

By the Committee on Health Care

317-406-98

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.07, F.S., relating to inspection,  
4           examination, and duplication of records;  
5           exempting identifying information pertaining to  
6           natural persons in health, medical, patient, or  
7           insurance records from the public records law;  
8           providing exceptions; amending s. 286.011,  
9           F.S., relating to public meetings; exempting  
10          from public discussion portions of public  
11          meetings during which the contents of health,  
12          medical, patient, or insurance information  
13          pertaining to a natural person are considered;  
14          providing exceptions; amending s. 296.09, F.S.,  
15          relating to veterans residing in the Veterans'  
16          Domiciliary Home of Florida; deleting an  
17          exemption from the public records law relating  
18          to health records and annual reevaluations;  
19          amending s. 310.102, F.S., relating to  
20          treatment programs for impaired pilots and  
21          deputy pilots; deleting an exemption from the  
22          public records law for information about a  
23          licensee obtained by a probable cause panel  
24          from a consultant; amending s. 383.32, F.S.,  
25          relating to birth center clinical records;  
26          deleting an exemption of clinical records of  
27          birth center clients from the public records  
28          law; amending s. 394.4615, F.S., relating to  
29          mental health; deleting an exemption of  
30          clinical records of mental health patients from  
31          the public records law; amending s. 400.494,

1 F.S., relating to home health agencies;  
2 deleting an exemption of clinical records of  
3 home health patients from the public records  
4 law; amending s. 400.611, F.S., relating to  
5 hospice; deleting an exemption of information  
6 obtained from a patient record by a state  
7 agency from the public records law; amending s.  
8 408.001, F.S., relating to the Florida Health  
9 Care Purchasing Cooperative; deleting an  
10 exemption of patient medical records and other  
11 similar records from the public records law;  
12 amending s. 760.40, F.S., relating to  
13 discriminatory use of genetic test results;  
14 deleting an exemption of certain information  
15 obtained through genetic testing from the  
16 public records law; repealing s. 400.0077,  
17 F.S., relating to resident records held by  
18 state and district long-term-care ombudsmen;  
19 repealing s. 440.125, F.S., relating to  
20 confidentiality of workers' compensation  
21 medical records and reports and identifying  
22 information in employee medical bills;  
23 providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Present paragraphs (w), (x), (y), (z),  
28 (aa), and (bb) of subsection (3) of section 119.07, Florida  
29 Statutes, are redesignated as paragraphs (x), (y), (z), (aa),  
30 (bb), and (cc), respectively, and a new paragraph (w) is added  
31 to that subsection to read:

1           119.07 Inspection, examination, and duplication of  
2 records; exemptions.--

3           (3)

4           (w) Any identifying information pertaining to a  
5 natural person which is contained in a health, medical,  
6 patient, or insurance record is exempt from subsection (1) and  
7 s. 24(a), Art. I of the State Constitution. However, such  
8 information may be disclosed if the person to whom the  
9 information pertains or the person's legal representative  
10 provides written permission or if a court of competent  
11 jurisdiction orders disclosure.

12           Section 2. Subsection (1) of section 286.011, Florida  
13 Statutes, is amended and subsection (9) is added to that  
14 section to read:

15           286.011 Public meetings and records; public  
16 inspection; criminal and civil penalties.--

17           (1) All meetings of any board or commission of any  
18 state agency or authority or of any agency or authority of any  
19 county, municipal corporation, or political subdivision,  
20 except as otherwise provided in the Constitution and  
21 subsection (9), at which official acts are to be taken are  
22 declared to be public meetings open to the public at all  
23 times, and no resolution, rule, or formal action shall be  
24 considered binding except as taken or made at such meeting.  
25 The board or commission must provide reasonable notice of all  
26 such meetings.

27           (9) A portion of a meeting that is declared a public  
28 meeting open to the public under subsection (1) during which  
29 the contents of a health, medical, patient, or insurance  
30 record pertaining to a natural person or containing  
31 information provided by a natural person about the person who

1 is the subject of the record is discussed shall be closed to  
2 the public unless such persons or their legal representatives  
3 have given their written consent for public discussion or a  
4 court of competent jurisdiction orders public discussion.

5 Section 3. The Legislature finds that it is a public  
6 necessity that identifying information concerning a natural  
7 person included in health, medical, patient, and insurance  
8 records when such records are held by a governmental agency be  
9 exempt from the public records law, as provided in section  
10 119.07, Florida Statutes, and the public meetings law, as  
11 provided in section 286.011, Florida Statutes. The Legislature  
12 finds that the residents of Florida benefit from the  
13 preservation of their privacy and protection from aimless,  
14 casual, or sensationalized public scrutiny of personal,  
15 sensitive information about their physical or mental status.  
16 Furthermore, health care professionals and individuals  
17 identified in health, medical, patient, or insurance records  
18 as the sources of information should be assured protection of  
19 their identities from disclosure, unless for reasons of sound  
20 public policy disclosure is appropriate. Protection from  
21 aimless, casual, or sensationalized disclosure of the identity  
22 of health care professionals and other individuals who furnish  
23 information held in health, medical, patient, or insurance  
24 records will promote the willingness of health care  
25 professionals to consult on difficult cases. Such protection  
26 will encourage individuals who are not health care  
27 professionals to willingly provide crucial, but sensitive,  
28 information personally known to them about others that may  
29 contribute to the successful care and treatment of others  
30 receiving health or medical services. Therefore, the  
31 Legislature finds that the harm of disclosure of the identity

1 of a natural person who is the subject of a health, medical,  
2 patient, or insurance record, of health care professionals,  
3 and of individuals who are not health care professionals  
4 substantially outweighs the public benefit in allowing such  
5 disclosure.

6 Section 4. Subsection (1) of section 296.09, Florida  
7 Statutes, is amended to read:

8 296.09 Health record and general register to be  
9 maintained.--

10 (1) A health record for each member shall be  
11 maintained and shall contain an identification sheet, a  
12 medical history, a report of initial physical examination, and  
13 subsequent records of treatment and progress, including  
14 medications, diets, and consultations. An annual reevaluation  
15 of the member's health status shall be conducted and recorded.  
16 The health record and the annual reevaluation are confidential  
17 ~~and exempt from the provisions of s. 119.07(1) and s. 24(a),~~  
18 ~~Art. I of the State Constitution,~~ and shall be preserved for a  
19 period of time as determined by the director.

20 Section 5. Subsection (3) of section 310.102, Florida  
21 Statutes, is amended to read:

22 310.102 Treatment programs for impaired pilots and  
23 deputy pilots.--

24 (3)(a) Whenever the department receives a written or  
25 oral legally sufficient complaint alleging that a pilot or  
26 deputy pilot licensed or certificated by the department is  
27 impaired as a result of the misuse or abuse of alcohol or  
28 drugs, or both, or due to a mental or physical condition which  
29 could affect the pilot's or deputy pilot's ability to practice  
30 with skill and safety, and no complaint against the pilot or  
31 deputy pilot other than impairment exists, the reporting of

1 such information shall not constitute a complaint within the  
2 meaning of s. 455.255 if the probable cause panel finds:

3 1. The pilot or deputy pilot has acknowledged the  
4 impairment problem.

5 2. The pilot or deputy pilot has voluntarily enrolled  
6 in an appropriate, approved treatment program.

7 3. The pilot or deputy pilot has voluntarily withdrawn  
8 from piloting or limited the scope of piloting as determined  
9 by the panel, in each case, until such time as the panel is  
10 satisfied the pilot or deputy pilot has successfully completed  
11 an approved treatment program.

12 4. The pilot or deputy pilot has executed releases for  
13 medical records, authorizing the release of all records of  
14 evaluations, diagnoses, and treatment of the pilot or deputy  
15 pilot, including records of treatment for emotional or mental  
16 conditions, to the consultant. The consultant shall make no  
17 copies or reports of records that do not regard the issue of  
18 the pilot's or deputy pilot's impairment and his or her  
19 participation in a treatment program.

20 (b) If, however, the pilot or deputy pilot agrees to  
21 withdraw from piloting until such time as the consultant  
22 determines the pilot or deputy pilot has satisfactorily  
23 completed an approved treatment program or evaluation, the  
24 probable cause panel shall not become involved in the pilot's  
25 or deputy pilot's case.

26 (c) Inquiries related to impairment treatment programs  
27 designed to provide information to the pilot or deputy pilot  
28 and others and which do not indicate that the pilot or deputy  
29 pilot presents a danger to the public shall not constitute a  
30 complaint within the meaning of s. 455.255 and shall be exempt  
31 from the provisions of this subsection.

1           (d) Whenever the department receives a legally  
2 sufficient complaint alleging that a pilot or deputy pilot is  
3 impaired as described in paragraph (a) and no complaint  
4 against the pilot or deputy pilot other than impairment  
5 exists, the department shall forward all information in its  
6 possession regarding the impaired pilot or deputy pilot to the  
7 consultant.

8           (e) The probable cause panel shall work directly with  
9 the consultant, and all information concerning a licensee  
10 obtained by the panel from the consultant shall remain  
11 confidential ~~and exempt from the provisions of s. 119.07(1)~~  
12 ~~and s. 24(a), Art. I of the State Constitution~~, subject to the  
13 provisions of subsections (5) and (6).

14           (f) A finding of probable cause shall not be made as  
15 long as the panel is satisfied, based upon information it  
16 receives from the consultant and the department, that the  
17 pilot or deputy pilot is progressing satisfactorily in an  
18 approved treatment program.

19           Section 6. Subsection (3) of section 383.32, Florida  
20 Statutes, is amended to read:

21           383.32 Clinical records.--

22           (3) Clinical records shall be kept confidential in  
23 accordance with s. 455.667 ~~s. 455.241~~ ~~and exempt from the~~  
24 ~~provisions of s. 119.07(1)~~. A client's clinical records shall  
25 be open to inspection only under the following conditions:

26           (a) A consent to release information has been signed  
27 by the client; or

28           (b) The review is made by the department for a  
29 licensure survey or complaint investigation.

30           Section 7. Subsection (1) of section 394.4615, Florida  
31 Statutes, is amended to read:

1           394.4615 Clinical records; confidentiality.--

2           (1) A clinical record shall be maintained for each  
3 patient. The record shall include data pertaining to  
4 admission and such other information as may be required under  
5 rules of the department. A clinical record is confidential  
6 ~~and exempt from the provisions of s. 119.07(1)~~. Unless waived  
7 by express and informed consent, by the patient or the  
8 patient's guardian or guardian advocate or, if the patient is  
9 deceased, by the patient's personal representative or the  
10 family member who stands next in line of intestate succession,  
11 the confidential status of the clinical record shall not be  
12 lost by either authorized or unauthorized disclosure to any  
13 person, organization, or agency.

14           Section 8. Section 400.494, Florida Statutes, is  
15 amended to read:

16           400.494 Information about patients  
17 confidential.--Information about patients received by persons  
18 employed by, or providing services to, a home health agency or  
19 received by the licensing agency through reports or inspection  
20 shall be confidential ~~and exempt from the provisions of s.~~  
21 ~~119.07(1)~~and shall not be disclosed to any person other than  
22 the patient without the written consent of that patient or the  
23 patient's guardian.

24           Section 9. Subsection (3) of section 400.611, Florida  
25 Statutes, is amended to read:

26           400.611 Interdisciplinary records of care;  
27 confidentiality.--

28           (3) Patient records of care are confidential. A  
29 hospice may not release a record or any portion thereof,  
30 unless:

31



1 (a) A patient or legal guardian has given express  
2 written informed consent;

3 (b) A court of competent jurisdiction has so ordered;  
4 or

5 (c) A state or federal agency, acting under its  
6 statutory authority, requires submission of aggregate  
7 statistical data. Any information obtained from patient  
8 records by a state agency pursuant to its statutory authority  
9 is confidential ~~and exempt from the provisions of s.~~  
10 ~~119.07(1)~~.

11 Section 10. Paragraph (a) of subsection (4) of section  
12 408.001, Florida Statutes, is amended to read:

13 408.001 Florida Health Care Purchasing Cooperative.--

14 (4) CONFIDENTIALITY.--

15 (a) Patient medical records, patient insurance  
16 records, and portions of any other records obtained or  
17 generated by the cooperative which contain information that is  
18 patient-specific or that otherwise identifies a patient,  
19 either directly or indirectly, are confidential ~~and exempt~~  
20 ~~from s. 119.07(1) and s. 24(a), Art. I of the State~~  
21 ~~Constitution~~.

22 Section 11. Paragraph (a) of subsection (2) of section  
23 760.40, Florida Statutes, is amended to read:

24 760.40 Genetic testing; informed consent;  
25 confidentiality.--

26 (2)(a) Except for purposes of criminal prosecution,  
27 except for purposes of determining paternity as provided in s.  
28 742.12(1), and except for purposes of acquiring specimens from  
29 persons convicted of certain offenses as provided in s.  
30 943.325, DNA analysis may be performed only with the informed  
31 consent of the person to be tested, and the results of such

1 DNA analysis, whether held by a public or private entity, are  
2 the exclusive property of the person tested, are confidential,  
3 and may not be disclosed without the consent of the person  
4 tested. ~~Such information held by a public entity is exempt~~  
5 ~~from the provisions of s. 119.07(1) and s. 24(a), Art. I of~~  
6 ~~the State Constitution.~~

7 Section 12. Sections 400.0077, 440.125, Florida  
8 Statutes, are repealed.

9 Section 13. This act shall take effect upon becoming a  
10 law.

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13 SENATE SUMMARY

14 Exempts from the public records law any identifying  
15 information pertaining to a natural person which is  
16 contained in a health, medical, patient, or insurance  
17 record. Permits disclosure of such information if the  
18 person to whom the information pertains or the person's  
19 legal representative provides written permission or if a  
20 court orders disclosure. Requires that any portion of a  
21 public meeting at which such information is discussed be  
22 closed to the public unless consent is given or a court  
23 orders public discussion. Provides a finding of public  
24 necessity to support such exemptions from the public  
25 records and meetings law. Deletes an exemption from the  
26 public records law for health records and annual  
27 reevaluation of veterans in the Veterans' Domiciliary  
28 Home of Florida. Deletes an exemption for information  
29 about an impaired licensed pilot or deputy pilot relating  
30 to treatment which is obtained by a probable cause panel  
31 from a consultant. Deletes an exemption for clinical  
records of birth center clients, mental health patients,  
home health patients, hospice patients, and patients of  
the Florida Health Care Purchasing Cooperative. Deletes  
an exemption for certain information obtained through  
genetic testing. Repeals s. 400.0077, F.S., relating to  
resident records of long-term-care ombudsmen. Repeals s.  
440.125, F.S., relating to the confidentiality of  
workers' compensation medical records and reports.