Florida Senate - 2006

SB 1052

By the Committee on Criminal Justice

591-526-06

	591-520-00
1	A bill to be entitled
2	An act relating to a review under the Open
3	Government Sunset Review Act; amending s.
4	406.135, F.S., relating to an exemption from
5	public-records requirements provided for any
6	photograph or video or audio recording of an
7	autopsy; saving the exemption from repeal under
8	the Open Government Sunset Review Act; deleting
9	provisions providing for the repeal of the
10	exemption; providing an effective date.
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12	Be It Enacted by the Legislature of the State of Florida:
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14	Section 1. Section 406.135, Florida Statutes, is
15	amended to read:
16	406.135 Autopsies; confidentiality of photographs and
17	video and audio recordings; exemption
18	(1) A photograph or video or audio recording of an
19	autopsy in the custody of a medical examiner is confidential
20	and exempt from the requirements of s. $119.07(1)$ and s. $24(a)$,
21	Art. I of the State Constitution, except that a surviving
22	spouse may view and copy a photograph or video or listen to or
23	copy an audio recording of the deceased spouse's autopsy. If
24	there is no surviving spouse, then the surviving parents shall
25	have access to such records. If there is no surviving spouse
26	or parent, then an adult child shall have access to such
27	records. However, the deceased's surviving relative, with whom
28	authority rests to obtain such records, may designate in
29	writing an agent to obtain such records. A local governmental
30	entity, or a state or federal agency, in furtherance of its
31	official duties, pursuant to a written request, may view or
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1 copy a photograph or video or may listen to or copy an audio 2 recording of an autopsy, and unless otherwise required in the performance of their duties, the identity of the deceased 3 shall remain confidential and exempt. The custodian of the 4 record, or his or her designee, may not permit any other 5 6 person, except an agent designated in writing by the 7 deceased's surviving relative with whom authority rests to 8 obtain such records, to view or copy such photograph or video 9 recording or listen to or copy an audio recording without a court order. For the purposes of this section, the term 10 "medical examiner" means any district medical examiner, 11 12 associate medical examiner, or substitute medical examiner 13 acting pursuant to this chapter, as well as any employee, deputy, or agent of a medical examiner or any other person who 14 may obtain possession of a photograph or audio or video 15 recording of an autopsy in the course of assisting a medical 16 17 examiner in the performance of his or her official duties. 18 (2)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a 19 photograph or video recording of an autopsy or to listen to or 20 21 copy an audio recording of an autopsy and may prescribe any 22 restrictions or stipulations that the court deems appropriate. 23 In determining good cause, the court shall consider whether such disclosure is necessary for the public evaluation of 2.4 governmental performance; the seriousness of the intrusion 25 into the family's right to privacy and whether such disclosure 26 27 is the least intrusive means available; and the availability 2.8 of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to or 29 30 other handling of a photograph or video or audio recording of 31

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1 an autopsy must be under the direct supervision of the 2 custodian of the record or his or her designee. 3 (b) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a 4 photograph or video recording of an autopsy or a petition to 5 6 listen to or copy an audio recording, a copy of such petition, 7 and reasonable notice of the opportunity to be present and 8 heard at any hearing on the matter. If there is no surviving 9 spouse, then such notice must be given to the deceased's 10 parents, and if the deceased has no living parent, then to the adult children of the deceased. 11 12 (3)(a) Any custodian of a photograph or video or audio 13 recording of an autopsy who willfully and knowingly violates this section commits a felony of the third degree, punishable 14 as provided in s. 775.082, s. 775.083, or s. 775.084. 15 (b) Any person who willfully and knowingly violates a 16 17 court order issued pursuant to this section commits a felony 18 of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 19 (c) A criminal or administrative proceeding is exempt 20 21 from this section, but unless otherwise exempted, is subject 22 to all other provisions of chapter 119, provided however that 23 this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from 2.4 restricting or otherwise controlling the disclosure of an 25 26 autopsy, crime scene, or similar photograph or video or audio 27 recordings in the manner prescribed herein. 2.8 (4) This exemption shall be given retroactive 29 application. 30 (5) The exemption in this section is subject Open Government Sunset Review Act of 1995 in accordance with 31 3

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s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature. Section 2. This act shall take effect October 1, 2006. ***** SENATE SUMMARY Removes the repeal under the Open Government Sunset Review Act of an exemption from public-records requirements provided for photographs and video and audio recordings of autopsies.

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