

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 250

SPONSOR: Health, Aging and Long-Term Care Committee

SUBJECT: Public Records Exemptions - Practitioner Profiles

DATE: January 15, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	Rhea	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

Section 456.046, F.S., exempts patient records and other data maintained or received by the Department of Health (DOH) or its agent for purposes of compiling a health care practitioner profile until the profile is made public under s. 456.041(7), F.S. Any information or record that the DOH obtains from the Agency for Health Care Administration (AHCA) or any other governmental entity for the purpose of compiling a practitioner profile or substantiating other information or records submitted for that purpose that was exempt from the provisions of ch. 119, F.S., and s. 24(a), Art. I of the State Constitution remain exempt.

The exemption established in s. 456.046, F.S., is scheduled for repeal on October 2, 2002, unless the Legislature reviews it pursuant to criteria specified in the Open Government Sunset Review Act¹ and reenacts it. Staff of the Committee on Health, Aging and Long-Term Care reviewed the exemption during the interim and recommended in *Interim Project Report 2002-218* that the exemption be reenacted with minor technical amendments.

This bill amends s. 456.046, F.S.

II. Present Situation:

Public Records Law - The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24,

¹ Section 119.15, F.S.

Florida Constitution, governs the creation and expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

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 meeting requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature acts to reenact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

In the year before the scheduled repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in s. 119.15, F.S. An exemption that is not identified and certified is not subject to legislative review and repeal. If the division fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year’s certification after that determination.

Section 119.15(2), F.S., states that an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Further, s. 119.15(4)(a), F.S., requires consideration of the following specific questions as part of the review:

- (a) What specific records or meetings are affected by the exemption?
- (b) Whom does the exemption uniquely affect, as opposed to the general public?
- (c) What is the identifiable public purpose or goal of the exemption?
- (d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Additionally, under s. 119.15(4)(b), F.S., 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:

- (a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?
- (b) Does the exemption protect 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 paragraph, only information that would identify the individuals may be exempted; or,
- (c) Does the exemption protect 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?

Practitioner Profiles - Section 456.039, F.S., requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, has been compiled into practitioner profiles to be made available to the public. The information must include: graduate medical education; hospitals at which the physician has privileges; the address at which the physician will primarily conduct his or her practice; specialty certification; year the physician began practice; faculty appointments; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; and professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000. In addition, the physician may submit: professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 456.039, F.S., requires medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit fingerprints for a national criminal history check as part of initial licensure. The section also requires already licensed medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit, on a one-time-basis, a set of fingerprints for the initial renewal of their licenses after January 1, 2000, to the Department of Health. The Department of Health must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after January 1, 2000. For any subsequent renewal of the applicant's license, the Department of Health must submit the required information for a statewide criminal history check of the applicant.

Section 456.0391, F.S., requires advanced registered nurse practitioners to comply with the practitioner profiling requirements and submit fingerprints and specified information for compilation into a practitioner profile. The Department of Health began compiling profiles for advanced registered nurse practitioners on July 1, 2001.

Section 456.041, F.S., requires the Department of Health to indicate if the criminal history information reported by a medical physician, osteopathic physician, chiropractic physician, podiatric physician or advanced registered nurse practitioner is not corroborated by a criminal history check. The Department of Health or the board having regulatory authority over the practitioner must investigate any information it receives when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice. Each practitioner's profile must include the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

Medical physicians, osteopathic physicians, chiropractic physicians, podiatric physicians and advanced registered nurse practitioners applying for licensure renewal must submit the information required for the practitioner profiles, however, an applicant who has submitted fingerprints to the Department of Health for a national criminal history check upon initial licensure and is renewing his or her license for the first time, only needs to submit the information and fee required for a statewide criminal history check.

Section 456.043, F.S., requires the Department of Health to develop or contract for a computer system to accommodate the new data collection and storage requirements for practitioner profiles. The department is authorized to contract with and negotiate any interagency agreement necessary to develop and implement the practitioner profiles. The Department of Health shall have access to any information or record maintained by the Agency for Health Care Administration, including any information or record that is otherwise confidential and exempt from ch. 119, F.S., and s. 24(a), Art. I of the State Constitution, so that the department may corroborate any information that practitioners are required to report under s. 456.039 or s. 456.0391, F.S.

Interim Project Report 2002-218 - Staff reviewed the public records exemptions in s. 456.046, F.S., pursuant to the Open Government Sunset Review Act of 1995 and recommended that the exemptions to the public records requirements in s. 456.046, F.S., be reenacted with minor technical amendments. Staff's findings and recommendations are detailed in *Interim Project Report 2002-218*.

III. Effect of Proposed Changes:

The bill revives and readopts the exemptions in s. 456.046, F.S., with minor technical amendments to clarify statutory references, the exemption from public disclosure of information submitted to the Department of Health that remains exempt in its possession as otherwise provided by law, and to delete unnecessary language referencing future review of the section.

The effective date of the bill is October 1, 2002.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act of 1995, this bill reenacts s. 456.046, F.S., which provides exemptions from the disclosure requirements of ch. 119, F.S., relating to public records, and s. 24(a), Art. I of the State Constitution for patient records maintained by the Department of Health or its agent for purposes of compiling a health care practitioner profile and for other data received by the department or its agent for purposes of creating a profile until the profile is made public under s. 456.041(7), F.S. Section 456.046, F.S., also provides that any information or record that the Department of Health obtains from the Agency for Health Care Administration or any other governmental entity for the purpose of compiling a practitioner profile or substantiating other information or records submitted for that purpose that was exempt from the provisions of ch. 119, F.S., and s. 24(a), Art. I of the State Constitution shall remain exempt.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
