
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 24, 1998 Revised: _____

Subject: Public Records/AHCA/Nursing Facility

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates a public records exemption for Federal Bureau of Investigation criminal records, juvenile records, and abuse hotline information which is 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 provides a Legislative finding that this exemption is necessary to prevent a chilling effect on the willingness to apply for such positions on the part of any person about whom there is information of past misbehavior contained in juvenile records or criminal records or in the central abuse registry, even if the person were fully rehabilitated and would be a suitable employee. The bill also finds that juvenile records and central abuse registry information is already otherwise exempt.

The bill makes the public records exemption which it creates subject to the Open Government Sunset Review Act of 1995. The exemption will be automatically repealed on October 2, 2003, unless reviewed and re-enacted by the Legislature.

II. Present Situation:

Open Records

The Florida Constitution requires that all public records be open to inspection. s. 24, Art. 1, Fla. Const. The constitution authorizes the Legislature to provide exemptions from this requirement by general law. However, a law which creates an exemption must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the

public necessity. Additionally, a law that creates an exemption is required to relate only to exemptions and enforcement of public records.

In addition to the constitutional requirements, the Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Under the Open Government Sunset Review Act of 1995, s. 119.15, F.S., of the Public Records Act, an exemption may be created only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose. s. 119.15(4)(b), F.S. The section provides that an identifiable public purpose is served if the exemption meets one of a list of purposes and if 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. *Id.* The listed purposes are that 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Id.

The section also provides for the systematic repeal of public records exemptions 5 years after creation of, or substantial modification to, the exemption. s. 119.15(3)(a), F.S. The repeal cycle begins in 2001. In reviewing the exemptions, the Legislature is to use the same public purpose criteria used in creating an exemption. *Id.*

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, F.S., 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.

III. Effect of Proposed Changes:

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

The exemption is subject to ss. 400.215(2)(c) and 435.10, F.S. Subsection 400.215, F.S., is created in CS/HB’s 3091 & 171, First Engrossed. The section requires the Agency for Health Care Administration to require background screening for all employees or prospective employees of nursing home facilities who are expected to, or whose responsibilities may require them to:

- Provide personal care or services to residents;
- Have access to resident living areas; or
- Have access to resident funds or other personal property.

The agency is to establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening and central abuse registry and tracking system checks. Upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, the agency is to notify the administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.

Chapter 435.01, F.S., applies whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law. Section 435.10, F.S., requires that every employer of employees covered by the chapter furnish copies of personnel records for employees or former employees to any other employer requesting this information pursuant to this section. Information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any employer releasing such records pursuant to this chapter shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the employer maliciously falsified such records.

The bill provides a Legislative finding that this exemption is necessary to prevent a chilling effect on the willingness to apply for such positions on the part of any person about whom there is information of past misbehavior contained in juvenile records or criminal records or in the central

abuse registry, even if the person were fully rehabilitated and would be a suitable employee. The bill also finds that juvenile records and central abuse registry information is already otherwise exempt.

The bill makes the public records exemption which it creates subject to the Open Government Sunset Review Act of 1995. The exemption will be automatically repealed on October 2, 2003, unless reviewed and re-enacted by the Legislature.

The bill takes effect on 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution authorizes the Legislature to provide public records exemptions by general law. However, such a law must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. Additionally, it must relate only to exemptions and enforcement of public records.

As the bill relates only to an exemption, states the specific public necessity upon which the exemption is based, and is no broader than necessary to meet that necessity, it meets these requirements.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
