

STORAGE NAME: h1485a.jud

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1485

RELATING TO: Public Records/Minors/Pregnancy

SPONSOR(S): Rep. Murman

COMPANION BILL(S): CS/SB 1596(s), HB 1585(c), and SB 1598(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 9 NAYS 0
- (2) FAMILY LAW & CHILDREN
- (3) GOVERNMENTAL OPERATIONS
- (4) GOVERNMENTAL RULES & REGULATION
- (5)

I. SUMMARY:

HB 1485 provides an exemption from public records requirements for information which might identify a pregnant minor who petitions the court for a waiver of parental notice prior to obtaining an abortion. The bill makes confidential and exempt from the requirements of Section 119.07(1), F.S., and Article I, Section 24(a) of the State Constitution any information in documents relating to the petition which could be used to identify the minor. The bill provides statements of public necessity.

The bill is tied to House Bill 1585, and takes effect on the same date as that bill or similar legislation takes effect, if such legislation is adopted in the same legislative session.

The bill creates two undesignated sections of law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.¹ Article I, Section 24, Florida Constitution, provides:

- (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law² specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . .

The Public Records Law states that, unless specifically exempted, all agency³ records are to be available for public inspection. The term "public record" is broadly defined 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.⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute.

Article I, Section 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated

¹ Article I, s. 24 of the Florida Constitution.

² Chapter 119, F.S.

³ The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . 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 Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the Florida Constitution.

⁴ Section 119.011(1), F.S.

⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

The Open Government Sunset Review Act of 1995⁸ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

- 1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁹

Article I, Section 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information that is in the possession of a health care practitioner or a state agency is confidential,¹⁰ except under certain specific circumstances. As confidential information, patient records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care providers involved in the care or treatment of the patient, except upon written authorization of the patient.

There are some significant exceptions to the, otherwise, exclusive control given patients over such information. These exceptions include:

- Release, without written authorization, of physical or mental examination or administered treatment information to a person that procures such examination or treatment with the patient's consent;
- Forwarding of examination results obtained when a compulsory physical examination is performed for purposes of civil litigation in conformity with the Rules of Civil Procedure; or
- Upon issuance of a subpoena in a civil or criminal action.

⁷ Art. I, s. 24(c) of the Florida Constitution.

⁸ Section 119.15, F.S.

⁹ Section 119.15(4)(b), F.S.

¹⁰ Section 455.667, F.S. (formerly 455.241, F.S.).

B. EFFECT OF PROPOSED CHANGES:

HB 1485 requires that when a minor petitions a circuit court for a waiver of the required parental notice pertaining to the termination of her pregnancy, any information in documents relating to the petition which could be used to identify the minor is confidential and exempt from the requirements of Section 119.07(1), F.S., and Section 24 (a) of Article I of the State Constitution.

The bill makes findings that the exemptions are a public necessity in that the disclosure of such information is not in the best interests of the minor. The bill makes additional findings that public disclosure of such information may expose minors who have been physically abused sexually abused or neglected by a parent or guardian to the risk of retribution.

The bill is tied to House Bill 1585, and takes effect on the same date as that bill or similar legislation takes effect, if such legislation is adopted in the same legislative session.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 119.07(1), Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Please see II.B above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on judiciary adopted a strike-all amendment on April 15, 1999. Section 1 of the strike-all provides that when a minor petitions for waiver of the notice requirements, any information in the documents related to her petition is exempt from the public records requirements of Section 119.07(1), F.S., and Section 24(a) of Article I of the State Constitution. Section 2 contains legislative findings justifying the exemptions. Section 3 makes the act effective when the "Parental Notice of Abortion Act" takes effect.

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:
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