

# 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 for SB 1848

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

SUBJECT: Public Records

DATE: April 17, 2001                      REVISED: \_\_\_\_\_

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

**I. Summary:**

The bill provides that any portion of a document, in the custody of the Agency for Health Care Administration, that identifies the claimant or case number of a resolved claim or civil action involving a nursing home or assisted living facility under chapter 400, Florida Statutes, is confidential and exempt from disclosure under the Public Records Law. The exemption is subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 2, 2006, unless reenacted.

The bill also provides that the information contained in any report of liability claims against a nursing home, in the custody of the Agency for Health Care Administration, under chapter 400, Florida Statutes, is confidential and exempt from disclosure under the Public Records Law. The exemption is subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 2, 2006, unless reenacted.

Legislative intent is provided that it is a public necessity to protect the identity of persons resolving a claim or civil action against a nursing home or assisted living facility, and that it is not in the best interest of potentially vulnerable claimants for such information to be public, and that the potential harm to such claimants due to disclosure substantially outweighs any minimal public benefit derived from such disclosure.

The bill further provides legislative intent that reports of liability claims against nursing homes contain preliminary information that may or may not be meritorious and that the potential harm to such nursing homes due to disclosure substantially outweighs any minimal public benefit derived from such disclosure.

This bill creates three undesignated sections of law.

## II. Present Situation:

### *Public Records Exemptions*

The Public Records Law, chapter 119, F.S., specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. While the state constitution provides that records of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to this requirement 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.

Under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 cannot be accomplished without the exemption:

- (a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?
- (b) Does the exemption protect 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?<sup>1</sup>
- (c) Does the exemption protect 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?

### *Open Government Sunset Review*

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 meeting requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

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<sup>1</sup> However, in exemptions under this paragraph, only information that would identify the individuals may be exempted.

***CS/CS/SB 1202***

CS for CS for SB 1202, an act relating to long-term care, provides that long-term care providers are to inform the Agency for Health Care Administration (AHCA) of the resolution of lawsuits brought under chapter 400, F.S. Specifically, ss. 400.023(7) and 400.429(8), F.S., as created in CS/CS/SB 1202 provide that nursing homes and assisted living facilities must provide to AHCA a copy of any resolution of a claim or civil action brought under chapter 400, F.S., within 90 days after such resolution, including but not limited to any final judgment, arbitration decision, order, injunction, mediation agreement or settlement.

CS/CS/SB 1202 also provides that nursing homes must report monthly to AHCA any liability claims filed against them under s. 400.147(9), F.S. The report must include the name of the resident, the date or dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred. The report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in such actions brought by AHCA to enforce the provisions of chapter 400, F.S. The agency is required to annually submit a report to the Legislature on nursing home adverse incidents. The report must include the types of liability claims filed based on an adverse incident or reportable injury. This information must be arranged by county.

**III. Effect of Proposed Changes:**

**Section 1.** Provides that any portion of a document identifying the claimant or case number of a claim or civil action that results in a final judgment, arbitration decision, order, injunction, mediation agreement or settlement that involves a nursing home or assisted living facility that is submitted to AHCA under ss. 400.023(7) or 400.429(8), F.S., is confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

The exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2.** Provides that the information contained in any report of liability claims against nursing homes provided to AHCA under s. 400.147(9), F.S., is confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

The exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 3.** Provides that the Legislature finds that it is a public necessity to protect the identity of those persons who may have received compensation pursuant to arbitration, mediation, or litigation involving a nursing home or assisted living facility. The Legislature finds that it is not in the best interest of potentially vulnerable claimants for such information to be readily available to those who might use the information to take advantage of such claimants. Accordingly, the Legislature finds that the harm to the public which could result from the release of the information substantially outweighs any minimal public benefit derived therefrom.

The bill also provides legislative intent that monthly reports of liability claims against nursing homes submitted to AHCA contain preliminary allegations that may or may not possess merit. Accordingly, the Legislature finds that the potential harm to nursing homes due to the release of such preliminary information substantially outweighs any minimal public benefit derived therefrom.

**Section 4.** Provides that this bill shall take effect on the effective date of CS/CS/SB 1202, or similar legislation, and that this bill shall not take effect if such legislation does not become law.

#### **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 Art. VII, s. 18 of the Florida Constitution.

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

The bill provides an exemption from the requirements of s. 119.07, F.S., and Art. I, s. 24(a) of the Florida Constitution.

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

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 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:**

None.

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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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