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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1767
RELATING TO: Public Records / Personal ID Information
SPONSOR(S): Representative(s) Allen

TIED BILL(S):

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

- (1) COUNCIL FOR SMARTER GOVERNMENT
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates a public records exemption for all bank account numbers and debit, charge, and credit card numbers; all personal identifying information contained in financial records and patient records; and other individual financial and health information held by the Department of Insurance or its service providers. This bill requires the department to release such exempt information to any local, state, or federal law enforcement agency when necessary for that agency to perform its official duties and responsibilities. The bill provides that the public records exemption does not apply to information regarding an insured or other person who is the subject of a criminal investigation.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that such exemption is necessary in order to protect a person's financial interests as well as their personal medical information. Disclosure of such information could cause unwarranted damage to the good name or reputation of individuals and could jeopardize their health and safety.

This bill does not provide for retroactive application of the public records exemption. This bill provides for future review and repeal of the public records exemption.

This bill does not appear to have a fiscal impact on state or local governments.

See "Effect of Proposed Changes" and "Constitutional Concerns" sections for concerns with the bill.

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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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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(c), 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 must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption 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.

At present, the Department of Insurance does not have a public records exemption for all bank account numbers and debit, charge, and credit card numbers; medical records; and personal identifying information contained in records that disclose personal financial or health information held by the department.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for all bank account numbers and debit, charge, and credit card numbers; all personal identifying information contained in financial records and patient records; and other individual financial and health information held by the Department of Insurance or its service providers. This exemption appears overly broad in that it exempts "other individual financial and health information" from public disclosure. It is unclear as to what that other information is and why such information needs to be made exempt from public disclosure.

This bill requires the department to release such exempt information to any local, state, or federal law enforcement agency when necessary for that agency to perform its official duties and responsibilities. The bill provides that the public records exemption does not apply to information regarding an insured or other person who is the subject of a criminal investigation.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that such exemption is necessary in order to protect a persons financial interest as well as their personal medical information. Disclosure of such information could cause unwarranted damage to the good name or reputation of individuals and could jeopardize their health and safety.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature. This bill does *not* provide for retroactive application of the exemption.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

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 to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities 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 counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill may raise a constitutional concern. The public records exemption appears overly broad in that it creates an exemption for "other individual financial and health information" held by the Department of Insurance. It is unclear as to what that other information is and why such information needs to be made exempt from public disclosure.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COUNCIL FOR SMARTER GOVERNMENT:

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