

STORAGE NAME: h0365a.hp.doc
DATE: March 6, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH PROMOTION
ANALYSIS**

BILL #: HB 365
RELATING TO: Public Records
SPONSOR(S): Representative(s) Hogan

TIED BILL(S):

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

- (1) HEALTH PROMOTION YEAS 11 NAYS 0
- (2) STATE ADMINISTRATION
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

HB 365 creates an exemption from the public records law for all personally identifying information, bank account numbers, and debit and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services made or received by the Department of Health or its service providers by making such information confidential and exempt from the Public Records law.

A subsequent repeal and review is specified for this exemption as required by s. 119.15(3)(a), F.S. A public necessity statement is provided for this exemption, as required by Art. 1, s. 24, of the Florida Constitution.

The bill's effective date is July 1, 2001.

This bill has no fiscal impact on state or local governments, or the private sector.

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 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 are analyzed using the following definition of public necessity: a public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

State Health Online Tracking System (SHOTS)

The Department of Health currently operates a statewide immunization registry, Florida SHOTS, which is a computerized database that maintains immunization records for all children in Florida (authorized by ch. 2000-367, Laws of Florida). Florida SHOTS contains personal identifying information submitted by both the county health departments and private health care providers relating to personal health (immunizations). This information is not specifically exempt from ch. 119, F.S.

Epilepsy Services

Epilepsy service providers under contract with the Department of Health often in the course of performing their duties and functions obtain personal health and financial information related to their clients and their families. This information is not specifically exempt from ch. 119, F.S.

C. EFFECT OF PROPOSED CHANGES:

See SECTION-BY-SECTION ANALYSIS which follows.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection 119.07(3), FS., pertaining to public records exceptions., to add a new paragraph (dd) for records relating to an individual's personal health or eligibility for health-related services, providing that such records made or received by the Department of Health or its service providers are confidential and exempt from the provisions of subsection (1) of this section and section 24(a), Art. I of the State Constitution of Florida, except as otherwise provided by law.

Provides that the records relating to an individual's personal health or eligibility for health-related services that come into the possession of the department or its service providers are confidential and may not be released except as authorized by this act.

Provides that this section 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 reenacted.

Section 2. Provides a legislative finding of public necessity relating to personally identifying information, bank account numbers, and debit and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services made or received by the Department of Health or its service contractors. Provides a legislative finding that this exemption is needed to protect information of a sensitive nature that concerns individuals; that an individual has an expectation and right of privacy concerning his or her health when medical services are provided by the department or its service contractors; that matters of personal health are traditionally private and confidential concerns between the patient and the health care provider; and that the confidential nature of personal health matters pervades both public and private health care sectors. Provides that a person's personal financial situation, as it relates to eligibility, is also of a sensitive nature and should be confidential and exempt.

Section 3. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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.

STORAGE NAME: h0365a.hp.doc

DATE: March 6, 2001

PAGE: 5

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This 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:

As required by Art. 1, s. 24, of the Florida Constitution, a public necessity statement accompanies this proposed public records amendment.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

As required by s. 119.15(3)(a), F.S., a subsequent repeal and review of this exemption under the Open Government Sunset Review Act of 1995 is specified.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2001, the Committee on Health Promotion passed HB 365 with a "strike-everything" amendment which: added "charge" card numbers to the list of exempted information, and added a public necessity statement relating to the exempted financial information.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Staff Director:

Tonya Sue Chavis, Esq.

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