

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1761 (PCB FFF 04-08) w/CS Public Records Exemption

SPONSOR(S): Future of Florida's Families and Fiorentino

TIED BILLS: HB 1759 **IDEN./SIM. BILLS:** SB 2826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	5 Y, 0 N	Preston	Liem
2) Future of Florida's Families	13 Y, 0 N	Preston	Liem
3) Insurance	17 Y, 3 N	Tinney	Cooper
4) State Administration	7 Y, 0 N w/CS	Williamson	Everhart
5)			

SUMMARY ANALYSIS

This bill creates a public records exemption for insurance claims information obtained by the Department of Revenue for the purpose of child support enforcement. It also provides for expiration of the exemption for information regarding a person whose name is matched to a person owing child support. If the department does not make a match, then the information regarding the non-match person must be destroyed.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

This bill appears to have a minimal fiscal impact on state government. See "FISCAL IMPACT ON STATE GOVERNMENT" section for further details.

This bill will require a two-thirds vote of the members present and voting for passage.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1761d.sa.doc

DATE: April 14, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

HB 1761 creates s. 409.25659, F.S., providing for the development and establishment of an insurance claim data exchange. The purpose of the exchange is to provide for the identification of settlement payments on insurance liability claims which can then be applied to child support arrearages in Title IV-D cases, such as child support enforcement cases.

Effect of Bill

This bill creates a public records exemption for insurance claims information obtained by the Department of Revenue for the purpose of child support enforcement. It also provides for expiration of the exemption. If the department matches the name of an insurance claimant with the name of a person owing child support, then such information is made available for public disclosure. If the department does not make a match, then the information regarding the non-match person must be destroyed.

This bill provides that such confidential and exempt records may only be disclosed for the purpose of locating an individual or establishing, modifying, or enforcing a child support obligation.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates s. 409.25660, F.S., to create a public records exemption for insurance claims information obtained by the Department of Revenue under an insurance claim data exchange system.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect county or municipal government.

2. Other:

Article I, s. 24(c), Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, HB 1761 requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record

of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 14, 2004, the Committee on State Administration adopted a strike-all amendment to HB 1761 and reported the bill favorably with CS. The bill as filed created, in an unnumbered section, a public records exemption for insurance claims records obtained by the Department of Revenue for purposes of child support enforcement. It did not provide for expiration of the exemption. The strike-all amendment creates the public records exemption in a numbered section. It also provides for expiration of the exemption for information regarding a person whose name is matched to a person owing child support. If no match is made, then the strike-all amendment requires the department to destroy information regarding the non-match.

¹ Section 119.15, F.S.