

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1824

SPONSOR: Senator Campbell

SUBJECT: Public Records; Adverse Incident Notices

DATE: March 14, 1999

REVISED: 03/23/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill creates an exemption from chapter 119, Florida Statutes, the Public Records Law, and Section 24(a), Article I of the State Constitution for information contained in a notice of an adverse incident submitted to the Department of Health and provides findings of necessity to justify the creation of the exemption. The legislation also specifies that the notice is not discoverable or admissible in any civil or administrative action, unless the action is a disciplinary proceeding by the Department of Health or an appropriate regulatory board. The bill provides that the information contained in the notice of an adverse incident report maintained by the Department of Health may not be made available to the public as part of the record of an investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Health or an appropriate regulatory board. The bill makes the exemption subject to a review prior to a repeal date of October 2, 2003, in accordance with the Open Government Sunset Review Act of 1995.

The bill provides that it will take effect on the same date that Senate Bill 1348 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof.

This bill creates two sections of law that have not been designated to a specific section of the Florida Statutes.

## II. Present Situation:

The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const. governs the creation and

expansion of exemptions, to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const. provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The next review cycle will begin in 2001. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Part II of chapter 455, F.S., provides the general regulatory provisions for health care professions regulated by the Department of Health. Section 455.621, F.S., provides procedures for disciplinary proceedings against professions under the department's regulatory jurisdiction. Disciplinary complaints and all information obtained by the Department of Health are confidential and exempt from the public records and meetings laws until 10 days after probable cause is found or the subject of the complaint waives confidentiality. Section 455.667(8), F.S., provides that all patient records obtained by the Department of Health and any other documents maintained by the department which identify the patient by name are confidential and exempt from s.119.07, F.S., and shall be used solely by the department and the appropriate regulatory board in their investigation, prosecution, and appeal of disciplinary proceedings. The patient records may not be made available to the public as part of the records of investigation for and prosecution in disciplinary proceedings that are made available to the public.

Chapter 395, F.S., imposes requirements on ambulatory surgical centers and hospitals which include inspection and accreditation, and reporting of adverse incidents that result in serious patient injury. Ambulatory surgical centers and hospitals, under s. 395.0197(8), F.S., must report the following incidents within 15 calendar days after their occurrence to the Agency for Health Care Administration: death of a patient; brain or spinal damage to a patient; performance of a surgical procedure on the wrong patient; performance of a wrong-site surgical procedure; performance of a wrong surgical procedure; performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition; surgical repair of damage resulting to the patient from a planned surgical procedure where damage is not a recognized specific risk, as disclosed to the patient and documented through the informed consent process; or performance of procedures to remove unplanned foreign objects remaining in a patient following surgery.

Pursuant to s. 395.0197(8), F.S., the incident reports filed with the Agency for Health Care Administration may not be made available to the public pursuant to s. 119.07(1), F.S., or any other law providing access to public records, nor be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the Department of Health or the

appropriate regulatory board. The incident reports may not be made available to the public as part of the records of investigation for and prosecution in disciplinary proceedings that are made available to the public. The Department of Health or the appropriate regulatory board must make available, upon written request by a health care professional against whom probable cause has been found, any such records which form the basis of the determination of probable cause. The Department of Health must review each incident and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action under the provisions of s. 455.621, F.S.

Senate Bill 1348, the companion bill that necessitates this bill, requires any physician or physician assistant who practices in Florida to notify the Department of Health, effective January 1, 2000, of any adverse incident that involved the physician or physician assistant and occurred in a setting that is not licensed under chapter 395, F.S., relating to licensure of hospitals and ambulatory surgical centers. The physician or physician assistant must also notify the department of any patient accepted by the physician or physician assistant for care or treatment due to an injury that was the result of an adverse incident that occurred in a setting that is not licensed under chapter 395, F.S. SB 1348 requires the Department of Health to review each adverse incident and determine whether the incident potentially involved conduct by a health care professional who is subject to disciplinary action. The bill authorizes the department to have access to all medical records necessary to review the adverse incident and for any subsequent investigation related to the discipline of a licensed health care practitioner under its jurisdiction.

### **III. Effect of Proposed Changes:**

The bill creates an exemption from chapter 119, Florida Statutes, the Public Records Law, and Section 24(a), Article I of the State Constitution for information contained in a notice of an adverse incident required under s. 458.351, F.S., and submitted to the Department of Health. The bill provides findings of necessity to justify the creation of the exemption. The bill provides that it would be an invasion of a patient's privacy for such personal, sensitive information contained in an adverse incident to be publicly available. The bill provides that the failure to protect the confidentiality of any information submitted to or collected by the Department of Health under s. 458.351, F.S., regarding an adverse incident, including, the identity of a patient, the type of adverse incident, and the fact that an investigation is being conducted would deter the collection and reporting of this information to the department. Release of the information would prevent the Department of Health and the appropriate regulatory boards from effectively carrying out their responsibility to enforce standards of safe patient care and to take the necessary disciplinary action for practice violations. The bill provides that release of the information could lead to the deterioration of services and care rendered to patients.

The legislation also specifies that the notice is not discoverable or admissible in any civil or administrative action, unless the action is a disciplinary proceeding by the Department of Health or an appropriate regulatory board. The bill provides that the information contained in the notice of an adverse incident required under s. 458.351, F.S., and submitted to the Department of Health may not be made available to the public as part of the record of an investigation for and prosecution in disciplinary proceedings made available to the public by the Department of Health or an appropriate regulatory board. The bill makes the exemption subject to a review prior to a repeal date of October 2, 2003, in accordance with the Open Government Sunset Review Act of

1995. The bill provides that it will take effect on the same date that Senate Bill 1348 or similar legislation takes effect, if such legislation is enacted in the same legislative session or an extension thereof.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The bill creates an exemption from chapter 119, Florida Statutes, the Public Records Law, and Section 24(a), Article I of the State Constitution for specified records maintained by the Department of Health and provides findings of necessity to justify the creation of the exemption.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Health, Aging and Long-Term Care:  
Corrects a grammatical error in the bill.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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