

STORAGE NAME: h4123s1.go
DATE: March 30, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 4123 (PCB LT 98-03a)

RELATING TO: Public Records

SPONSOR(S): Committees on Governmental Operations, Elder Affairs & Long Term Care, Representative Brooks and others

COMPANION BILL(S): CS/HB 3089(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 6 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill is the public records exemption bill related to CS/HBs 3089 and 171.

CS/HB 4123 (formerly PCB LT 98-03) creates a public records exemption for juvenile records, abuse hotline information, and Federal Bureau of Investigation criminal records which are obtained by the Agency for Health Care Administration in connection with background screening requirements that apply to an employee, or a prospective employee, of a nursing facility.

The bill creates a specific public records exemption from the provisions of s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution. It provides a Legislative finding that this exemption is necessary to prevent discouraging qualified applicants from seeking employment in nursing facilities. The public records exemption contained in this bill is subject to the Open Government Sunset Review Act of 1995. This exemption will be automatically repealed on October 2, 2003, unless reviewed and reenacted by the Legislature.

The bill has no fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records - Florida Constitution

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records by providing that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, permits the Legislature to provide, by general law, for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public Records - Florida Statutes

The Florida Statutes clearly indicates Florida public policy regarding access to government records. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.

However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, 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, the disclosure of which information would injure the affected entity in the marketplace.

Health Care Records and Background Screening

Section 400.211, F.S., provides certification requirements for persons employed as nursing assistants, including an employment history.

Section 400.512, F.S., provides for level 1 screening standards for home health agency personnel, nurse registry personnel, sitters, companions and homemakers registered under s. 400.509, F.S.

Section 415.107 makes reports and records concerning abuse, neglect, or exploitation of disabled adult or elderly persons, including reports made to the central abuse registry and tracking system, confidential and exempt from the provisions of s. 119.07(1), F.S.

Section 415.103, F.S., provides for the establishment and function of the central abuse registry and tracking system.

Section 435.03, F.S., provides for "level 1" background screening standards. They include, but are not limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies.

Currently, the Agency for Health Care Administration does not obtain background screening information for the employment of nursing home employees.

B. EFFECT OF PROPOSED CHANGES:

The bill creates a specific public records exemption from the provisions of s. 119.07(1), F.S., and Art. I, Sec. 24(a), Florida Constitution. It would protect from public disclosure Federal Bureau of Investigation criminal records, juvenile records, and abuse hotline information, which are of a sensitive and personal nature, obtained by the Agency for Health Care Administration in connection with background screening of employees and prospective employees of nursing facilities.

The public records exemption contained in this bill is subject to the Open Government Sunset Review Act of 1995. This exemption will be automatically repealed on October 2, 2003, unless reviewed, and saved from repeal by the Legislature.

The bill provides as the public necessity, the protection of public health and safety by not discouraging qualified applicants from seeking employment at nursing homes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

N/A

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Indirectly, by establishing the privacy of the subject records in connection with nursing facility employees, or prospective employees, such facilities and workers may benefit by encouraging otherwise reluctant workers, to seek, and find employment in nursing facilities.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. This bill prohibits the Agency for Health Care Administration from releasing criminal records, juvenile records, or abuse hotline information obtained in connection with background screening of nursing home employees or prospective employees. Juvenile records and abuse hotline information are otherwise already protected from disclosure.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

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D. STATUTE(S) AFFECTED:

Unspecified.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - Statutory language is created which provides an exemption from the provisions of s. 119.07(1), F.S., and Art. I, sec. 24(a), Florida Constitution, for criminal records from the Federal Bureau of Investigation, juvenile records, or abuse registry information obtained by the Agency for Health Care Administration, in connection with background screening applying to employees or prospective employees of nursing facilities.

Section 2 - Provides a public necessity statement concerning the protection of public health and safety by avoiding the chilling effect of having records (described in **Section 1**), available to the public.

Section 3 - Provides an effective date of the same date that Committee Substitute for House Bills 3089 and 171, or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

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2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

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

None

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on March 30, 1998, the Committee on Governmental Operations adopted one amendment. The amendment clarifies that criminal records originating with the Federal Bureau of Investigation are the only criminal records included in the public records exemption.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Legislative Research Director:

Melanie Meyer

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms