

1989

Session Law 89-048

Florida Senate & House of Representatives

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**H 409 GENERAL BILL/1ST ENG by Governmental Operations;
Martin (Similar S 106)**
Motor Vehicle/Mobile Home/Regis. (OPEN GOVERNMENT SUNSET RE-
VIEW) continues & expands public records law exemption for motor veh. regis-
trations & lic. plates issued under fictitious names to law enf. agencies & public
defender's offices; continues restriction on access to motor vehicle registration
records to persons furnishing positive proof of ID but eliminates that restriction
re mobile home reg. records; provides for future legislative review, etc. Amends
320.025,.05. Effective Date: 10/01/89.
02/24/89 HOUSE Prefiled
02/28/89 HOUSE Placed on Calendar
04/04/89 HOUSE Introduced, placed on Calendar -HJ 46
04/06/89 HOUSE Placed on Special Order Calendar; Read second time;
Amendments adopted -HJ 163
04/11/89 HOUSE Read third time; Passed as amended; YEAS 113 NAYS 0
-HJ 191
04/12/89 SENATE In Messages
04/19/89 SENATE Received, referred to Transportation -SJ 194
04/28/89 SENATE Extension of time granted Committee Transportation
05/12/89 SENATE Extension of time granted Committee Transportation
05/26/89 SENATE Extension of time granted Committee Transportation
05/31/89 SENATE Withdrawn from Transportation; Substituted for SB 106;
Passed; YEAS 35 NAYS 0 -SJ 657
05/31/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/15/89 Approved by Governor; Chapter No. 89-48

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0409-f.go
DATE: June 20, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 409 (PCB GO 89-3)

RELATING TO: Confidentiality of Registrations and Inspections-DHSMV

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 15, 1989

CHAPTER #: 89-48, Laws of Florida

COMPANION BILL(S): SB 106 (similar)

OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SHORT SUMMARY:

Section 320.025, Florida Statutes, allows law enforcement agencies and public defenders to obtain registrations and license plates using a fictitious name for the purpose of performing investigative or covert operations. The records of the fictitious registrations and license plates are exempt from the public records law. This exemption allows law enforcement agencies to effectively use covert activities in fighting crime.

Section 320.05, Florida Statutes, provides that motor vehicle and mobile home registrations may be inspected under conditions prescribed in the statute. This exemption protects information that could cause an individual harm if released without controls.

This bill reenacts the exemption found in s. 320.025, Florida Statutes, and reenacts, with modifications, the exemption found in s. 320.05, Florida Statutes.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified at section 119.01, Florida Statutes:

It is the policy of this state that all state, county, and municipal records shall at all

times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in section 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that section, but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

- 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 information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Second, the law requires that the exemption will be maintained only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; or
- protect information of a sensitive personal nature concerning individuals if its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or its release would jeopardize the safety of such individuals; or
- protect information of a confidential nature concerning entities which include formulas, patterns, devices,

combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it if its disclosure would injure the affected entity in the marketplace.

B. PRESENT SITUATION:

Section 320.025, Florida Statutes, allows law enforcement agencies and public defenders to obtain confidential or fictitious registrations and license plates for the purpose of performing duties requiring concealment of the registrant's true identity.

There are currently 11,126 confidential tags in use in Florida. According to the Department of Highway Safety and Motor Vehicles, the identity of the owners of vehicles registered with confidential plates should not be released to the public because the information could jeopardize undercover investigations and place law enforcement personnel in danger.

Section 320.05, Florida Statutes, requires that the Department of Highway Safety and Motor Vehicles open motor vehicle and mobile home registration records to the public for inspection with certain restrictions. Registration records may be inspected during business hours, but the person making the request must provide positive proof of identification. The department then records the name and address of the person requesting this information and the name and address of the person who is the subject of the inquiry. The records are then kept for a period of six months.

The Department of Highway Safety and Motor Vehicles has construed s. 320.05, Florida Statutes, to allow certain entities access to registration information via the telephone. Entities provided information over the telephone are attorneys, financial institutions, tax collectors, auto dealers, law enforcement, department inspectors and personnel, insurance companies, newspapers, state representatives and senators, U.S. representatives and senators, the Internal Revenue Service, and private investigators who are registered under chapter 493, Florida Statutes.

The department believes that if an individual knows a person's license plate number, he may obtain that person's address in order to commit a crime against him. The department also believes that without the restrictions the Bureau of Registration Services could not process the large volume of inquiries it receives.

The department does not, however, believe that the restriction should apply to motor home registration records. The number of requests the department receives over the telephone for motor home registrations is negligible. In addition to the low volume of requests, the department believes that since mobile homes are usually stationary, the restriction serves no purpose. If an

individual's address is known, the restriction offers him no protection.

Staff believes that the exemptions found in ss. 320.025 and 320.05, Florida Statutes, meet an identifiable public purpose by allowing effective administration of a governmental program. The exemption ensures the confidentiality of covert operations and protects information of a sensitive personal nature so that individuals are not harmed by information released without controls. For this reason, staff recommends that the exemption found in s. 320.025, Florida Statutes, be reenacted and the exemption in s. 320.05, Florida Statutes, except for mobile home registration, be reenacted.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records exemption provided for fictitious registrations and license plates by s. 320.025, Florida Statutes, effective October 1, 1989, and would require Sunset Review of the exemption in ten years, as provided by section 119.14, Florida Statutes.

Section 320.05, Florida Statutes, is amended to repeal the restriction placed on access to mobile home registration records.

The restriction on access to motor vehicle registration is revived and readopted effective October 1, 1989. The exemption would require sunset review of the exemption in ten years as provided by s. 119.14, Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Reenacts the exemption to the Public Records Law provided by s. 320.025, Florida Statutes.

Section 2 -- Reenacts the exemption to the Public Records law, with modifications, provided by s. 320.05, Florida Statutes.

Section 3 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Appropriations Consequences:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

Not applicable.


IV. COMMENTS:

None.

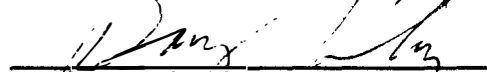
V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:


Bill Barzee

Staff Director:


Barry Kling

STORAGE NAME: h0409-f.go

DATE: June 20, 1989

PAGE: 6

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

| <u>ANALYST</u> | <u>STAFF DIRECTOR</u> | <u>REFERENCE</u> | <u>ACTION</u> |
|-------------------|-----------------------|------------------|----------------------|
| 1. <u>Johnson</u> | <u>Gargiulo</u> | 1. <u>TR</u> | <u>FAV/2 Amends.</u> |
| 2. _____ | _____ | 2. _____ | _____ |
| 3. _____ | _____ | 3. _____ | _____ |
| 4. _____ | _____ | 4. _____ | _____ |

SUBJECT: Open Government Sunset Review
 Motor Vehicle and Mobile
 Home Registration

BILL NO. AND SPONSOR: SB 106 by
 Committee on Transportation

I. SUMMARY:

A. Present Situation:

The Department of Highway Safety and Motor Vehicles is directed by s. 320.05, F.S., to register motor vehicles and mobile homes under distinctive numbers assigned to each vehicle. The vehicle registration contains vehicle identification information, such as the vehicle identification number, the title number, and the make, model, weight, and type of vehicle. It also identifies the owner's name, address, driver's license number, sex, and date of birth. Additionally, the registration contains the decal and tag numbers assigned to the vehicle, a record of insurance, and whether the registration is new, a transfer, or the reissuance of a lost or damaged tag.

The section requires that the motor vehicle and mobile home registration records be open to the inspection of the public during business hours and that the person making the request furnish positive proof of identification. Registration information may be provided by telephone or other electronic device to financial institutions, insurance companies, motor vehicle dealers, licensed private detectives, attorneys, and other agencies which the department determines have a right to know.

The department is directed to record the name and address of any person, other than a representative of a law enforcement agency, who requests and receives information from motor vehicle registration records and to record the name and address of the person who is the subject of the inquiry or to record other information identifying the entity about which information is requested. The record of the request must be maintained for a period of 6 months from the date the information was released.

The public may make inquiries regarding motor vehicle and mobile home registrations directly through the department or through any tax collector's office. Inquiries may be made in person, by mail, or where authorized, by phone or other electronic device, including the Compuserve computer system. For all inquiries, other than those from law enforcement agencies, the department records the name, address, and driver's license number of the person requesting registration information or the department records the Compuserve account number. The department also records the name and address of the person who is the subject of the inquiry or records such other information as would identify the entity about whom information is requested. For telephone requests, the department verifies that the request is from an entity authorized to receive registration information by telephone and records the name and driver's license number of the person receiving the information.

Section 320.025, F.S., allows governmental law enforcement agencies and public defenders to obtain confidential or fictitious registrations and license plates which are exempt

from the public records requirements of s. 119.07, F.S. These registrations may be obtained for vehicles owned or leased by the agency and used for law enforcement activities requiring concealment. When a request for registration information is received on a confidential license plate the computer responds that no record of the tag number, the decal number, or the vehicle identification number can be found. When an inquiry is received for a fictitious registration the computer responds with the fictitious registration record which can not be distinguished from a legitimate registration. At the same time that the computer is responding to one of these inquiries it notifies the confidential tag office that an inquiry has been made. Information regarding the actual owner of a vehicle registered with a confidential or fictitious registration and information regarding inquiries about confidential and fictitious registrations are released only to the law enforcement agency which originally requested the registration.

B. Effect of Proposed Changes:

The bill amends s. 320.05, F.S., to revive and reenact the requirement that persons obtaining information on a motor vehicle registration must provide their name and address and the requirement that the department must record the information provided as well as the identification of the owner of the vehicle on which the request was made. The restriction on access to mobile home registration records is repealed. The section is also amended to provide for future legislative review and repeal pursuant to the Open Government Sunset Review Act.

Section 320.025, F.S., is amended to revive and reenact the public records law exemption for information contained in confidential motor vehicle registrations. The section is also amended to provide for future legislative review and repeal pursuant to the Open Government Sunset Review Act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None

B. Government:

The approximate annual cost of \$62,000, for the confidential or fictitious registration and license plate program, will be continued.

The cost to verify and record the identification of persons requesting copies of motor vehicle registrations and to record information regarding the registration requested, cannot be determined because that function is only a part of the duties performed by the eleven positions in the department who respond to requests for motor vehicle and mobile home registrations. There will be a small reduction in these costs if the department discontinues the checking and recording of identification information on requests for mobile home registration information.

III. COMMENTS:

None

IV. AMENDMENTS:

#1 by Transportation:
Corrects an erroneous cross-reference.

#2 by Transportation:
Title Amendment.