

STORAGE NAME: h1147.ccc.doc
DATE: April 16, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS

BILL #: HB 1147
RELATING TO: Public Records
SPONSOR(S): Representative Kendrick
TIED BILL(S): None

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

- (1) INSURANCE YEAS 12 NAYS 0
- (2) STATE ADMINISTRATION YEAS 4 NAYS 0
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

Under article I, s. 24 of Florida's Constitution, "[e]very 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" The constitution also provides that the Legislature may exempt certain records and meetings from the requirements. The exemption must include a specific statement of public necessity and not be broader than necessary to accomplish its stated purpose.

Current law exempts only specific types or classes of medical, financial, and personally-identifying information contained in state-held documents. The Department of Insurance receives many public records requests for unprotected document classes that contain medical, financial and personally-identifying information.

This bill would declare all medical, financial, and personally identifying information contained within Department of Insurance records exempt from Florida's public records law except for information concerning the subjects of criminal investigations.

The bill would not have a fiscal impact upon the department.

This bill takes effect upon becoming law.

See "Other Comments" section for comments by the Committee on State Administration.

Traveling amendment by the Committee on State Administration:

The substitute strike-everything amendment creates a public records exemption for all bank account numbers, and debit, charge, and credit card numbers, and all personal identifying information contained in financial records, patient records, and other individual health records held by the Department of Insurance. The amendment changes the exemption expiration date from October 1, 2006, to October 2, 2006. The substitute strike-everything amendment restructures and edits the public necessity statement. This amendment supersedes a strike-everything amendment previously adopted by the Committee on Insurance.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes [] No [] N/A [x]
- 2. Lower Taxes Yes [] No [] N/A [x]
- 3. Individual Freedom Yes [] No [x] N/A []

This bill affects the public's ability to obtain information contained in records kept by the Department of Insurance. Currently, the public has access to non-exempt records submitted to the department containing medical, financial, and personally-identifying information.

- 4. Personal Responsibility Yes [] No [] N/A [x]
- 5. Family Empowerment Yes [] No [] N/A [x]

B. PRESENT SITUATION:

What is Florida's public records policy?

Does the Florida constitution address public records?

Article I, s. 24 of the Florida Constitution expresses Florida's public policy regarding access to government records:

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.

Can the Legislature create public records exemptions?

The Legislature may by general law exempt certain records and meetings from the requirements of article I, s. 24 of the Florida Constitution. The general law must include a specific statement of the public necessity justifying the exemption, and the exemption must not be broader than necessary to accomplish the stated purpose of the law.

What criteria must the Legislature consider when crafting an exemption?

In the Open Government Sunset Review Act of 1995, the Legislature included an express statement of intent that exemptions to the public records and public meetings laws be created or maintained only if the exempted record or meeting is of a sensitive, personal nature concerning individuals; the exemption is necessary for the effective and efficient administration of a governmental program; or the exemption affects confidential information concerning an entity.

What is a redaction?

A “redaction” is the “careful editing of a document, especially to remove confidential references or offensive material.”¹ There are several instances in Florida law where agencies are authorized to release redacted reports: protective investigation reports done by the Department of Children and Families, closed-door hospital board meeting transcripts where confidential strategic plan information is discussed, confidential medical and mental history in pre-sentence defendant investigation reports viewed by victims of felony crimes, and minutes of closed door meetings of the Florida Joint Underwriters Association and the Residential Property and Casualty Joint Underwriting Association regarding open claim and underwriting files.

What kinds of records are exempt from disclosure?

Generally, records relating to an individual's private financial and medical affairs are exempt from disclosure pursuant to a public records request. In some instances, an individual's personally-identifying information, such as telephone number and address, is also exempt from disclosure. However, not all state-held documents that contain private financial, medical or personally-identifying information are exempt.

What general insurance records are exempt?

Certain insurance records held by the state, such as bail bondsman applications, active investigation records, reports from workers' compensation self insureds, non-final emergency orders issued against licensees, records of state insurance claim negotiations, and claim files of Joint Underwriting Associations, among others, are exempt from public disclosure.

What financial records are exempt?

Personal financial information, such as state direct deposit records, taxpayer records, financial records of persons participating in enterprise guaranty programs, and financial records of both Florida Export Finance Corporation and Florida Development Finance Corporation loan applicants, among others, are exempt from public disclosure.

What medical records are exempt?

Florida's protection of private medical records extends to insurance medical records kept by the state, a county, or a water management district, state held disease records, hospital patient records, records obtained by the Agency for Health Care Administration, records obtained by the Department of Health, and records obtained during search of physician's office are among the medical records exempt from release under Florida's public records laws.

What personally-identifying records are exempt?

Some personally-identifying information held by a state agency is protected. For example, personally-identifying information held by the Department of Transportation and acquired through purchase of an electronic expressway toll device, and information gathered by the Statewide Subscriber Assistance Panel through its investigations is exempt from release. Also, donor anonymity, when requested, is recognized for most major state-run programs.

¹ Black's Law Dictionary, 7th Edition (1999)

What is federal opinion on medical record privacy?

Recently the federal government has adopted revisions to its administrative rules regulating privacy of medical records. The rules prevent disclosure of all medical records that health plans, health clearinghouses, and health providers have in their possession. No record may be released, even for "routine disclosure," without the consent of the patient. In addition, no medical record may be used for "non-health purposes" including use by employers to make personnel decisions. Entities must adopt written privacy procedures identifying those with access to medical records and designate a privacy officer responsible for overseeing procedural enforcement. This law was adopted specifically as a nationwide privacy "floor" and does not preempt states from providing greater privacy protections.

Does the Department of Insurance keep non-exempt records containing medical, financial, and personally-identifying information?

The Department of Insurance receives many public records requests for unprotected document classes that contain medical, financial and personally-identifying information. Requesters most often ask for all closed consumer complaints.² The department does not keep track of the total number of requests for consumer complaint information. However, the department has released medical and financial information pursuant to consumer complaints requests.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 627.111, F.S., to provide that medical, financial, and personally-identifying information in department records not otherwise exempted, are exempt from the public records disclosure. This bill allows the department to redact this information before release. This exemption would not apply to records involving insureds or consumers under criminal investigation.

This bill contains a legislative finding that it is a public necessity to redact medical, financial, and personally-identifying information from department-held records.

In accordance with the Open Government Sunset Review Act of 1995, this exemption would be repealed on October 1, 2006, unless saved by reenactment.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

² Consumer complaint files contain, among other things, all records given to the department by the consumer. According to the department, consumers filing complaints usually disclose all information regarding the financial and medical circumstances of the case.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Insurance estimates that any added redaction workload would not require additional personnel or cost.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on State Administration

The strike-all amendment traveling with this bill creates a public records exemption for "all personal information specifically related to bank account numbers, personal financial information, patient records, and other individual personal health information." Bank account numbers do not have personal information relative to them; either the bank account number is exempt or personal identifying information regarding the account holder is made exempt. Also, the strike-all

amendment makes certain public records *exempt*, whereas, the public necessity statement provides that such records are *confidential* and exempt. There is a substantial difference between records that are "exempt" and records that are "confidential and exempt"; and, both the exemption and the public necessity statement must conform. The strike-all amendment subjects the exemption to the Open Government Sunset Review Act and provides an expiration date of October 1, 2006. The Open Government Sunset Review Act of 1995 provides an expiration date of October 2 of the fifth year, after the enactment of the exemption. In addition, the strike-all amendment contains superfluous language.

The sponsor has filed a substitute amendment to the amendment that remediates these concerns.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Traveling amendment by Committee on State Administration:

On April 12, 2001, the Committee on State Administration adopted a substitute strike-everything amendment to HB 1147. The substitute strike-everything amendment creates a public records exemption for all bank account numbers, and debit, charge, and credit card numbers, and all personal identifying information contained in financial records, patient records, and other individual health records held by the Department of Insurance. The amendment changes the exemption expiration date from October 1, 2006, to October 2, 2006. The substitute strike-everything amendment restructures and edits the public necessity statement.

The amendment by State Administration supersedes a strike-everything amendment by the Committee on Insurance. Under that amendment, the bill's public records exemption would be limited to specific types of medical and financial information only, and language was added to the statement of public necessity to the effect that an individual's expectation of and right to privacy concerning sensitive medical and financial information justifies preservation of the individual's privacy by the state.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

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