

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 Health Policy

BILL: CS/SB 878

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Public Records/Emergency Room Health Care Practitioners

DATE: January 14, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 878 amends s. 119.071(5), F.S., to define an “emergency room health care practitioner” and to provide a new public records exemption for:

- The home addresses, telephone numbers, dates of birth, and photographs of current and former emergency room health care practitioners;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such practitioners; and
- The schools and day care facilities attended by the children of such practitioners.

The bill also provides a statement of public necessity.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies

¹ FLA. CONST. art. I, s. 24(a).

to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive branch agencies.

Executive Branch Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So.3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Other Personal Information

Section 119.071(5), F.S., provides two types of public records exemptions for personal identification and location information that any of the three branches of state government may have collected on any citizen for various consensual legitimate governmental purposes. One type of exemption is for confidential information and the other is for exempt information.

Confidential information is not subject to inspection by the public and may only be released to those persons and entities designated in the statute. Exempt information is not subject to the mandatory disclosure requirements of the public records law; however, an agency is not prohibited from disclosing such records under specific circumstances.¹⁶

Department of Health

Regulated Professions and Facilities

The Department of Health (DOH) is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.¹⁷ Practitioner regulation is conducted by the Division of Medical Quality Assurance (MQA) and includes the following professions:

- Emergency Medical Technicians and Paramedics;¹⁸
- Acupuncturist;¹⁹
- Allopathic physicians and physician assistants;²⁰

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

¹⁷ Section 20.43(1)(g), F.S.

¹⁸ Part III, ch. 401, F.S.

¹⁹ Chapter 457, F.S.

²⁰ Chapter 458, F.S.

- Osteopathic physicians and physician assistants;²¹
- Chiropractic physicians, physician assistants, and registered chiropractic assistants;²²
- Podiatric physicians;²³
- Naturopathic physicians;²⁴
- Optometrists;²⁵
- Advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistant;²⁶
- Pharmacists;²⁷
- Dentists, dental hygienist and dental laboratories;²⁸
- Midwives;²⁹
- Speech and language pathologists;³⁰
- Audiologists;³¹
- Occupational therapists;³²
- Respiratory therapists;³³
- Dieticians and nutritionists;³⁴
- Athletic trainers;³⁵
- Orthotists, prosthetists, and pedorthists;³⁶
- Electrologists;³⁷
- Massage therapists;³⁸
- Clinical laboratory personnel;³⁹
- Medical physicists;⁴⁰
- Opticians;⁴¹
- Hearing aid specialists;⁴²
- Physical therapists;⁴³

²¹ Chapter 459, F.S.

²² Chapter 460, F.S.

²³ Chapter 461, F.S.

²⁴ Chapter 462, F.S.

²⁵ Chapter 463, F.S.

²⁶ Chapter 464, F.S.

²⁷ Chapter 465, F.S.

²⁸ Chapter 466, F.S.

²⁹ Chapter 467, F.S.

³⁰ Part I, ch. 468, F.S.

³¹ *Id.*

³² Part III, ch. 468, F.S.

³³ Part V, ch. 468, F.S.

³⁴ Part X, ch. 468, F.S.

³⁵ Part XIII, ch. 468, F.S.

³⁶ Part XIV, ch. 468, F.S.

³⁷ Chapter 478, F.S.

³⁸ Chapter 480, F.S.

³⁹ Part II, ch. 483, F.S.

⁴⁰ Part III, ch. 483, F.S.

⁴¹ Part I, ch. 484, F.S.

⁴² Part II, ch. 484, F.S.

⁴³ Chapter 486, F.S.

- Psychologists and school psychologists;⁴⁴ and
- Clinical social workers, mental health counselors and marriage and family therapists.⁴⁵

The following relevant entities are also regulated or inspected by MQA:⁴⁶

- EMS education programs;⁴⁷
- EMS vehicle permittees;⁴⁸
- Environmental testing laboratories;⁴⁹
- Nursing education programs;⁵⁰
- Pharmacies;⁵¹ and
- Trauma centers.⁵²

As part of the DOH's practitioner regulation responsibilities, information required by the DOH from applicants for regulated professions are public records and open to public inspection,⁵³ except for financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are not to be discussed or made available to anyone except the program director of an approved or accredited nursing education program,⁵⁴ members of the DOH regulatory boards, and DOH staff who have a bona fide need to know such information. Any information supplied to the DOH by another agency, which is exempt from the provisions of ch. 119, F.S., or is confidential, shall remain exempt or confidential while in the custody of the DOH or any other agency.⁵⁵

As part of the DOH's licensure and enforcement responsibilities, the DOH also collects information and investigates complaints against health care practitioners, many of which perform their professional duties in a hospital emergency department. The DOH must investigate any complaint that is written, signed by the complainant,⁵⁶ and legally sufficient,⁵⁷ and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.⁵⁸ The DOH also has

⁴⁴ Chapter 490, F.S.

⁴⁵ Chapter 491, F.S.

⁴⁶ Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

⁴⁷ Chapter 401, F.S.

⁴⁸ *Id.*

⁴⁹ Section 403.0625, F.S.

⁵⁰ Chapter 464, F.S.

⁵¹ Chapter 465, F.S.

⁵² Part II, ch. 395, F.S.

⁵³ Section 119.007, F.S.

⁵⁴ Section 464.019(6), F.S.

⁵⁵ Section 456.014, F.S.

⁵⁶ The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See s. 456.073(1), F.S.*

⁵⁷ A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See s. 456.073(1), F.S.*

⁵⁸ Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See s. 456.073(2), F.S.* If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds

a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.⁵⁹

Hospital Emergency Room Health Care Practitioners

Hospitals are licensed by the Agency for Health Care Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. A hospital is an establishment that offers a range of health care services, provided by myriads of the DOH's licensed health care practitioners, with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.⁶⁰ Hospitals must, at a minimum, make clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment, regularly available.⁶¹

Hospitals must maintain current state licensure but may choose to be Medicare-certified and may choose to be accredited by The Joint Commission, Healthcare Facilities Accreditation Program, Center for Improvement in Healthcare Quality or DNV GL Healthcare. Accredited hospitals meeting Chapter 59A-3.253(3), Florida Administrative Code, may be "deemed" to be in compliance with the licensure and certification requirements. Deemed hospitals are not scheduled for routine on-site licensure surveys.⁶²

By definition, a facility providing "emergency services and care" must include medical screening, examination, and evaluation by a physician, or other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists. If such condition does exist, the facility must provide care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.^{63, 64}

The AHCA is required to maintain an inventory of hospitals that provide emergency services. The inventory must list all the emergency services the hospital provides, and such services must appear on the face of the hospital's license⁶⁵ and on a sign in the hospital located where individuals not yet admitted would reasonably be expected to present for emergency services.⁶⁶ As of December 1, 2019, 226 of the 306 licensed hospitals in Florida provide emergency room services, and 50 of the 226 also have off-site emergency departments.⁶⁷

that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

⁵⁹ Section 456.066, F.S.

⁶⁰ Section 395.002(12), F.S.

⁶¹ *Id.*

⁶² Agency for Health Care Administration, Hospitals, *Licensure Information*, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/hospital.shtml (last visited Jan. 7, 2020).

⁶³ Section 395.002(9), F.S.

⁶⁴ Section 395.002(8), F.S., defines an "emergency medical condition" as a medical condition manifesting itself by acute, severe symptoms, include severe pain, such that the absence of immediate medical care could reasonably be expected to result in any of the following: serious jeopardy to patient health, including a pregnant woman or fetus; serious impairment to bodily functions; or serious dysfunction of any organ or part.

⁶⁵ Section 395.1041(2), F.S.

⁶⁶ Fla. Adm. Code. R. 59A-3.225(1) (2019).

⁶⁷ Agency for Health Care Administration, *Facility/Provider Search Results, Hospitals and Emergency*, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (reports generated on Jan. 6, 2020).

Hospitals offering emergency services and care to patients presenting in the emergency department must provide, among other services, emergency care 24 hour a day and adequate emergency room staff, with sufficient education and training to provide the following:

- An initial consultation with a physician within 30 minutes, either in person, or via two-way voice communication;
- A specialty consultation, if requested by the attending physician, or a transfer to a hospital where definitive care can be provided;
- Written policies and procedures specifying the scope and conduct of emergency services to be rendered to patients;
- A control register identifying all persons seeking emergency care and a medical record on every patient seeking emergency care containing specified information;
- Clinical laboratory services sufficient to perform routine studies and standard analyses of blood, urine, other body fluids, and to store and type and cross-match blood;
- An sufficient blood supply, either in-hospital or from outside sources;
- Diagnostic radiology services;
- Oxygen and administration equipment;
- Mechanical ventilation equipment, including airways, manual breathing bags, and a ventilator;
- A cardiac defibrillator with synchronization capability;
- Respiratory and cardiac monitoring equipment;
- Thoracenteses and closed thoracostomy sets;
- A tracheostomy or cricothyrotomy set;
- Tourniquets;
- Vascular cut-down sets;
- Laryngoscopes and endotracheal tubes;
- Urinary catheters with closed bag systems;
- Pleural and pericardial drainage sets;
- Minor surgical instruments;
- Splinting devices;
- Emergency obstetrical packs;
- Standard emergency drugs including common poison antidotes, parenteral fluids, infusion sets, and surgical supplies;
- Refrigeration storage for biologicals and other supplies; and
- Stable examination tables.⁶⁸

The AHCA inventory of hospital emergency room services and the required equipment to provide those services could potentially require, at a minimum, DOH-licensed health care practitioners from all of the following licensed professions:

- Emergency medical technicians and paramedics;⁶⁹
- Allopathic physicians and physician assistants;⁷⁰

⁶⁸ Fla. Adm. Code R. 59A-3.225(6), (2019).

⁶⁹ Part III, ch. 401, F.S.

⁷⁰ Chapter 458, F.S.

- Osteopathic physicians and physician assistants;⁷¹
- Podiatric physicians;⁷²
- Advanced practice registered nurses, registered nurses, licensed practical nurses, and certified nursing assistant;⁷³
- Pharmacists;⁷⁴
- Dentists;⁷⁵
- Midwives;⁷⁶
- Respiratory therapists;⁷⁷
- Dieticians;⁷⁸
- Clinical laboratory personnel;⁷⁹
- Medical physicists;⁸⁰
- Physical therapists;⁸¹ and
- Clinical social workers, mental health counselors, and marriage and family therapists.⁸²

Emergency Room Personnel and Physical Violence, Harassment, and Intimidation

Workplace violence (WPV) is defined as any act or threat of physical violence, harassment, intimidation, or other disruptive behavior that occurs at the work site and may cause physical or emotional harm. Health care professionals are among the workers at highest risk for WPV. According to a 2007 report of the U.S. Bureau of Labor Statistics, WPV occurs more often in health care and social assistance industries than in any other workforce sector, accounting for 60 percent of all nonfatal assaults.⁸³ Emergency room health care practitioners, by the nature of their duties, are often placed in traumatic circumstances in which loss of life and severe bodily injuries have occurred.

The Emergency Nurses Association reports that violence in emergency departments has reached epidemic levels and emergency room nurses are particularly vulnerable. The Association further reports that the healthcare industry leads all other sectors in the incidence of nonfatal workplace assaults, and the emergency department is a particularly vulnerable setting.⁸⁴

⁷¹ Chapter 459, F.S.

⁷² Chapter 467, F.S.

⁷³ Chapter 464, F.S.

⁷⁴ Chapter 465, F.S.

⁷⁵ Chapter 466, F.S.

⁷⁶ Chapter 467, F.S.

⁷⁷ Part V, ch. 468, F.S.

⁷⁸ Part X, ch. 468, F.S.

⁷⁹ Part II, ch. 483, F.S.

⁸⁰ Part III, ch. 483, F.S.

⁸¹ Chapter 486, F.S.

⁸² Chapter 491, F.S.

⁸³ Stene, Julie, MHA, MSN, RN; Larson, Erin, MSN, RN; Levy, Maria, RN; Dohlman, Michon, MSN, RN; The Permanente Journal, *Workplace Violence in the Emergency Department: Giving Staff the Tools and Support to Report*, Spring 2015, Vol. 19, No.2, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4403590/> (last visited Jan. 7, 2020).

⁸⁴ Emergency Nurses Association, *Workplace Violence* (2019), available at <https://www.ena.org/practice-resources/workplace-violence> (last visited Jan. 7, 2020).

According to surveys by the American College of Emergency Physicians and the Emergency Nurses Association, almost half of emergency physicians report being physically assaulted at work, while about 70 percent of emergency nurses report being hit and kicked while on the job. Furthermore, the vast majority – 80 percent – of emergency physicians say violence in the emergency department harms patient care. Similarly, emergency nurses report that the harmful consequences of experiencing a violent event at work interferes with the delivery of high-quality patient care.⁸⁵

III. Effect of Proposed Changes:

The bill creates s. 119.071(5)(1), F.S., to provide a new public records exemption for certain personal information pertaining to health care practitioners whose duties are currently, or were formerly, performed in a hospital emergency department. The exemption prevents the disclosure of their:

- Home addresses, telephone numbers, dates of birth, and photographs;
- Spouse’s and children’s names, home addresses, telephone numbers, dates of birth, and places of employment; and
- Children’s schools and day care facilities.

The bill defines an “emergency room health care practitioner” as:

- A physician or a physician assistant licensed under chapters 458 or 459, F.S.;
- An advanced practice registered nurse, a registered nurse, or a licensed practical nurse licensed under part I of chapter 464; or
- Any other licensed health care practitioner whose duties are performed in a hospital emergency department.

The bill mandates that the DOH, or any other agency, which has custody of an emergency room health care practitioner’s confidential identification and location information, must maintain the exempt status of that information and may release it only under a court order or some other legitimate state interest.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c), of the Florida 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.

⁸⁵ *Id.*

Public Necessity Statement

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly-created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c), of the Florida Constitution requires a newly-created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings stated in the bill, and even though the bill potentially encompasses a large number of health care practitioners whose duties are performed in a hospital emergency department, the bill does not appear to be in conflict with this constitutional requirement.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Government agencies may incur an indeterminate cost in determining if an individual whose information is requested is, or was, an emergency room health care practitioner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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 the Health Policy Committee on October 14, 2020:

The CS places the new public records exemption in s. 119.071(5), F.S., instead of in s. 119.071(4), F.S., as in the underlying bill, to make the exemption self-executing and affect more of the individuals the bill was designed to protect.

- B. **Amendments:**

None.