

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Justice offered the following:

Amendment (with title amendment)

On page 2, between lines 21 and 22, of the bill

insert:

Section 2. The Legislature finds that personal identifying information, name, age, diagnosis, address, bank account numbers, and debit and credit card numbers contained in the records relating to an individual's personal health or eligibility for health-related services made or received by the individual's physician and public or private health facility should be held confidential. Furthermore, the Legislature finds that every person has an expectation of and a right to privacy in all matters concerning her or his personal health when medical services are provided. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private sectors. For these reasons, it is the express intent of the Legislature to

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1 protect confidential information and the individual's
2 expectations of the right to privacy in all matters regarding
3 her or his personal health and not to have such information
4 exploited for purposes of solicitation or marketing the sale
5 of goods and services.

6 Section 3. Subsection (5) of section 456.057, Florida
7 Statutes, is amended to read:

8 456.057 Ownership and control of patient records;
9 report or copies of records to be furnished.--

10 (5)(a) Except as otherwise provided in this section
11 and in s. 440.13(4)(c), such records may not be furnished to,
12 and the medical condition of a patient may not be discussed
13 with, any person other than the patient or the patient's legal
14 representative or other health care practitioners and
15 providers involved in the care or treatment of the patient,
16 except upon written authorization of the patient. However,
17 such records may be furnished without written authorization
18 under the following circumstances:

19 1.(a) To any person, firm, or corporation that has
20 procured or furnished such examination or treatment with the
21 patient's consent.

22 2.(b) When compulsory physical examination is made
23 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in
24 which case copies of the medical records shall be furnished to
25 both the defendant and the plaintiff.

26 3.(c) In any civil or criminal action, unless
27 otherwise prohibited by law, upon the issuance of a subpoena
28 from a court of competent jurisdiction and proper notice to
29 the patient or the patient's legal representative by the party
30 seeking such records.

31 4.(d) For statistical and scientific research,

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1 provided the information is abstracted in such a way as to
2 protect the identity of the patient or provided written
3 permission is received from the patient or the patient's legal
4 representative.

5 (b) Absent a specific written release or authorization
6 permitting utilization of patient information for solicitation
7 or marketing the sale of goods or services, any use of that
8 information for those purposes is prohibited.

9 (14) Licensees in violation of the provisions of this
10 section shall be disciplined by the appropriate licensing
11 authority.

12 (15) The Attorney General is authorized to enforce the
13 provisions of this section for records owners not otherwise
14 licensed by the state, through injunctive relief and fines not
15 to exceed \$5,000 per violation.

16 Section 4. Subsection (7) of section 395.3025, Florida
17 Statutes is amended to read:

18 395.3025 Patient and personnel records; copies;
19 examination.--

20 (7)(a) If the content of any record of patient
21 treatment is provided under this section, the recipient, if
22 other than the patient or the patient's representative, may
23 use such information only for the purpose provided and may not
24 further disclose any information to any other person or
25 entity, unless expressly permitted by the written consent of
26 the patient. A general authorization for the release of
27 medical information is not sufficient for this purpose. The
28 content of such patient treatment record is confidential and
29 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
30 I of the State Constitution.

31 (b) Absent a specific written release or authorization

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1 permitting utilization of patient information for solicitation
2 or marketing the sale of goods or services, any use of that
3 information for those purposes is prohibited.

4 Section 5. Subsection (1) of section 400.1415, Florida
5 Statutes, is amended to read:

6 400.1415 Patient records; penalties for alteration.--

7 (1) Any person who fraudulently alters, defaces, or
8 falsifies any medical record or releases medical records for
9 the purposes of solicitation or marketing the sale of goods or
10 services absent a specific written release or authorization
11 permitting utilization of patient information, or other
12 nursing home record, or causes or procures any of these
13 offenses to be committed, commits a misdemeanor of the second
14 degree, punishable as provided in s. 775.082 or s. 775.083.

15 Section 6. Section 626.9651, Florida Statutes, is
16 created to read:

17 626.9651 Privacy.--The department shall adopt rules
18 consistent with other provisions of the Florida Insurance Code
19 to govern the use of a consumer's nonpublic personal financial
20 and health information. These rules must be based on,
21 consistent with, and not more restrictive than the Privacy of
22 Consumer Financial and Health Information Regulation, adopted
23 September 26, 2000, by the National Association of Insurance
24 Commissioners; however, the rules must permit the use and
25 disclosure of nonpublic personal health information for
26 scientific, medical, or public policy research, in accordance
27 with federal law. In addition, these rules must be consistent
28 with, and not more restrictive than, the standards contained
29 in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No.
30 106-102. If the department determines that a health insurer or
31 health maintenance organization is in compliance with, or is

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1 actively undertaking compliance with, the consumer privacy
2 protection rules adopted by the United States Department of
3 Health and Human Services, in conformance with the Health
4 Insurance Portability and Affordability Act, that health
5 insurer or health maintenance organization is in compliance
6 with this section.

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

10 And the title is amended as follows:

11 On page 1, line 6,

13 after the semicolon insert:

14 providing legislative intent; amending ss.
15 395.3025, 400.1415, and 456.057, F.S.;
16 prohibiting the use of a patient's medical
17 records for purposes of solicitation and
18 marketing absent a specific written release or
19 authorization; providing penalties; creating s.
20 626.9651, F.S.; requiring the Department of
21 Insurance to adopt rules governing the use of a
22 consumer's nonpublic personal financial and
23 health information; providing standards for the
24 rules;