

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: SB324S1

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Vogel

3. Committee: General Laws and Technology

4. Title: Public agencies; privacy of personal information.

5. Summary: Provides that public agencies shall not request personal information, defined in the bill. The bill amends the Virginia Freedom of Information Act definition of "public record" to exclude personal information. The bill also exempts the Campaign Finance Disclosure Act of 2006 from the requirements that public agencies protect personal information and refrain from requesting personal information.

6. Budget Amendment Necessary: See item 8.

7. Fiscal Impact Estimates: See item 8.

8. Fiscal Implications: The fiscal impact of this legislation is indeterminate. This bill amends Va. Code section §2.2-3808 to make it unlawful for any agency to “5. Disclose personal information without the express, written permission of every individual who is identifiable from the potential release of such personal information, including individuals identifiable as members, supporters, or volunteers of, or donors to, the agency.” As written this bill could be interpreted to include not only those individuals listed, but also all individuals identifiable.

If using the above interpretation of the bill, this legislation would prohibit agencies from disclosing personal information without the express, written permission of every person who is identifiable from the potential release of such personal information. The Department of Motor Vehicles’ (DMV) notes that existing controlling privacy laws, under both state and federal law, direct when data may be released. Although consent is a reason DMV may release information, there are many other circumstances under which DMV may or must release personal information to a specific entity for a specific reason such as recall information must be released under the federal Driver’s Privacy Protection Act and information to insurance companies for underwriting and fraud purposes or to employers of commercial driver’s license holders under state laws.

Stopping the ability to release personal information without express consent would result in DMV being out of compliance with federal and state law for customers who do not expressly consent. Additionally, DMV indicates that it would likely need to undertake an information technology initiative to create a method to identify which individuals have consented to having their information released.

DMV estimates that this information technology project may cost approximately \$1.5 million over the course of two years. Estimated costs would also require a number of additional staff to create and manage the database. DMV indicates that a fiscal impact of this magnitude would require additional revenue from raising a fee, support from the general fund, or require the agency to make reductions in operating costs.

This bill also makes it a violation of law to disclose personal information without express written permission. Violations result in civil liability and the complainant may be awarded the costs of litigation, attorney's fees and witness fees. The fiscal impact of these costs is indeterminate.

Anyone who knowingly violates this law is guilty of a misdemeanor and subject to a sentence of up to 90 days in jail, fine of not more than \$1,000, or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

9. Specific Agency or Political Subdivisions Affected: All state agencies and other public bodies covered by the Virginia Freedom of Information Act.

10. Technical Amendment Necessary: No

11. Other Comments: Companion to HB970.