

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1287 Public Records/Veterinary Medical Practice

**SPONSOR(S):** State Affairs Committee, Business & Professions Subcommittee, Renuart, Harrell and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Haston	Luczynski
2) State Affairs Committee	17 Y, 1 N, As CS	Williamson	Camechis
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians. Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. It provides for retroactive application of the public record exemption. In addition, the bill authorizes the release of the confidential and exempt animal medical records in certain instances.

The public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Public Records Law

Article 1, s. 24(a) of the State 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.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

##### Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.<sup>1</sup>

Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:<sup>3</sup>

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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 provisions; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

##### Animal Medical Records

Animal medical records generated by licensed veterinarians are not public records; however, the records are confidential and protected from disclosure under the law regulating licensed veterinarians, except in certain limited circumstances.<sup>5</sup> Animal medical records are public records when generated by an individual practicing in conjunction with a state college of veterinary medicine located in Florida and accredited by the American Veterinary Medical Association Council on Education.

#### **Effect of Proposed Changes**

The bill creates a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on

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<sup>1</sup> Art. I, s. 24(c) of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> Section 474.2165, F.S.

Education. It provides that the following records are confidential and exempt<sup>6</sup> from public record requirements:

- Medical records generated that relate to diagnosing the medical condition of an animal, the medical treatment of an animal, or performing a manual procedure for the diagnosis of or treatment for the pregnancy, fertility, or infertility of an animal.
- Any such medical records that are transferred by a previous record owner.

The confidential and exempt animal medical records may be disclosed to a governmental entity in the performance of its duties and responsibilities, and pursuant to s. 474.2165, F.S.<sup>7</sup>

The bill provides for retroactive application of the public record exemption.<sup>8</sup>

The public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution, which provides that the privacy of medical records relating to the treatment of animals is a public necessity warranting exemption from public records requirements.

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 474.2167, F.S., to create a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

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<sup>6</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

<sup>7</sup> Section 474.2165, F.S., relates to ownership and control of veterinary medical patient records, and provides instances when animal medical records must be released.

<sup>8</sup> The Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 2001).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on certain state colleges of veterinary medicine because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, those state colleges could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the state college.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2015, the Business & Professions Subcommittee considered a strike-all amendment and reported the bill favorably as a committee substitute. The adopted strike-all amendment made the following changes to the filed version of the bill:

- Formatted the bill as a public records exemption;
- Provided an exemption from public records requirements for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

On April 2, 2015, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment authorized release of confidential and exempt animal medical records pursuant to s. 474.2165, F.S., and revised the public necessity statement for the exemption.

The staff analysis is drafted to reflect the committee substitute as approved by the State Affairs Committee.