

Bill No. CS for CS for SB 1356

Amendment No. Barcode 381678

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator King moved the following amendment:

13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

16 and insert:

17 Section 1. (1) A photograph or video or audio
18 recording of an autopsy in the custody of a medical examiner
19 is confidential and exempt from the requirements of section
20 119.07(1) and s. 24(a), Art. I of the State Constitution,
21 except that a surviving spouse may view and copy a photograph
22 or video or listen to or copy an audio recording of the
23 deceased spouse's autopsy. If there is no surviving spouse,
24 then the surviving parents shall have access to such records.
25 If there is no surviving spouse or parent, then an adult child
26 shall have access to such records. A local governmental
27 entity, or a state or federal agency, in furtherance of its
28 official duties, pursuant to a written request, may view or
29 copy a photograph or video or may listen to or copy an audio
30 recording of an autopsy, and unless otherwise required in the
31 performance of their duties, the identity of the deceased

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1 shall remain confidential and exempt. The custodian of the
2 record, or his or her designee, may not permit any other
3 person to view or copy such photograph or video recording or
4 listen to or copy an audio recording without a court order.
5 For the purposes of this section, the term "medical examiner"
6 means any district medical examiner, associate medical
7 examiner, or substitute medical examiner acting pursuant to
8 ch. 406, as well as any employee, deputy, or agent of a
9 medical examiner or any other person who may obtain possession
10 of a photograph or audio or video recording of an autopsy in
11 the course of assisting a medical examiner in the performance
12 of his or her official duties.

13 (2)(a) The court, upon a showing of good cause, may
14 issue an order authorizing any person to view or copy a
15 photograph or video recording of an autopsy or to listen to or
16 copy an audio recording of an autopsy and may prescribe any
17 restrictions or stipulations that the court deems appropriate.

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19 In determining good cause, the court shall consider whether
20 such disclosure is necessary for the public evaluation of
21 governmental performance; the seriousness of the intrusion
22 into the family's right to privacy and whether such disclosure
23 is the least intrusive means available; and the availability
24 of similar information in other public records, regardless of
25 form. In all cases, the viewing, copying, listening to or
26 other handling of a photograph or video or audio recording of
27 an autopsy must be under the direct supervision of the
28 custodian of the record or his or her designee.

29 (2)(b) A surviving spouse shall be given reasonable
30 notice of a petition filed with the court to view or copy a
31 photograph or video recording of an autopsy or a petition to

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1 listen to or copy an audio recording, a copy of such petition,
2 and reasonable notice of the opportunity to be present and
3 heard at any hearing on the matter. If there is no surviving
4 spouse, then such notice must be given to the deceased's
5 parents, and if the deceased has no living parent, then to the
6 adult children of the deceased.

7 (3)(a) Any custodian of a photograph or video or audio
8 recording of an autopsy who willfully and knowingly violates
9 this section commits a felony of the third degree, punishable
10 as provided in section 775.082, section 775.083, or section
11 775.084, Florida Statutes.

12 (b) Any person who willfully and knowingly violates a
13 court order issued pursuant to this section commits a felony
14 of the third degree, punishable as provided in section
15 775.082, section 775.083, or section 775.084, Florida
16 Statutes.

17 (c) A criminal or administrative proceeding is exempt
18 from this section, but unless otherwise exempted, is subject
19 to all other provisions of Chapter 119, Florida Statutes,
20 provided however that this section does not prohibit a court
21 in a criminal or administrative proceeding upon good cause
22 shown from restricting or otherwise controlling the disclosure
23 of an autopsy, crime-scene, or similar photograph or video or
24 audio recordings in the manner prescribed herein.

25 (4) This exemption shall be given retroactive
26 application.

27 (5) The exemption in this section is subject to the
28 Open Government Sunset Review Act of 1995 in accordance with
29 section 119.15, Florida Statutes, and shall stand repealed on
30 October 2, 2006, unless reviewed and saved from repeal through
31 reenactment by the Legislature.

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1 Section 2. The Legislature finds that it is a public
2 necessity that photographs and video and audio recordings of
3 an autopsy be made confidential and exempt from the
4 requirements of section 119.07(1), Florida Statutes, and
5 Section 24(a) of Article I of the State Constitution. The
6 Legislature finds that photographs or video or audio
7 recordings of an autopsy depict or describe the deceased in
8 graphic and often disturbing fashion. Such photographs or
9 video or audio recordings may depict or describe the deceased
10 nude, bruised, bloodied, broken, with bullet or other wounds,
11 cut open, dismembered, or decapitated. As such, photographs or
12 video or audio recordings of an autopsy are highly sensitive
13 depictions or descriptions of the deceased which, if heard,
14 viewed, copied or publicized, could result in trauma, sorrow,
15 humiliation, or emotional injury to the immediate family of
16 the deceased, as well as injury to the memory of the deceased.
17 The Legislature notes that the existence of the World Wide Web
18 and the proliferation of personal computers throughout the
19 world encourages and promotes the wide dissemination of
20 photographs and video and audio recordings 24 hours a day and
21 that widespread unauthorized dissemination of autopsy
22 photographs and video and audio recordings would subject the
23 immediate family of the deceased to continuous injury. The
24 Legislature further notes that there continue to be other
25 types of available information, such as the autopsy report,
26 which are less intrusive and injurious to the immediate family
27 members of the deceased and which continue to provide for
28 public oversight. The Legislature further finds that the
29 exemption provided in this act should be given retroactive
30 application because it is remedial in nature.

31 Section 3. This act shall take effect upon becoming a

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1 law, and shall apply to all photographs or video or audio
2 recordings of an autopsy, regardless of whether the autopsy
3 was performed before or after the effective date of the act.

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

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10 and insert:

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A bill to be entitled

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An act relating to public records; providing an

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exemption from the public records law for

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photographs and video and audio recordings of

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an autopsy; providing an exemption for certain

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members of the immediate family, or a

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representative thereof, or a state or federal

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agency; prohibiting the custodian of a

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photograph or video or audio recording of an

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autopsy from permitting any person to view or

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duplicate a photograph or video or audio,

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except pursuant to court order and under the

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direct supervision of the custodian or his or

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her designee; exempting criminal and

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administrative proceedings from the act;

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requiring certain persons to be parties in a

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request for access to a photograph or video or

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audio recording of an autopsy; providing

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penalties; providing for future legislative

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review and repeal; providing a finding of

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public necessity; providing a retroactive

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1 effective date.
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