”<sup>19</sup> This modified definition, which was to take effect on October 1, 2016,<sup>20</sup> expanded the original definition to include Internet identifiers associated with a website, URL<sup>21</sup> or software applications.

Section 775.21(2)(j), F.S., provides that an “Internet identifier” includes, but is not limited to, all websites, URLs and application software mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.<sup>22</sup>

Shortly before the amended definition of “Internet identifier” was slated to take effect, a group of plaintiffs in Florida who had been convicted as sexual offenders filed a lawsuit against the

<sup>15</sup> Offender searches and other information may be accessed from “NSPOW,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on March 13, 2017).

<sup>16</sup> *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance, U.S. Department of Justice (updated January 1, 2016) available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266685> (last visited on March 13, 2017).

<sup>17</sup> “Jurisdictions that have substantially implemented SORNA,” Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at [http://www.ojp.usdoj.gov/smart/newsroom\\_jurisdictions\\_sorna.htm](http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm) (last visited on March 13, 2017).

<sup>18</sup> Chapter 2014-5, Laws of Fla.

<sup>19</sup> Chapter 2016-104, Laws of Fla, (amending s. 775.21(2)(i), F.S., and renumbering it as s. 775.21(2)(j), F.S.). The original definition of “Internet identifier” was all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but did not include a date of birth, social security number, or PIN. Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waived the disclosure exemption in this paragraph for such personal information. Section 775.21(2)(i), F.S. (2014).

<sup>20</sup> *Id.*

<sup>21</sup> “URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files).” “ARCHIVED: What is a URL?”, Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last visited on March 14, 2017).

<sup>22</sup> Sections 943.0435(1)(e), 944.607, and 985.4815, F.S., provide that “Internet identifier” has the same meaning as provided in s. 775.21, F.S.

Commissioner of the FDLE in the United States District Court for the Northern District of Florida, Tallahassee Division.<sup>23</sup> The plaintiffs argued that the prior and amended definition of “Internet identifier” violated the First Amendment and raised a vagueness challenge. The plaintiffs also moved for a preliminary injunction, which the court treated as a challenge only to the amended definition.

The court found the current definition is “hopelessly vague, chills speech protected by the First Amendment, and is far broader than necessary to serve the state’s legitimate interest in deterring or solving online sex crimes.”<sup>24</sup> The court granted the preliminary injunction.

The court stated the definition “sets no outer limit, because the term is expressly ‘not limited to’ what the definition says. Having jettisoned the ordinary understanding and replaced it with an expressly unlimited description, the definition leaves a sex offender guessing at what must be disclosed.”<sup>25</sup> The court also stated that the definition, “at least on many plausible readings, is hopelessly and unnecessarily broad in scope.” One of the examples the court cited in its finding was that of a registered sex offender, John Doe’s, subscription to a digital newspaper. In the court’s illustration, Mr. Doe, receives an e-mail every morning with the day’s headlines and e-mails every day with additional articles or breaking news. The court continued:

He plainly must register at least the URL for the newspaper, if not the URL for every article the newspaper sends. But the State has absolutely no legitimate interest in requiring a sex offender to register the URL of the newspaper or articles the offender reads. And if Mr. Doe chooses one day to make a comment on an article, he must now figure out whether the same URL is in use, and he must make his identity available to the public. Unlike every other subscriber or member of the public, Mr. Doe cannot comment anonymously. *See White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (holding that enforcement of a registration requirement would irreparably harm a registered sex offender “by chilling his First Amendment right to engage in anonymous free speech”).<sup>26</sup>

The order states that the preliminary injunction remains in effect until entry of a final judgment in the case or until otherwise ordered. The injunction prohibits the FDLE Commissioner<sup>27</sup> from taking any action based on the current definition of “Internet identifier.” However, the injunction does not preclude enforcement of the prior definition.

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<sup>23</sup> The plaintiffs filed this action against current FDLE Commissioner Richard “Rick” L. Swearingen in his official capacity. Preliminary Injunction, *Doe I et al. v. Swearingen, etc.*, Case No. 4:16-00cv501-RH-CAS (N.D. Fla. Sept. 27, 2016) (on file with the Senate Committee on Criminal Justice). All information regarding this case is from this source.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* The injunction also binds the Commissioner’s “officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise.” *Id.*

## 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>28</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>29</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>30</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>31</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>32</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>33</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>34</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>35</sup>

The Legislature may create an exemption to public records requirements.<sup>36</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>37</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>38</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>39</sup>

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<sup>28</sup> FLA. CONST., art. I, s. 24(a).

<sup>29</sup> *Id.*

<sup>30</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>31</sup> Public records laws are found throughout the Florida Statutes.

<sup>32</sup> Section 119.01(1), F.S.

<sup>33</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>34</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>35</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>36</sup> FLA. CONST., art. I, s. 24(c).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</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).

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>40</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>41</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>42</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>43</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>44</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>45</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>46</sup> or
- It protects trade or business secrets.<sup>47</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>48</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>40</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>41</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>42</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>43</sup> Section 119.15(3), F.S.

<sup>44</sup> Section 119.15(6)(b), F.S.

<sup>45</sup> Section 119.15(6)(b)1., F.S.

<sup>46</sup> Section 119.15(6)(b)2., F.S.

<sup>47</sup> Section 119.15(6)(b)3., F.S.

<sup>48</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?
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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>49</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>50</sup>

### III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create a new paragraph (l), which provides that electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S., are exempt from public disclosure.

The bill references definitions for “electronic mail address” and “Internet identifier.” “Electronic mail address” has the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., provides that “electronic mail address” means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered. “Internet identifier” has the same meaning as provided in s. 775.21, F.S. The substantive linked bill, CS/SB 684, provides that “Internet identifier” means:

any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, personal identification number (PIN), password, or other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph and in s. 119.071(5)(l) for such personal information.<sup>51</sup>

This exemption applies to records held before, on, or after the effective date of the bill.

The bill expressly states that a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier reported pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S., is registered in the FDLE sexual offender and sexual predator registry.

The bill provides that the exemption is subject to the OGSR Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

<sup>49</sup> FLA. CONST. art. I, s. 24(c).

<sup>50</sup> Section 119.15(7), F.S.

<sup>51</sup> This is the definition as amended by the CS/SB 684. Coding has been removed.



The bill includes a public necessity statement as required by the Florida Constitution.<sup>52</sup> The statement includes the following legislative findings that it is a public necessity to create the exemption:

- The exemption strikes an important balance between the government’s legitimate interest in public safety and protecting individuals’ rights afforded under the Florida Constitution and First Amendment rights protected by the United States Constitution.
- The exemption maintains the ability of members of the public to confirm whether an electronic mail address or Internet identifier is associated with or is contained in the sexual offender and sexual predator registry without obtaining the personal identifying information of the registrant associated with this information.
- The exemption allows members of the public access to safety information which assists them in making informed decisions regarding communicating or otherwise interacting with registered sexual predators and sexual offenders.
- The exemption preserves the ability of criminal justice agencies to access valuable investigative information.
- Criminal justice agencies are tasked with the prevention of crimes to protect residents, particularly children, from sexual exploitation through investigating and bringing offenders to justice.
- As daily life necessitates increasing dependence upon access to the Internet, sexual exploitation through the use of the Internet grows as well.
- There is a nexus between commercial social networking sites and Internet sex crimes. Commercial social networking sites are widely used among youth and adults for introduction, communication, and publication of personal details that may be exploited.
- Locating missing children, sexual predators, and sexual offenders who have evaded registration is greatly aided through the use of registered electronic mail addresses and Internet identifiers.
- Without the exemption, criminal justice agencies may lose access to information which has become a valuable investigative tool since the inception of this registration requirement.
- Absent a registration requirement for electronic mail addresses and Internet identifiers, investigative agencies will be severely hampered in the growing call to protect Florida residents from sexual exploitation online.
- Electronic mail addresses and Internet identifiers have an exceptional distinction from other registration requirements in that they are used as unique personal identifiers for speech and communication, and because of this distinction, a public records exemption is required to avoid any appearance of infringement on registrants’ constitutional rights.
- If the ability to collect this information were prevented, it would greatly disrupt the ability of criminal justice agencies to use this essential information in combatting the prevalent problem of online sexual exploitation of children.

The bill also directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” whenever it occurs in this act with the date the act becomes a law.

The bill takes effect on the same date that SB 684 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

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<sup>52</sup> Article I, s. 24(c), FLA. CONST.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

**Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement.

**Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the public records exemption is no broader than necessary to accomplish its stated purpose.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Connected Bill**

A connected bill, CS/SB 684 (2017), revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers. These revisions include modifying the definition of the term “Internet identifier” and defining a connected term “social Internet communication.” The bill also requires a sexual predator and sexual offender to report each Internet identifier’s corresponding website homepage or application software name.

**Access to Sex Offender Registry Information**

The bill does not affect the public’s access to information currently available on the sex offender registry. The online registry does not include sex offenders’ electronic mail addresses or Internet identifiers.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on April 3, 2017:**

The committee substitute:

- Specifies that the public records exemption applies to electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority.
- Removes language stating that the electronic mail addresses and Internet identifiers can be used “only by criminal justice agencies for criminal justice purposes.”
- Removes language precluding disclosure of personal identification information linked to exempt electronic mail addresses and Internet identifiers.
- Removes language authorizing the FDLE to provide exempt information pursuant to s. 943.0437, F.S. (commercial social networking sites).
- Revises the public necessity statement.
- Revises the effective date by providing a contingent effective date (effective on the same date that SB 684 or similar legislation takes effect in the same session).

- B. **Amendments:**

None.