

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 Appropriations

BILL: CS/SB 1326

INTRODUCER: Transportation Committee and Senator Harrell

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

DATE: April 14, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|-----------|--------------------|
| 1. | <u>Proctor</u> | <u>Vickers</u> | <u>TR</u> | <u>Fav/CS</u> |
| 2. | <u>Wells</u> | <u>Sadberry</u> | <u>AP</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 creates public record exemptions related to creation of a digital proof of driver license and identification card and an electronic credentialing system to use such digital cards. The bill makes the following information exempt from public records:

- Secure login credentials held by the Department of Highway Safety and Motor Vehicles (DHSMV); and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses the public-facing portal.

The bill is subject to the Open Government Sunset Review Act and the new exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill takes effect on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy 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.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each chamber of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives* (2020-2022)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ 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.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Driver Privacy Protection Act of 1994

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act of 1994.²⁷ Personal information covered by the act includes: access to an individual's social security number, driver license or identification card number, name, address (except the zip code), telephone number, and medical or disability information contained in motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to s. 119.0712(2), F.S.²⁸

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ 18 USC 2721 et seq., and s. 119.0712(2), F.S.

²⁸ DHSMV, *Privacy Statement: Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on April 8, 2021).

Information that is not covered by the Driver's Privacy Protection Act, and therefore considered public information, includes non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations, and driver status information.²⁹

The Driver's Privacy Protection Act allows the release of personal information in motor vehicle and driver license records for specific permissible uses. These include uses for:³⁰

- Matters related to motor vehicle or driver safety and theft, motor vehicle recalls;
- By any government agency, including any court or law enforcement agency, in carrying out its functions;
- Verifying personal information submitted in the normal course of business by a legitimate business or its agents, employees, or contractors;
- Claims investigation activities, antifraud activities, rating, or underwriting by insurers;
- Other activities when there is consent of the individual to whom the information pertains; and
- Other specifically authorized activities under state law if such use is related to the operation of a motor vehicle or public safety.

SB 1324 – Digital Driver Licenses and Identification Cards

SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The bill amends s. 322.032, F.S., to authorize the DHSMV to contract with one or more private entities to develop an electronic credentialing system, which is defined as a computer system accessed using a computer, a cellphone, or any other personal device which queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system. The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual.

III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., creating public record exemptions for the following information held by the DHSMV before, on, or after the effective date of the exemption (July 1, 2021):

- Secure login credentials; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user

²⁹ *Id.*

³⁰ 18 USC 2721(b) (2000). *See also* Driver's Privacy Protection Act exemptions listed in DHSMV forms *Driver License Records Request*, HSMV 90511 (Revised 11/19), available at <https://www.flhsmv.gov/pdf/forms/90511.pdf> and *Motor Vehicle, Vessel, and Mobile Home Records Request*, HSMV 90510 (Revised 03/19), available at <https://www.flhsmv.gov/pdf/forms/90510.pdf> (both last visited April 8, 2021).

accesses a public-facing portal and the dates and times that a user accesses a public-facing portal.

The bill defines “secure login credentials” as:

- Information collected or issued by the DHSMV to authenticate a user logging into an account on a computer, computer system, computer network, or an electronic device; or
- An online user account accessible over the Internet by a mobile device, website, or other electronic means.
- The term includes user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

The bill defines “public-facing portal” as a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering motor vehicle titles and registrations, driver licenses, identification cards, vessel titles and registrations, or any other provision of law conferring duties upon the DHSMV.

The bill is subject to the Open Government Sunset Review Act and the exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill contains a public necessity statement as required by the Florida Constitution. It provides that the Legislature finds that:

- Safeguarding the integrity and accuracy of data systems maintained by the DHSMV is of paramount public importance. Because the data systems contain critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records, some of which is also protected from disclosure by the federal Driver’s Privacy Protection Act, unauthorized access to the systems poses a serious threat to the integrity and accuracy of the data contained therein. Additionally, unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts.
- Development in information technology allows the DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet. However, public release of users secure login credentials, Internet protocol addresses, and geolocation data could make the data systems vulnerable to unauthorized access.
- To safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records requirements. Without the public records exemption, the effective and efficient administration of user accounts would be hindered.

The bill is effective on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for secure login credentials held by the DHSMV and Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal and the dates and times that a user accesses a public-facing portal. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

The purpose of the law is to protect secure login credentials and certain Internet protocol addresses, geolocation data, and other information held by the DHSMV. This bill exempts only that specific information. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

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.)

CS by Transportation on March 10, 2021:

- Amends the effective date to reflect the linked bill SB 1324.

B. Amendments:

None.