

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 704

SPONSOR: Health, Aging and Long-Term Care Committee, Senators Forman and Grant

SUBJECT: Public Records Exemption, Public Guardianship

DATE: March 4, 1999 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Liem</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 704 maintains the confidential or exempt status, if any, of confidential information contained in medical, financial or mental health records provided to the Statewide Public Guardianship Office by an agency or the court and its agencies. The bill creates a public records exemption for other medical, financial, or mental health records of certain vulnerable persons that are obtained by the Statewide Public Guardianship Office. The bill requires that information obtained by the Statewide Public Guardianship Office and the courts about prospective guardians' credit history and the results of criminal history checks be confidential and exempt. The exemptions are made subject to the Open Government Sunset Review Act of 1995. The bill provides statements of public necessity.

The bill is tied to CS/SB 702, which establishes the Statewide Public Guardianship Office.

The bill creates section 744.7081 of the Florida Statutes and one undesignated section of law.

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 Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹ Article I, s. 24, Florida Constitution, provides:

- (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

¹Article I, s. 24 of the Florida Constitution.

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 Florida Constitution, the Public Records Law² 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 agency³ 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.⁴

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.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, Florida 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

²Chapter 119, F.S.

³The 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 Florida Constitution.

⁴Section 119.011(1), F.S.

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

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

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.⁷

The Open Government Sunset Review Act of 1995⁸ 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.⁹

Article I, s. 23 of the Florida 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 Joint Legislative Management Committee 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.

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

⁷Art. I, s. 24(c) of the Florida Constitution.

⁸Section 119.15, F.S.

⁹Section 119.15(4)(b), F.S.

state agency is confidential,¹⁰ 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.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 704 creates s. 744.7081, F.S., to require that confidential or exempt information obtained by the Statewide Public Guardianship Office continue to be held as confidential or exempt. All other records held by the Office relating to the medical, financial, or mental health of vulnerable citizens who are elderly persons or disabled adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394 are made confidential and exempt from the public records law. Information obtained by the Office and the courts as a result of an investigation of a guardian's criminal history and credit history is also to be held as confidential and is made exempt.

The bill makes legislative findings that the exemptions provided are a public necessity because the public disclosure of sensitive information, as well as information that is otherwise confidential or exempt, could lead to discrimination against affected citizens and could make these citizens reluctant to seek assistance for themselves or their family members, and that release of information obtained about guardians' credit history and criminal history could hinder the recruitment of guardians and make citizens who would otherwise serve reluctant to assume the role of guardians. These results would then negatively affect the effective and efficient operation of the Statewide Public Guardianship Office.

The bill takes effect upon the same date that legislation creating the Statewide Public Guardianship Office, provided that such legislation is adopted in the same legislative session or an extension thereof, takes effect.

¹⁰Section 455.667, F.S. (formerly 455.241, F.S.).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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.