

STORAGE NAME: h1903a.flc

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 1903

RELATING TO: Public Records/Abandoned Infants

SPONSOR(S): Representative Murman

TIED BILL(S): HB 1901

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

- (1) FAMILY LAW AND CHILDREN YEAS 6 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

Article I, s. 24 of the Florida Constitution, and ch. 119, the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates a public records exemption for the identity of a parent who leaves a newborn infant with a hospital as provided by HB 1901.

This bill creates an unnumbered section of the Florida Statutes.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records and Public Meeting Laws.

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

(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.

Article I, s. 24, Florida Constitution, does, however, permit 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 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.

Access to government meetings is addressed in the Florida Statutes as well. Section 286.011, F.S., states:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 119.15, F.S., provides that an exemption to the public records and meeting requirements 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.

Section 395.3025, F.S., provides that patient records are confidential and exempt from section 119.07(1) F.S., and must not be disclosed without the consent of the patient except in the enumerated circumstances which include:

Facility personnel and attending physicians;
Agency for Health Care Administration for specified purposes;
Upon issuance of a subpoena in a civil, criminal or administrative matter;
Department of Children and Families for purposes of investigating abuse, neglect and exploitation;
Organ procurement;
Department of Health for specified purposes;

Section 63.162, F.S., provides an exemption from s. 119.07(1) F.S., for "Papers and records of the [Department of Children and Family Services], a court, or any other governmental agency, which papers and records relate to adoptions. . . ." Since the leaving of a child at a hospital may not be directly related to a later adoption of that child, this section would not protect the identity of the parent leaving the child in all cases covered by s. 383.50, F.S.

C. EFFECT OF PROPOSED CHANGES:

See Section by Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates a new section of the Florida Statutes. This section provides that information that identifies a parent who leaves a newborn infant with a hospital in accordance with s. 383.50, F.S. (see HB 1901), is confidential and exempt from public disclosure. This section also provides that the exemption is subject to repeal on October 2, 2005, unless reviewed and saved from repeal through reenactment.

Section 2. Provides that this exemption is a public necessity because it will encourage parents to leave infants safely and, in turn, will protect the life and health of those infants.

Section 3. Provides that this act will take effect on the same date as HB 1901 or similar legislation, if adopted by the legislature.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 take an action requiring 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 municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2000, the Committee on Family Law and Children adopted a strike everything amendment which provided that identifying information of parents who drop newborns off at fire stations is to remain confidential and exempt. It also provided that the information held exempt by the bill is to be released to any person claiming to be a parent of the newborn.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

David R. Westcott

Carol Preston