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DATE: March 20, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 365
RELATING TO: Public Records/Health/Financial Information
SPONSOR(S): Committee on State Administration, Representative(s) Hogan and others
TIED BILL(S): None

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

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

I. SUMMARY:

This committee substitute provides a public records exemption for all personal identifying information, bank account numbers, and debit, charge, 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. This committee substitute provides for the following exceptions to this exemption:

- With the express written consent of the individual or the individual's legally authorized representative.
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual.
- By court order upon a showing of good cause.
- To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data use agreement with the department.

The stated public purpose of this exemption is to protect health related information that is of a sensitive personal nature. Without this public records exemption, the opportunity for theft or fraud arises.

This committee substitute does not appear to have a fiscal impact on state or local governments.

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

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that 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:

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.

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 chapter 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 chapter 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 chapter 119, F.S.

C. EFFECT OF PROPOSED CHANGES:

This committee substitute amends s. 119.07(3), F.S., to provide a public records exemption for

[a]ll personal identifying information, bank account numbers, and debit, charge, 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.

This committee substitute provides for the following exceptions to this exemption:

- With the express written consent of the individual or the individual's legally authorized representative.
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual.
- By court order upon a showing of good cause.
- To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by the department, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data use agreement with the department.

The stated public purpose served by this public records exemption is to protect health related information that is of a sensitive personal nature. In addition, the public necessity statement provides that if this exemption from public disclosure is not created, the opportunity for theft or fraud arises.

This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This committee substitute 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 committee substitute 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:

Some custodians of agency records thought that if records were requested by a person's name, then those records would have to be provided to the requestor, so long as the agency redacted¹ the person's personal identifying information, which was exempt. This interpretation violates the reason for the public records exemption, which is to keep the medical records disassociated from the person, thereby maintaining that person's privacy, while at the same time allowing disclosure of the medical information. There are a number of existing exemptions that exempt personal identifying information, but not the underlying records. These exemptions are narrowly crafted to meet privacy needs yet allow access to the record. If a person were allowed to request records of an individual by name, redacting the name and then providing copies of the records would not provide the protection the exemption was crafted to afford because the receiving individual would be able to associate the underlying records with the individual, which is precisely what such public records exemptions are created to prevent.²

¹ Redact means to blacken out or strikeover so that the information cannot be read.

² A substitute amendment is being drafted to eliminate the duplicative sentence.

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 pertaining to the exempted financial information.

On March 20, 2001, the Committee on State Administration passed HB 365 with one amendment, and reported it out favorably as a committee substitute. The committee substitute removes superfluous language. In addition, the committee substitute provides an exception to the public records exemption for health research entities. It also allows the department to deny a health research entity's request for records, pursuant to certain guidelines.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

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Staff Director:

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

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