

STORAGE NAME: h2101a.go
DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 2101 (PCB HCL 00-10)
RELATING TO: Public Records/Exemption for Profiling & Eliminating Duplicate Fingerprinting
SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Fasano
TIED BILL(S): HB 1659 (PCB HCL 00-03)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

There are three types of public records exempted by this bill related to profiling of practitioners which is the process of requiring health care practitioners to self-disclose information to the Department of Health which had never been collected before and to undergo national criminal background checks. This public records exemption bill is necessary to accomplish the goals of the tied bill, HB 1659 (PCB HCL 00-03), to profile additional health care professions and eliminate duplicate fingerprinting while still maintaining the confidentiality of court records that have been expunged and while still maintaining the confidentiality of patient medical records.

The first relates to home addresses and home telephone numbers of health care practitioners who work in correctional or mental health facilities. This bill will protect the safety and well-being of the health care practitioner and their family members while in their own home from inmates or clients who might seek this information for the purpose of stalking, intimidating, harassing, or otherwise threatening or harming such health care practitioner or his or her family member.

The second exemption relates to medical records and other information that must be submitted to the department which contains confidential information about a patient's medical history, treatment, or current condition and which identifies a patient by name or other identifier. Since HB 1659 attempts to add additional professions to the list of health care practitioners to be profiled, the public records exemption currently found in s. 455.5656, F.S., should be modified as well. The professions that will be profiled if HB 1659 passes include psychologists and mental health practitioners.

The third type of public record exempted by this bill are expunged criminal history records. Currently, under s. 943.0585(4)(c), F.S., expunged records are confidential and exempt from the public records laws except that the Florida Department of Law Enforcement shall disclose this information to certain listed state agencies for purposes of licensure or employment. HB 1659 adds the Department of Health to this list of state agencies so that the Department of Health can operate as a repository of criminal history information regarding health care practitioners and provide this information to the other state agencies listed in this section. The public records exemption in this provision goes to information relating to the existence of an expunged criminal history record. The provision then requires the maintenance of the confidentiality of that expunged record by the Department of Health.

Note. On April 5, 2000, the Committee on Governmental Operations adopted four amendments which relate to an exemption for certain information in court records relating to an order by the Department of Health to compel a practitioner to submit to a mental or physical examination.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

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.

Article 1, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of s. 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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 a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public

policy of open government and that such purpose cannot be accomplished without 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 information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; 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 which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Exemptions for Personal Information, Medical Information and Expunged Records

The home addresses and home telephone numbers of health care practitioners are currently public records if they have been provided by the practitioner to the Department of Health. Practitioners are required by s. 455.717, F.S., to provide the department with their current mailing address and place of practice. Oftentimes, practitioners provide their home address to the department as their mailing address so they can personally receive critical licensure renewal information from the department. By doing so, they are making their home address and phone number available to the public. In the past, these practitioners have requested an unlisted telephone number from the telephone companies which keeps this personal information out of most telephone directories and out of the hands of convicted criminals who might use this information to harm the practitioner or otherwise threaten or harass the practitioner or his or her family. The criminal rarely contacted or knew to contact the Department of Health to request this personal information. However, this information is now available for physicians, and will be available for all health care practitioners if HB 1659 becomes law, via the internet even if the practitioner had requested an unlisted number from the telephone company. There is no current protection of the home address and home telephone number of health care practitioners who agree to work in correctional or mental health facilities since they do not fall within the category of existing public records exemptions. Law enforcement personnel, including correctional officers, victims of crimes, prosecutors, and judges are currently afforded this protection and more under s. 119.07(3), F.S.

Patient medical records are currently protected from disclosure and release by s. 455.667, F.S., while in the custody and under control of a health care practitioner. That section provides for limited disclosure to the Department of Health for certain purposes. The profiling laws, ss. 455.565-455.5656, F.S., require practitioners who are being profiled to report information to the Department of Health in addition to the provisions of s. 455.667, F.S. When the law passed in 1997 requiring physicians to be profiled, the Legislature recognized the need to maintain the confidentiality of patient medical records and enacted a public records exemption in s. 455.5656, F.S. HB 1659, if enacted, will add additional professions to the list of health care practitioners to be profiled. If the public records exemption currently found in s. 455.5656, F.S., is not expanded accordingly, the additional

patient medical records that could be included with the materials the practitioner must submit to the Department of Health will be open to the public. The professions that will be profiled if HB 1659 passes include psychologists and mental health practitioners. These patients expect their medical records to be kept confidential from the public so they are not harassed, humiliated, or discriminated against. The patient-practitioner relationship is based upon trust and the knowledge that diagnoses, treatment, prognoses, and other medical information will remain confidential and exempt from disclosure to the public.

Currently, under s. 943.0585(4)(c), F.S., expunged records are confidential and exempt from the public records laws except that the Florida Department of Law Enforcement shall disclose this information to certain listed state agencies for purposes of licensure or employment. HB 1659 adds the Department of Health to this list of state agencies so that the department can operate as a repository of criminal history information regarding health care practitioners and provide this information to the other state agencies listed in this section. The purpose of the Department of Health becoming a repository is to eliminate the redundant and duplicative fingerprinting of health care practitioners.

C. EFFECT OF PROPOSED CHANGES:

This public records exemption bill is necessary to accomplish the goals of the tied bill, HB 1659 (PCB HCL 00-03), with regard to profiling and eliminating duplicate fingerprinting while still maintaining the confidentiality of court records that have been expunged, maintaining the confidentiality of patient medical records, and protecting health care practitioners working in correctional or mental health facilities from harm. These public records exemptions duplicate existing public records exemptions already in the law.

There are three types of public records exempted by this bill related to profiling of practitioners which is the process of requiring health care practitioners to self-disclose a wealth of information to the Department of Health which had never been collected before and to undergo national criminal background checks. The first exemption relates to home addresses and home telephone numbers of health care practitioners who work in correctional or mental health facilities. This bill protects the safety and well-being of the health care practitioner and their family members while in their own home from inmates or clients who might seek this information for the purpose of stalking, intimidating, harassing, or otherwise threatening or harming such health care practitioner or his or her family member. The elimination of disclosure of this information on the practitioner profiles or through other public records request will eliminate the deterrent effect on qualified health care practitioners willing to work in these settings.

The second exemption relates to medical records and other information that must be submitted to the department which contains confidential information about a patient's medical history, treatment, or current condition and which identifies a patient by name or other identifier. This bill would keep patient medical records confidential and exempt from disclosure to the public.

The third type of public record exempted by this bill are expunged criminal records. The public records exemption in this provision goes to information relating to the existence of an expunged criminal history record. The provision then requires the maintenance of the confidentiality of that expunged record by the Department of Health.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds s. 119.07(3)(dd), F.S., to exempt the home addresses and home telephone numbers of health care practitioners working in correctional or mental health facilities from disclosure to the public.

Section 2. Provides a statement of public necessity for the public records exemption.

Section 3. Amends s. 455.5656, F.S., to clarify that the public records exemption with regard to physicians profiled pursuant to s. 455.565, F.S., remains subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature. Provides that the public records exemption with regard to all other practitioners profiled pursuant to s. 455.56505, F.S., as created by HB 1659, is subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Provides a statement of public necessity for the public records exemption.

Section 5. Amends s. 943.0585, F.S., to provide that information relating to the existence of expunged criminal history records provided to the Department of Health are confidential and exempt from the public records laws, requires the maintenance of the confidentiality of the expunged records by the Department of Health. and provides criminal sanctions for the release of expunged records to unauthorized persons. Provides that this exemption is subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. Provides a statement of public necessity for the public records exemption.

Section 7. Provides that this bill shall take effect on the effective date of HB 1659 or similar legislation creating s. 455.56505, F.S., to provide for practitioner profiling of additional health care practitioners, and s. 943.0585(4)(a)7., F.S., to provide the Department of Health access to expunged criminal history information on health care practitioners if such legislation is adopted in the same legislative session or an extension thereof.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 2000, the Committee on Governmental Operations adopted four amendments without objection, which will travel with the bill, and reported the bill favorably.

Amendment 1 repeats language from the tied bill, HB 1659, providing that certain persons must disclose an expunged criminal history record.

Amendment 2 provides a public records exemption for certain information in court records relating to an order by the Department of Health to compel a practitioner to submit to a mental or physical examination.

Amendment 3 provides a statement of public necessity for the exemption created by amendment 2.

Amendment 4 provides a title amendment relating to the exemption created by amendment 2.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

Jimmy O. Helms