

By Senator Posey

24-599-06

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

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
3 | performance of their duties, the identity of the deceased
4 | shall remain confidential and exempt. The custodian of the
5 | record, or his or her designee, may not permit any other
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
10 | court order. For the purposes of this section, the term
11 | "medical examiner" means any district medical examiner,
12 | associate medical examiner, or substitute medical examiner
13 | acting pursuant to this chapter, as well as any employee,
14 | deputy, or agent of a medical examiner or any other person who
15 | may obtain possession of a photograph or audio or video
16 | recording of an autopsy in the course of assisting a medical
17 | examiner in the performance of his or her official duties.

18 | (2)(a) The court, upon a showing of good cause, may
19 | issue an order authorizing any person to view or copy a
20 | photograph or video recording of an autopsy or to listen to or
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
24 | such disclosure is necessary for the public evaluation of
25 | governmental performance; the seriousness of the intrusion
26 | into the family's right to privacy and whether such disclosure
27 | is the least intrusive means available; and the availability
28 | of similar information in other public records, regardless of
29 | form. In all cases, the viewing, copying, listening to or
30 | other handling of a photograph or video or audio recording of
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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
4 notice of a petition filed with the court to view or copy a
5 photograph or video recording of an autopsy or a petition to
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
11 adult children of the deceased.

12 (3)(a) Any custodian of a photograph or video or audio
13 recording of an autopsy who willfully and knowingly violates
14 this section commits a felony of the third degree, punishable
15 as provided in s. 775.082, s. 775.083, or s. 775.084.

16 (b) Any person who willfully and knowingly violates a
17 court order issued pursuant to this section commits a felony
18 of the third degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

20 (c) A criminal or administrative proceeding is exempt
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
24 administrative proceeding upon good cause shown from
25 restricting or otherwise controlling the disclosure of an
26 autopsy, crime scene, or similar photograph or video or audio
27 recordings in the manner prescribed herein.

28 (4) This exemption shall be given retroactive
29 application.

30 ~~(5) The exemption in this section is subject to the~~
31 ~~Open Government Sunset Review Act of 1995 in accordance with~~

1 ~~s. 119.15, and shall stand repealed on October 2, 2006, unless~~
2 ~~reviewed and saved from repeal through reenactment by the~~
3 ~~Legislature.~~

4 Section 2. This act shall take effect October 1, 2006.

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7 SENATE SUMMARY

8 Removes the repeal under the Open Government Sunset
9 Review Act of an exemption from public-records
10 requirements provided for photographs and video and audio
11 recordings of autopsies.
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