



This bill creates section 627.3111, Florida Statutes.

## II. Present Situation:

### **Constitutional Access to Public Records and Meetings**

Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy 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. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

### **The Open Government Sunset Review Act of 1995**

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the 5th year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed effective October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if: (1) the exempted record or meeting is of a sensitive, personal nature concerning individuals; (2) the exemption is necessary for the effective and efficient administration of a governmental program; or (3) the exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions: (1) what specific records or meetings are affected by the exemption? (2) whom does the exemption uniquely affect, as opposed to the general public? (3) what is the identifiable public purpose or goal of the exemption? (4) can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption: (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

#### **Department of Insurance--Records of Insureds and Consumers**

According to representatives with the Department of Insurance, when the department investigates the activities of insurance companies, policyholders provide the department with personal information relating to their insurance policy, which often includes financial or medical data. These investigations are often initiated due to complaints by the insured, however, once the investigation is concluded, the entire department file becomes a public record. Further, consumers may also contact the department about problems they have in obtaining insurance coverage and, as such, might submit medical data to the department.

Approximately one-half of the 35,000 complaints the department receives each year are related in some fashion to health insurance and include personal information concerning insureds or consumers. For example, often a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services with the department. In providing background information, the insured will provide medical records detailing the history of the claim, e.g., medical records revealing the facts supporting why the claim should be paid. Upon resolution of the matter, the medical information is available to anyone requesting the files on a particular company, transaction, or type of complaint. This is an unintended consequence of seeking assistance from the department.

The department contracts or outsources with private entities (service providers) to provide services, such as market conduct examinations. In some instances, these entities, acting on behalf of the department, may have access to personal financial or medical information of consumers or insureds during the course of conducting examinations. The department presently provides NAIC with summary information concerning consumer complaints.

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

**Section 1.** Creates s. 627.3111, F.S., relating to confidentiality of personal information, to provide that all bank account numbers and debit, charge, and credit card numbers; medical records and personal identifying information other than the name and address contained in

records that disclose personal financial or health information that is in the possession of the Department of Insurance, or its service providers, are confidential and exempt from s. 119.07(1) and s. 24(a), Article 1 of the Florida Constitution. This exemption would apply to information and records made confidential and exempt by this section held by the Department of Insurance, or its service providers before, on, or after the effective date of this exemption.

The exemption would not prevent the department from referring such information to any governmental entity, if disclosure is necessary for the receiving entity to perform its duties, and the National Association of Insurance Commissioners. The governmental entity and the NAIC would be required to maintain the confidentiality of such information.

The information and records made confidential and exempt by this section could be used in a criminal, civil, or administrative proceeding, if the confidential and exempt status of such information and records is maintained.

This public records exemption is subject to the Sunset Review Act and would be repealed on October 2, 2007, unless reviewed and reenacted by the Legislature.

**Section 2.** Provides for legislative findings of public necessity, which state that the public records exemption is necessary in order to protect an individual's sensitive, personal information and that the disclosure of such financial information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of an individual. The section also provides that limiting disclosures of personal identifying information that disclose personal financial information held by the department or its service providers is necessary in order to protect the financial interests of those persons to whom that information pertains.

The section also provides that every person has an expectation of and a right to privacy in all matters concerning his or her personal financial matters. The Legislature also finds that it is a public necessity that medical records and personal identifying information contained in records that disclose personal health information be made confidential and exempt because matters of personal health are traditionally private and confidential concerns and the public disclosure of medical information could have a negative effect upon a person's business and personal relationships.

**Section 3.** Provides that the act shall take effect upon becoming a law.

#### **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:

The exemption would protect individuals from potential identity theft and other misuses of personal financial and medical information.

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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