

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 716

INTRODUCER: Regulated Industries Committee and Senator Hays and others

SUBJECT: Public Records/Animal Medical Records

DATE: March 30, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 716 exempts animal medical records held by any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education from public inspection and copying.

Confidential and exempt medical records that are transferred by a records owner in connection with official business by any accredited state college of veterinary medicine remain confidential and exempt from disclosure. Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities. The bill provides a public necessity statement justifying the exemption pursuant to s. 24(c), Art. I, of the State Constitution.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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

This bill creates a new public records exemption and therefore requires a two-thirds vote for passage in each house of the Legislature in order to become law.

II. Present Situation:

Veterinary Medical Records

In 1979, the Legislature determined that because the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners, it mandated minimum requirements for licensure of veterinarians in the state.¹ A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida pursuant to ch. 474, F.S. The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.²

Section 474.2165, F.S. governs the ownership and control of veterinary medical records. Anyone who provides veterinary medical services is required to maintain medical records.³ In general, veterinary medical records are confidential and may only be disclosed to other veterinarians involved in the treatment of the animal, with the consent of the owner or when there is a legal action.⁴ Medical records may be furnished without written authorization of the owner to an entity that provided treatment,⁵ upon issuance of a subpoena,⁶ for research purposes,⁷ or when there is a pending legal or disciplinary action.⁸

Pursuant to s. 474.203, F.S., eight categories of persons are exempt from complying with ch. 474, F.S., respecting veterinary medical practice.

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;¹⁰
- Intern or resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;¹¹

¹ See s. 474.201, F.S.

² See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

³ Section 474.2165(2), F.S.

⁴ Section 474.2165(4) and (5), F.S.

⁵ Section 474.2165(4)(a), F.S.

⁶ Section 474.2165(4)(b), F.S.

⁷ Section 474.2165(4)(c), F.S.

⁸ Section 474.2165(5) and (6), F.S.

⁹ Pursuant to s. 474.203(1) and (2), F.S., accreditation of a school or college must be granted by the American Veterinary Medical Association (AMVA) Council on Education, or the American Veterinary Medical Association Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015). The American Veterinary Medical Association Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program (ECFVG). See <https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Mar. 20, 2015). In turn, CHEA, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. See <http://chea.org/> (last visited Mar. 20, 2015).

¹⁰ Section 474.203(1), F.S.

¹¹ Section 474.203(2), F.S.

- Students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors^{12,13};
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties;¹⁴
- Persons or their employees caring for the persons' own animals; as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations. The exemption is not available to those who are licensed as a veterinarian in another state and are temporarily practicing in Florida, or those convicted of violating ch. 828, F.S., respecting animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;¹⁵
- Certain entities or persons¹⁶ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treat of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.¹⁷
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employee of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹⁸ of a licensed veterinarian;¹⁹ and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, who are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, who assist upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal, or on the treatment on a specific case of the animals of a single owner.²⁰

Because these categories of practitioners are exempt from chapter 474 in its entirety, they are not able to keep veterinary medical records private in the same manner as a practitioner who is subject to chapter 474, F.S.

Public Records

The Florida Constitution provides that the public has the right to access government records. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their

¹² A preceptor is a skilled practitioner or faculty member who supervises students in a clinical setting to allow practical experience with patients.

¹³ Section 474.203(3), F.S.

¹⁴ Section 474.203(4), F.S.

¹⁵ Section 474.203(5), F.S.

¹⁶ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof.”

¹⁷ Section 474.203(6), F.S.

¹⁸ The term “responsible supervision” is defined in s. 474.202(10), F.S. as the “control, direction, and regulation by a licensed veterinarian” of unlicensed personnel to whom the veterinarian has delegated veterinary services duties.

¹⁹ Section 474.203(7), F.S.

²⁰ Section 474.203(8), F.S.

behalf.²¹ In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³

There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.²⁴ If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption.²⁵

The Legislature may create an exemption to public records requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records exemptions.²⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³⁰

²¹ FLA. CONST., art. I, s. 24(a).

²² Chapter 119, F.S.

²³ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

²⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

²⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

³⁰ Section 119.15(3), F.S.

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³¹ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³³ or
- It protects trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's public policy favoring open government and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

The OGSR also requires specific questions to be considered during the review process.³⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

III. Effect of Proposed Changes:

CS/SB 716 creates s. 474.2167, F.S., to provide that certain animal medical records held by or transferred to any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education³⁹ are confidential and exempt from public inspection and copying. State colleges of veterinary medicine are government institutions and are subject to

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

³⁵ Section 119.15(6)(b), F.S.

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

- 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?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁷ FLA. CONST., art. I, s. 24(c).

³⁸ Section 119.15(7), F.S.

³⁹ The American Veterinary Medical Association (AVMA) Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015).

public records laws. The intent of the bill is to provide the same level of protection at a public veterinary facility that an animal's owner may receive at a private facility in which the practitioners are governed by ch. 474, F.S.

An animal medical record relates to:

- The diagnosis of the medical condition of an animal;
- Prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or
- Performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal.

Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities. However, the bill does not permit records to be released to any other entity, even the owner of the animal. Under current law, private veterinary clinics may release medical records under certain condition, as previously described. The bill does not permit records to be released under the same circumstances.

The bill provides for retroactive application of the exemption to records that are currently being held by state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education, and also provides for the exemption to be reviewed in five years pursuant to the OGSR.

The bill includes a public necessity statement and an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 or expanded public record or public meeting exemption. The bill creates a public record exemption for veterinary medical records; 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 public necessity statement provides legislative findings that the release of animal medical records will compromise the confidentiality protections otherwise afforded to animals and owners or agents of the animals being treated by licensed veterinarians. Further, it

finds that the owners or agents of animals have the right of privacy for the medical records of the affected animals and that the privacy concerns outweigh the public benefit received from disclosure of the records.

The State Constitution provides in s. 23, Art. I, titled "Right of Privacy," that every natural person has the right to be let alone and free from governmental intrusion into the person's private life, except as otherwise provided. Constitutional privacy protections are not afforded to animals. It appears the statement of public necessity should be revised to address only the protections afforded to owners of animals.

The public necessity statement is relatively weak and does not substantially justify why veterinary medical records held by a public institution should be confidential and exempt from public disclosure.

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 veterinary medical records in their entirety. This appears to be overly broad in that the exemption could be more narrowly tailored to protect records in the same manner as records would be protected under currently law by a veterinarian subject to ch. 474, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eligible accredited state colleges of veterinary medicine will be permitted to shield certain animal medical records from public disclosure. Persons seeking public inspection and copying of these confidential, exempted documents will no longer be able to obtain them.

C. Government Sector Impact:

State colleges of veterinary medicine that are eligible to shield certain animal medical records may be subject to legal challenges by those persons previously able to review those records.

VI. Technical Deficiencies:

The public necessity statement includes the phrase “owners or agents of animals” which appears to imply that animals can have agents. Agents of owners are not referenced in the body of the exemption, and so they do not need to be addressed in the public necessity statement.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 474.2167 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 18, 2015:

CS/SB 716 provides a statement of public necessity that animal medical records held by or transferred to any accredited state college of veterinary medicine be confidential and exempt from the inspection and copying requirements set forth in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

Confidential and exempt medical records that are transferred in connection with official business by any accredited state college of veterinary medicine remain confidential and exempt from disclosure.

Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities.

B. Amendments:

None.