

# 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.)

BILL: CS/SB 1498

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Saunders

SUBJECT: Public Records Exemption; Personnel Records of Hospital and Ambulatory Surgical Center Employees

DATE: March 11, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 1498 exempts from the Public Records Law and Art. I, s. 24(a) of the *Florida Constitution*, information about three classes of people who are either employees of, or related to people who are employees of, a hospital or an ambulatory surgical center. The bill would make unavailable for public disclosure the home addresses, telephone numbers, social security numbers, and photographs of employees of a hospital or an ambulatory surgical center; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of employees of such licensed facilities. The public necessity for the public records exemption provided in the bill is predicated on threats, intimidation, harassment, physical harm or other injury, or deaths of employees of hospitals or ambulatory surgical centers perpetrated by patients who may be angry or upset with the nature of the treatment or the circumstances under which the treatment was provided.

This bill adds a new subsection (10) to s. 395.3025, Florida Statutes.

## II. Present Situation:

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.<sup>1</sup> Article I, s. 24, State Constitution, provides:

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<sup>1</sup>Article I, s. 24 of the State Constitution.

(a) 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.

In addition to the State Constitution, the Public Records Law<sup>2</sup> specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . .

The Public Records Law states that, unless specifically exempted, all agency<sup>3</sup> records are to be available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>4</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>5</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>6</sup>

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute.

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<sup>2</sup>Chapter 119, F.S.

<sup>3</sup>The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to 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 those records exempted by law or the state constitution.

<sup>4</sup>Section 119.011(1), F.S.

<sup>5</sup>*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>6</sup>*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

Article I, s. 24, State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

The Open Government Sunset Review Act of 1995<sup>8</sup> states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria 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. The three statutory criteria are if 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.<sup>9</sup>

Article I, s. 23 of the State Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

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<sup>7</sup>Art. I, s. 24(c) of the State Constitution.

<sup>8</sup>Section 119.15, F.S.

<sup>9</sup>Section 119.15(4)(b), F.S.

There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information that is in the possession of a health care practitioner or a state agency is confidential,<sup>10</sup> except under certain specific circumstances. As confidential information, patient records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient.

There are some significant exceptions to the, otherwise, exclusive control given patients over such information. These exceptions include:

- Release, without written authorization, of physical or mental examination or administered treatment information to a person that procures such examination or treatment with the patient's consent;
- Forwarding of examination results obtained when a compulsory physical examination is performed for purposes of civil litigation in conformity with the Rules of Civil Procedure; or
- Upon issuance of a subpoena in a civil or criminal action.

Public hospitals and their employees are vulnerable to requests for disclosure of personnel records because of requirements of the Public Records Law. For instance, one hospital stated that it has received requests concerning information about employees from individuals that appeared to have questionable motives. One such instance involved a request for personnel information from an inmate incarcerated in a prison outside of Florida. The employee, when informed of the request, produced a letter that the inmate had mailed to her home. The employee moved from her residence after the hospital notified her of the inmate's inquiry. It is unclear, though, whether her home address was obtained from her personnel record or another source. Estranged spouses have made attempts to get information from personnel records for use in divorce proceedings or other nonprofessional purposes. Additionally, at least one emergency department of a hospital has adopted a policy that permits its employees who work in the mental health unit to wear identification badges that do not show their last name. Such employees must treat prisoners and persons arrested by local law enforcement as well as persons admitted for mental health evaluation under the Baker Act. The concerns about employee personnel information expressed by hospitals apply to ambulatory surgical centers as well.

### **III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 1498 exempts from the Public Records Law and Art. I, s. 24(a) of the *State Constitution* the home addresses, telephone numbers, social security numbers, and photographs of employees of hospitals and of ambulatory surgical centers; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of

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<sup>10</sup>Section 455.667, F.S. (formerly 455.241, F.S.).

spouses or children of employees of such health care facilities; and the names and locations of schools and day care facilities attended by children of employees of such health care facilities.

As provided in the bill, the public necessity that justifies exempting the specified information from the public records requirements of the *State Constitution* is that it is *not uncommon for employees of these facilities to be threatened by patients or family members of patients who may be angry or upset with the nature of the treatment or the circumstances under which it has been provided*. Such patients include, among others, prisoners, criminal suspects prior to incarceration, persons under the influence of illicit drugs or alcohol at the time of treatment, and persons treated for mental illness. The bill provides a legislative finding that personal information about public hospital employees has been requested that could have been used to threaten the safety *or welfare of the employees or their families*. An additional legislative finding bases the public necessity for the public records exemption on the fact that release of the information *would not benefit the public or aid it in monitoring the effective and efficient operation of government, but could result in harm to the specified employees or their families*.

The bill is to take effect on July 1, 1999.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

This bill exempts from the Public Records Law and Art. I, s. 24(a) of the *State Constitution* certain personal information contained in employee personnel records relating to the employees of hospitals and ambulatory surgical centers and the relatives of such employees. The bill provides the required statement of public necessity for the exemption.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **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.

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

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