

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: CS/SB 2394

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Campbell

SUBJECT: Public Records

DATE: April 7, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates exemptions from the Public Records Law for patient records and other data maintained by the Department of Health or its agent for purposes of compiling a practitioner profile, for expunged criminal history records maintained by the department for licensure and employment purposes, for the name or initials in any public court records or documents of any licensed health care practitioner who is the subject of court proceedings to compel the licensee to submit to a physical or mental examination, and for the home addresses and home telephone numbers of health care practitioners, as defined in s. 455.501(4), F.S., working in any type of correctional facility, including any prison or jail, or in any mental health facility. The bill provides findings of public necessity to justify the creation of the exemptions.

The bill provides that the act takes effect on the effective date of legislation creating s. 455.56505, F.S., to provide for practitioner profiling of additional health care practitioners and s. 943.0585(4)(a)7. and (c), F.S., to provide the Department of Health access to expunged criminal history information on health care practitioners seeking to work with children, the developmentally disabled, or the aged or elderly.

This bill creates four undesignated sections and amends ss. 119.07, 455.5656 and 943.0585, Florida Statutes.

II. Present Situation:

Public Records Law

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.

Practitioner Profiling

Section 455.565, Florida Statutes, requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, will be compiled into practitioner profiles to be made available to the public. The information includes: graduate medical education; hospitals at which the physician has privileges; specialty certification; year the physician began practice; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000; professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 455.565, F.S., requires medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit fingerprints for a national criminal history check as part of initial licensure. The section also requires already licensed medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit, on a one-time-basis, a set of fingerprints for the initial renewal of their licenses after January 1, 2000, to the Department of Health (DOH or department). The department must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant’s license after January 1, 2000. For any subsequent renewal of the applicant’s license, DOH must submit the required information for a statewide criminal history check of the applicant.

Section 455.5651, F.S., requires DOH to indicate if the criminal history information reported by a physician is not corroborated by a criminal history check. The department or the board having regulatory authority over the practitioner must investigate any information it receives when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice. Each practitioner's profile must include the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

Medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians applying for licensure renewal must submit the information required for the practitioner profiles, however, an applicant who has submitted fingerprints to DOH for a national criminal history check upon initial licensure and is renewing his or her license for the first time, only needs to submit the information and fee required for a statewide criminal history check.

Section 455.5653, F.S., requires DOH to develop by the year 2000, a schedule and procedures for other licensed health care practitioners to submit relevant information for inclusion in practitioner profiles. Section 3 of Committee Substitute for Senate Bill 2354 (the companion bill to this bill) would, if enacted, phase in profiling requirements for non-physician health care practitioners over the next five years.

Section 455.5656, F.S., makes any patient name or other information identifying a patient that is obtained by the Department of Health or its agent for the purposes of compiling a practitioner profile confidential and exempt from chapter 119, F.S., relating to the Public Records Law and Section 24(a), Article I of the State Constitution. Other data received by the department or its agent as a result of its duty to compile and promulgate practitioner profiles are confidential and exempt from chapter 119, F.S., and Section 24(a), Art. I of the State Constitution until the profile into which the data are incorporated or with respect to which the data are submitted is made public. Section 455.5656, F.S., also specifies that any information or record that the Department of Health obtains from the Agency for Health Care Administration or any other governmental entity for the purpose of compiling a practitioner profile or substantiating other information or records submitted for that purpose that was exempt from the provisions of chapter 119, Florida Statutes, relating to the public records and meetings law and Section 24(a), Article I of the State Constitution shall remain exempt.

Impaired Practitioner Treatment Program

Various practice acts regulating health care professions under DOH contain provisions establishing grounds for disciplinary action which may be taken against licensed health care practitioners who are unable to practice their profession with reasonable skill and safety as a result of the misuse or abuse of alcohol, drugs or due to a mental or physical condition. Several practice acts regulating health care professions under DOH contain provisions which provide a summary proceeding which allows the department to enforce an order in a circuit court to compel a licensed health care practitioner to submit to a physical or mental examination when probable cause exists that the licensee is unable to practice with reasonable skill and safety to patients by reason of impairment (s. 10 of CS/SB 2354 adds a new ground for discipline which will apply to all licensed health care practitioners regulated under the Division of Medical Quality Assurance in DOH). Section 455.707, F.S., provides for the impaired practitioner treatment program. By

entering and successfully completing the impaired practitioner treatment program, the practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment. The department must retain one or more impaired practitioner consultants to administer and implement the impaired practitioner treatment program. The consultant works closely with approved treatment providers regarding the intervention, evaluation, and treatment of impaired practitioners participating in the program.

If in the opinion of the consultant, after consultation with the treatment provider, the impaired practitioner fails to satisfactorily progress in a treatment program, all information regarding the practitioner's impairment and participation in the treatment program must be disclosed to DOH. The disclosure constitutes a disciplinary complaint under s. 455.621, F.S.

Criminal Records

Section 943.0585(4), F.S., provides that any criminal history record which is ordered expunged by a court of competent jurisdiction must be physically destroyed or obliterated by any *criminal justice agency* having custody of such record, except the Florida Department of Law Enforcement (FDLE) must retain the record and keep it confidential and such record as maintained by FDLE is also exempt from the Public Records Law. Any person who is the subject of a criminal history that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record with specified exceptions. When the subject of an expunged record provides the information to a state agency subject to the Public Records Law under the exceptions specified in s. 943.0585 (4)(a), F.S., the information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) of that section remains confidential and exempt as maintained by that state agency and may only be used for licensing and employment purposes and provided to other criminal justice agencies which must maintain the confidentiality thereof.

Paragraph (c) of s. 943.0585(4), F.S., provides that information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) of that subsection is confidential and exempt from the Public Records Law, except that FDLE must disclose the existence of a criminal history record ordered expunged to the entities listed in paragraph (a) of that subsection for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity listed in paragraph (a) of s. 943.0585(4), F.S., to disclose information relating to the existence of an expunged criminal history record of any person seeking employment or licensure, with such entity or contractor, except to the person to whom the criminal record relates to or persons having responsibility for employment or licensure decisions. The penalty for violation is a first degree misdemeanor punishable by imprisonment of up to 1 year and a fine of up to \$1,000. The Department of Health is not currently listed as one of the agencies for which this exception applies. Section 19 of CS/SB 2354 would, if enacted, include DOH in the exception.

III. Effect of Proposed Changes:

Section 1. Amends s. 119.07, F.S. , to create an exemption to the Public Records Law for home addresses and home telephone numbers of health care practitioners, as defined in s.455.501(4), F.S., working in any type of correctional facility, including any prison or jail, or in any mental

health facility. Section 455.501(4), F.S., defines “health care practitioner” as any person licensed under the acupuncture practice act, medical practice act, osteopathic practice act, chiropractic practice act, podiatric practice act, naturopathic practice act, optometric practice act, nursing practice act, pharmacy practice act, dentistry practice act, midwifery practice act, speech-language pathology and audiology practice act, nursing home administration practice act, occupational therapy practice act, respiratory therapy practice act, dietetics and nutrition practice act, athletic trainers practice act, orthotics, prosthetics, and pedorthics practice act, electrology practice act, massage therapy practice act, medical physics practice act, clinical laboratory personnel practice act, physical therapy practice act, psychology practice act, or psychotherapy practice act.

Section 2. Creates an undesignated section which specifies legislative findings for the creation of the exemption to the Public Records Law for home addresses and home telephone numbers of health care practitioners, as defined in s. 455.501(4), F.S., working in any type of correctional facility, including any prison or jail, or in any mental health facility.

Section 3. Amends s. 455.5656, F.S., which provides an exemption to the Public Records Law for patient records and other data maintained by DOH or its agent for purposes of compiling a practitioner profile, to extend the exemption to practitioners who may be made subject to profiling by legislation created during the 2000 regular session (s. 455.56505, F.S., as created by s. 3 of CS/SB 2354). The exemption is subject to the Open Government Sunset Review Act of 1995 and stands repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Creates an undesignated section which specifies findings of public necessity for the creation of the exemptions to the Public Records Law for any patient name or other information identifying a patient and other data received by the Department of Health or its agent for the purposes of compiling a practitioner profile.

Section 5. Amends s. 943.0585, F.S., to allow DOH to obtain expunged criminal history records for licensure and employment purposes in order to serve as a repository for other state agencies who presently receive expunged records directly from FDLE. An exemption to the Public Records Law for agencies which are provided expunged criminal history is created by extending the exemption to include DOH for health care practitioners seeking employment, licensure or a contract to work with children, the developmentally disabled, or the aged or elderly.

Section 6. Creates an undesignated section which provides that the name or identity of the licensed health practitioner who is the subject of a summary proceeding to enforce an order by the Department of Health to compel a mental or physical examination by physicians designated by the department under s. 455.624, F.S., may not be made public and closes the proceedings to the public. Such records or documents which name or identify the licensed practitioner are made confidential and exempt from the Public Records Law.

Section 7. Creates an undesignated section which specifies findings of public necessity for the creation of the exemptions to the Public Records Law for expunged criminal history information on health care practitioners seeking employment, licensure, or a contract with DOH. The section also specifies findings of public necessity for the exemptions to the Public Records Law for the

disclosure of information and the holding of public meetings, regarding the impairment of a licensed health practitioner.

Section 8. The bill provides that the act takes effect on the effective date of legislation creating s. 455.56505, F.S., to provide for practitioner profiling of additional health care practitioners.

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 exemptions from chapter 119, Florida Statutes, relating to 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 public necessity to justify the creation of the exemptions.

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:

Section 1 of the bill provides an exemption from the Public Records Law for the home addresses and home telephone numbers of health care practitioners who work in any type of correctional facility or mental health facility. The bill does not expressly require the newly created exemption to be subject to the Open Government Sunset Review Act of 1995 which requires that the exemption stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

VII. Related Issues:

None.

VIII. Amendments:

None.

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