

STORAGE NAME: h1081a.go

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1081

RELATING TO: Public Records Exemption/Certain Facilities

SPONSOR(S): Representative Goodlette

COMPANION BILL(S): CS/SB 1498 (similar)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1081 creates a public records exemption relating to certain personal identifying information regarding employees of health care facilities and rural hospitals. The home addresses, telephone numbers, social security numbers, and photographs of active and former employees are exempt from the public records law. In addition, the home addresses, telephone numbers, social security numbers, photographs, places of employment of spouses and children, and the names and location of schools and day care facilities attended by the children of such employees are exempt from the public records law.

The bill includes the statement of public necessity as required by s. 24 (a), Art. I of the Florida Constitution. The Legislature finds that these exemptions are a public necessity, and that it would be an invasion of a person's privacy for such personal, sensitive information contained in the records of these facilities to be publicly available. Employees of these facilities have been threatened and patients have inflicted injuries upon health care providers which have resulted in the death of the provider.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

There is no fiscal impact on the state, local government or the private sector.

NOTE: On March 11, 1999, the Health Care Licensing & Regulation Committee adopted two amendments which are traveling with the bill. On March 30, 1999, the Committee on Governmental Operations adopted a technical amendment which will travel with the bill.

Amendment 1 (by the Health Care Licensing & Regulation Committee). Creates subsection (10) of s. 395.3025, F.S., which narrows the exemption to facilities licensed under Chapter 395 (hospitals and ambulatory surgical centers) rather than all health care facilities and rural hospitals as defined by s. 408.07 (23) and (42), F.S.

Amendment 2 (by the Health Care Licensing & Regulation Committee). Clarifies that any state or federal agency authorized to have access to this information by law shall have access to the information necessary to carry out their statutory duties.

Technical amendment (by the Committee on Governmental Operations). Corrects a misspelling and conforms the language of the public necessity statement to that of the public record exemption section.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records 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, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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 policy regarding access to government records is also addressed in the Florida Statutes. 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., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. 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 that such purpose 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.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Section 119.07 (3)(i), F.S., provides a similar exemption for law enforcement officers, correctional officers, judges, prosecutors, revenue collection agents, child support enforcement agents, and firefighters. Currently, certain information available in health care facilities and rural hospitals as defined in s. 408.07, F.S., is not exempt from the public records law. Information regarding employees of these health care facilities and rural hospitals, and the places of employment of spouses and children and other personal information are available to the general public. Employees

of these facilities have been threatened and patients have inflicted injuries upon health care providers which have resulted in the death of the provider.

B. EFFECT OF PROPOSED CHANGES:

Creates s. 395.3037, F.S., relating to the exemption of certain personal identifying information regarding employees of health care facilities and rural hospitals from the public records law. The home addresses, telephone numbers, social security numbers, and photographs of active and former employees are exempt from the public records law. In addition, the home addresses, telephone numbers, social security numbers, photographs, places of employment of spouses and children, and the names and location of schools and day care facilities attended by the children of such employees are exempt from the public records law.

The bill includes the required statement of public necessity. The Legislature finds that these exemptions are a public necessity, and that it would be an invasion of a person's privacy for such personal, sensitive information contained in these facilities to be publicly available. Employees of these facilities have been threatened and patients have inflicted injuries upon health care providers which have resulted in the death of the provider.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

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?

N/A

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

N/A

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

Yes. Certain public information would be exempt from public records.

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

An agency or program is not reduced or eliminated.

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

Yes. Certain public information would be exempt from public records.

- 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?

N/A

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

Yes. Certain public information would be exempt from public records.

5. Family Empowerment:

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

The bill does not purport 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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 395.3037, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 395.3037, F.S., to provide for the confidentiality of personal identifying information regarding employees of health care facilities and rural hospitals.

These exemptions are subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2004.

Section 2. Includes the required statement of public necessity. The Legislature finds that these exemptions are a public necessity, that it would be an invasion of an employee's privacy for such personal, sensitive information to be publicly available, and that employees have been injured and threatened by patients with access to such records.

Section 3. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & 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.

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:

Making this information confidential will protect these individuals from potential harm.

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 municipalities or counties to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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.

V. COMMENTS:

In section 1, the bill refers to a public records exemption for certain personal information, but in section 2, the public necessity language refers to the information being "confidential" and exempt. Section 119.07 (3)(i), F.S., which provides a similar exemption for certain public employees, refers only to a public records exemption, not confidentiality.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1999, the Health Care Licensing & Regulation Committee adopted two amendments which are traveling with the bill. On March 30, 1999, the Committee on Governmental Operations adopted a technical amendment which will travel with the bill.

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Amendment 2 (by the Health Care Licensing & Regulation Committee). Clarifies that any state or federal agency authorized to have access to this information by law shall have access to the information necessary to carry out their statutory duties.

Technical amendment (by the Committee on Governmental Operations). Addresses the concerns regarding use of the term "confidential." The amendment corrects a misspelling and conforms the language of the public necessity statement to that of the public record exemption section.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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