

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1734

SPONSOR: Banking and Insurance Committee and Senator Rossin

SUBJECT: Insurance--Public Records Exception Pertaining to Specified Policyholder or Consumer Information

DATE: March 26, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1734 would provide an exemption from the public records requirements for specific personal information related to bank account numbers, financial data or patient records concerning policyholders and consumers, which records are in the possession of the Department of Insurance. The department would be allowed to redact such personal information prior to the record becoming available to the general public in order to protect the privacy of the particular policyholder or consumer. The bill provides for a finding of public necessity.

This bill creates section 627.3111, Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy 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. The section specifically includes the legislative, executive, and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the

exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years and must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the 5th year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed effective October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if: (1) the exempted record or meeting is of a sensitive, personal nature concerning individuals; (2) the exemption is necessary for the effective and efficient administration of a governmental program; or (3) the exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions: (1) what specific records or meetings are affected by the exemption? (2) whom does the exemption uniquely affect, as opposed to the general public? (3) what is the identifiable public purpose or goal of the exemption? (4) can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption: (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Department of Insurance--Records of Insureds and Consumers

According to representatives with the Department of Insurance, when the department investigates the activities of insurance companies, policyholders provide the department with personal information relating to their insurance policy, which often includes financial or medical data. These investigations are often initiated due to complaints by the insured, however, once the investigation is concluded, the entire department file becomes a public record. Further, consumers may also contact the department about problems they have in obtaining insurance coverage and, as such, might submit medical data to the department. Proponents of this bill state that it is important for the department to be able to redact personal policyholder and consumer information from investigation files prior to releasing such files as public records. Also, under the provisions of the bill, material that would still remain available as a public record would be the person's identity and the type of complaint the person made to the department.

Approximately one-half of the 35,000 complaints the department receives each year are related in some fashion to the health insurance industry and include personal information concerning insureds or consumers. For example, often a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services with the department. In providing background information, the insured will provide medical records detailing the history of the claim, e.g., medical records revealing the facts supporting why the claim should be paid. Upon resolution of the matter, the medical information is available to anyone requesting the files on a particular company, transaction, or type of complaint. This is an unintended consequence of seeking assistance from the department.

Redactions

A "redaction" is the "careful editing of a document, especially to remove confidential references or offensive material." 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 (s. 119.07(7), F.S.), closed-door hospital board meeting transcripts where confidential strategic plan information is discussed (s. 395.3035(4)(b), F.S.), confidential medical and mental history in pre-sentence defendant investigation reports viewed by victims of felony crimes (s. 960.001(1)(g)2, F.S.), 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 (s. 627.311(3)(l)1i, F.S.), and s. 627.351(6)(n)1i, F.S.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.3111, F.S., relating to confidentiality of personal information of an insured or consumer, to provide that all personal information specifically related to bank account numbers, personal financial data, patient records, and other individual personal health information that is in the possession of the Department of Insurance which is contained in public records may be redacted by the department before such information is released to the general public. Under the bill, this provision is necessary to preserve the privacy of the insured or consumer and any portions of records which reveal this information are exempt from the provisions of s. 119.07(1) and s. 24(a), Article 1 of the Florida Constitution. However, the exemption does not apply to records of the insured or other person who is the subject of a criminal investigation and does not prevent the department from referring such information to

any local, state, or federal law enforcement authority. The exemption is subject to the Sunset Review Act and shall stand repealed on October 1, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Provides for legislative findings of public necessity, which states that portions of records which are held by the department, and which reveal personal financial data, like bank account numbers, as well as patient medical records and other medical information concerning insured or consumers, should be withheld from the public to protect the privacy of those individuals.

Section 3. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This provision will protect the privacy rights of insured's and consumers.

C. Government Sector Impact:

There will be no fiscal impact on the Department of Insurance.

VI. Technical Deficiencies:

None.

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.
