By the Committees on Governmental Oversight and Productivity; Criminal Justice; and Senators Wise, King, Smith, Lynn, Wilson, Haridopolos and Crist

	585-2336-06
1	A bill to be entitled
2	An act relating to a review under the Open
3	Government Sunset Review Act regarding autopsy
4	photographs and video and audio recordings;
5	amending s. 406.135, F.S., which provides an
6	exemption from public-records requirements for
7	photographs and video and audio recordings of
8	an autopsy in the custody of a medical
9	examiner; reorganizing the section and making
10	editorial changes; removing the scheduled
11	repeal of the exemption; providing an effective
12	date.
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14	Be It Enacted by the Legislature of the State of Florida:
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16	Section 1. Section 406.135, Florida Statutes, is
17	amended to read:
18	406.135 Autopsies; confidentiality of photographs and
19	video and audio recordings; exemption
20	(1) For the purpose of this section, the term "medical
21	examiner" means any district medical examiner, associate
22	medical examiner, or substitute medical examiner acting
23	pursuant to this chapter, as well as any employee, deputy, or
24	agent of a medical examiner or any other person who may obtain
25	possession of a photograph or audio or video recording of an
26	autopsy in the course of assisting a medical examiner in the
27	performance of his or her official duties.
28	(2) A photograph or video or audio recording of an
29	autopsy <u>held by</u> in the custody of a medical examiner is
30	confidential and exempt from the requirements of s. 119.07(1)
31	and s. 24(a), Art. I of the State Constitution, except that a
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1 surviving spouse may view and copy a photograph or video 2 recording or listen to or copy an audio recording of the deceased spouse's autopsy. If there is no surviving spouse, 3 then the surviving parents shall have access to such records. 4 If there is no surviving spouse or parent, then an adult child 5 6 shall have access to such records. 7 (3)(a) However, The deceased's surviving relative, 8 with whom authority rests to obtain such records, may designate in writing an agent to obtain such records. 9 10 (b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a 11 12 written request, may view or copy a photograph or video 13 recording or may listen to or copy an audio recording of an autopsy, and unless otherwise required in the performance of 14 their duties, the identity of the deceased shall remain 15 confidential and exempt. 16 17 (c) The custodian of the record, or his or her 18 designee, may not permit any other person, except an agent designated in writing by the deceased's surviving relative 19 with whom authority rests to obtain such records, to view or 20 21 copy such photograph or video recording or listen to or copy 22 an audio recording without a court order. For the purposes of 23 this section, the term "medical examiner" means any district 2.4 medical examiner, associate medical examiner, or substitute 25 medical examiner acting pursuant to this chapter, as well as 26 any employee, deputy, or agent of a medical examiner or any 27 other person who may obtain possession of a photograph or 2.8 audio or video recording of an autopsy in the course of 29 assisting a medical examiner in the performance of his or 30 official duties. 31

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1	<u>(4)</u> (2)(a) The court, upon a showing of good cause, may
2	issue an order authorizing any person to view or copy a
3	photograph or video recording of an autopsy or to listen to or
4	copy an audio recording of an autopsy and may prescribe any
5	restrictions or stipulations that the court deems appropriate.
6	(b) In determining good cause, the court shall
7	consider whether such disclosure is necessary for the public
8	evaluation of governmental performance; the seriousness of the
9	intrusion into the family's right to privacy and whether such
10	disclosure is the least intrusive means available; and the
11	availability of similar information in other public records,
12	regardless of form.
13	(c) In all cases, the viewing, copying, listening to
14	or other handling of a photograph or video or audio recording
15	of an autopsy must be under the direct supervision of the
16	custodian of the record or his or her designee.
17	(5)(b) A surviving spouse shall be given reasonable
18	notice of a petition filed with the court to view or copy a
19	photograph or video recording of an autopsy or a petition to
20	listen to or copy an audio recording, a copy of such petition,
21	and reasonable notice of the opportunity to be present and
22	heard at any hearing on the matter. If there is no surviving
23	spouse, then such notice must be given to the parents of the
24	deceased deceased's parents, and if the deceased has no living
25	parent, then to the adult children of the deceased.
26	(6)(3)(a) Any custodian of a photograph or video or
27	audio recording of an autopsy who willfully and knowingly
28	violates this section commits a felony of the third degree,
29	punishable as provided in s. 775.082, s. 775.083, or s.
30	775.084.
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1	(b) Any person who willfully and knowingly violates a
2	court order issued pursuant to this section commits a felony
3	of the third degree, punishable as provided in s. 775.082, s.
4	775.083, or s. 775.084.
5	(7)(c) A criminal or administrative proceeding is
б	exempt from this section, but unless otherwise exempted, is
7	subject to all other provisions of chapter 119, provided
8	however that this section does not prohibit a court in a
9	criminal or administrative proceeding upon good cause shown
10	from restricting or otherwise controlling the disclosure of an
11	autopsy, crime scene, or similar photograph or video or audio
12	recordings in the manner prescribed herein.
13	(8)(4) This exemption shall be given retroactive
14	application.
15	(5) The exemption in this section is subject to the
16	Open Government Sunset Review Act of 1995 in accordance with
17	s. 119.15, and shall stand repealed on October 2, 2006, unless
18	reviewed and saved from repeal through reenactment by the
19	Legislature.
20	Section 2. This act shall take effect October 1, 2006.
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22	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
23	Senate Bill 1052
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25	Moves the definition of "medical examiner" to the beginning of the exemption as it applies to the entire exemption.
26	Adds subsections and paragraphs to the exemption for clarity.
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28	Makes technical and conforming changes, but no substantive changes.
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