

# 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: CS/CS/SB 464

SPONSOR: Governmental Oversight & Productivity Committee and Health, Aging, & Long-Term Care Committee

SUBJECT: Review of Public Records Exemption/Certain Employees of Hospitals, Ambulatory Surgical Centers, and Mobile Surgical Facilities

DATE: January 22, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute for the committee substitute reenacts and amends s. 395.3025(10) and (11), F.S., to continue the public records exemption for specific information concerning certain employees of hospitals, ambulatory surgical centers, and mobile surgical facilities. The committee substitute for the committee substitute limits the exemption in subsection (11) for information that is made based upon a “reasonable belief” of harassment or intimidation could occur if certain information is made available by requiring that such reasonable belief be based upon specific circumstances that are reported pursuant to procedures adopted by the facility.

The bill amends s. 395.3025, F.S.

**II. Present Situation:**

**Public Records**

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.<sup>1</sup> In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be

<sup>1</sup>Section 1, ch. 5942, 1909; RGS 424; CGL 490.

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, of the State 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, of the State Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Under the Open Government Sunset Review Act of 1995, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- 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;
- 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
- 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.

### **Public Records Exemption for Information about Employees at Public Hospitals**

The 1999 Legislature added subsections (10) and (11) to s. 395.3025, F.S., to provide an exemption from the Public Records Law for certain personal information about employees of any hospital, ambulatory surgical center, or mobile surgical facility. Section 395.3025, F.S., requires a licensed hospital, ambulatory surgical center, or mobile surgical facility to provide a copy of a patient’s record to the patient, or to the patient’s guardian, curator, personal representative, or other specified individuals upon written request.

Under s. 395.3025(10), F.S., the home addresses, telephone numbers, social security numbers, and photographs of employees who provide direct patient care or security services in licensed

facilities; the home address, telephone numbers, social security numbers, photographs, and places of employment of such an employee's spouse and children; and the names and locations of schools and day care facilities attended by such an employee's children are confidential and exempt from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is subject to availability of the otherwise exempted information to state and federal agencies in the furtherance of their statutory responsibilities. The exemption is repealed effective October 2, 2004, unless saved from repeal through reenactment by the Legislature following an Open Government Sunset Review.

Under s. 395.3025(11), F.S., the home addresses, telephone numbers, social security numbers, and photographs of employees of any licensed facility who do not provide direct patient care or security services but who have reason to believe that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of an employee's family; the home address, telephone numbers, social security numbers, photographs, and places of employment of such an employee's spouse and children; and the names and locations of schools and day care facilities attended by such an employee's children are confidential and exempt from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is subject to availability of the otherwise exempted information to state and federal agencies in the furtherance of their statutory responsibilities. The exemption is repealed effective October 2, 2004, unless saved from repeal through reenactment by the Legislature following an Open Government Sunset Review.

### **Public Necessity for the Exemption**

The legislation that created subsections (10) and (11) of s. 395.3025, F.S., provided a statement of public necessity for the public records exemption. Regarding the exemption in subsection (10), the bill stated:

*Employees in such facilities who provide direct patient care or security services encounter a wide spectrum of individuals including, among others, prisoners, criminal suspects brought for treatment by local law enforcement officers prior to incarceration, patients under the influence of drugs or alcohol at the time of treatment, and patients who have been admitted for treatment of mental illnesses, including involuntary admissions under the Baker Act. In addition, patients or family members of patients may at times become angry or upset with the nature of the treatment or the circumstances under which it has been provided. If any of these individuals gain access to the personal information specified in this act, they could use that information to threaten, intimidate, harass, or cause physical harm or other injury to the employees who provide direct patient care or security services or to their families. This concern is not mere speculation. Incidents have occurred in which patients have inflicted injuries upon health care providers which have resulted in the death of the provider. Therefore, the Legislature finds that it is a public necessity that the personal information of employees who provide direct patient care or security services be confidential and exempt from disclosure pursuant to the open records laws*

*of this state in order to protect the health, safety, and welfare of these employees and their families.*

The statement of public necessity for subsection (11) reads:

*The Legislature further finds that incidents have occurred in which the personnel records of other employees of hospitals and ambulatory surgical centers have been requested under circumstances that could have threatened the safety or welfare of these employees or their families, whether or not actual harm resulted. While these employees may not provide direct patient care or security services, they may yet face circumstances under which release of this information could be used to threaten, intimidate, harass, inflict violence upon, or defraud them or their families. Because release of this personal information under these circumstances would not benefit the public or aid it in monitoring the effective and efficient operation of government, but could result in harm to these employees or their families, the Legislature finds that it is public necessity that the personal information specified in this act be confidential and exempt from disclosure pursuant to the public records laws of this state when such protection is requested by a hospital or ambulatory surgical center employee in accordance with the provisions of this act.*

The statement of public necessity asserts that the exemption is consistent with the long-standing policy of the State relating to exempting the same type of personal information about certain active and former employees of state and local government, and judges in the judicial branch of government.

While the public records exemption in s. 395.3025(10) and (11), F.S., applies to all facilities licensed under ch. 395, F.S., in practice only publicly-owned hospitals would be subject to the Public Records Law. Thus the question addressed in the Open Government Sunset Review is whether certain information in personnel records of public hospitals should continue to be exempt from the Public Records Law.

### **Public Records Exemption Review**

The Senate staff reviewed the public records exemption in s. 395.3025(10 and (11), F.S., pursuant to the Open Government Sunset Review Act of 1995. As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

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

Based on findings of the Open Government Sunset Review, the staff found that the following information should not be protected by this public records exemption:

- Social security numbers which are protected by another public records exemption under s. 119.0721, F.S.; and
- Photographs of the employee's spouse and children which are not collected by the hospitals.

Thus, the exemption should be narrowed to exclude those items.

Upon review, Senate staff determined that the exemption accomplishes the public purpose of protecting personal information of employees who provide direct patient care or security services in public hospitals. Senate interim project report 2004-204 recommended that the exemption to the public records requirements in s. 395.3025(10) and (11), F.S., be narrowed and reenacted.

The report recommended that the exemption in subsection (10) be reenacted and narrowed to exempt only the following:

- The home address and telephone number of an employee who provides direct patient care or security services.
- The home address, telephone number and place of employment of such employee's spouse or child.
- The identity of the daycare or school of such employee's children.

The report recommended that the exemption in subsection (11) be reenacted and narrowed to include only the following:

- The home address and telephone number of any employee who does not provide direct patient care or security services who has a reasonable belief that release of the information would result in threat, intimidation, harassment, the inflicting of violence upon, or defrauding of the employee or any member of the employee's family, subject to the employee submitting a written request for confidentiality.
- The home address, telephone number and place of employment of such employee's spouse or child.

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

The bill reenacts and amends s. 395.3025(10) and (11), F.S., to continue the public records exemption for specific information concerning certain employees of hospitals, ambulatory surgical centers, and mobile surgical facilities. The exemption in subsection (10) of s. 395.3025, F.S., is narrowed to exempt only the following:

- The home address, telephone number, and photograph of an employee who provides direct patient care or security services.
- The home address, telephone number and place of employment of such employee's spouse or child.
- The identity of the daycare or school of such employee's children.

The exemption in subsection (11) is narrowed to include only the following:

- The home address, telephone number, and photograph of any employee who does not provide direct patient care or security services who has a reasonable belief that release of the information would result in threat, intimidation, harassment, the inflicting of violence upon, or defrauding of the employee or any member of the employee's family, subject to the employee submitting a written request for confidentiality.
- The home address, telephone number and place of employment of such employee's spouse or child.

The bill takes effect October 1, 2004.

#### **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:**

The bill narrows and reenacts the public records exemption found in s. 395.3025(10) and (11), F.S.

Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>2</sup> Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>3</sup>

##### **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.

<sup>2</sup> See, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>3</sup> Art. I, s. 24(c) of the State Constitution.

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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