

STORAGE NAME: h0477.jo.doc
DATE: March 16, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 477
RELATING TO: Public Records/Parents ID/Newborns
SPONSOR(S): Representative Hogan
TIED BILL(S): HB 475

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

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

I. SUMMARY:

HB 477 creates an exemption from the public records law for all information and records that would identify a parent who leaves a newborn infant at an emergency medical services station.

A public necessity statement is provided for this exemption, as required by Art. 1, s. 24, of the Florida Constitution. [Note: The required subsequent repeal and review language, as required by s. 119.15(3)(a), F.S., is currently found in s. 383.51, F.S.]

This bill does not appear to have a fiscal impact on state or local governments, or on 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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.

Confidentiality of the Identity of a Parent of an Abandoned Newborn

Section 383.51, F.S., relating to confidentiality, provides that the identity of a parent who leaves a newborn infant at a hospital or a fire station in accordance with s. 383.50, F.S., relating to the treatment of an abandoned newborn infant, is confidential and exempt from the provisions of s. 119.07(1) and Art. 1, s. 24(a), Fla.Const. However, the identity of a parent leaving a child must be disclosed to a person claiming to be a parent of the newborn infant. This section is subject to the Open Government Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2005, unless reenacted by the Legislature.

C. EFFECT OF PROPOSED CHANGES:

See Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 383.51, F.S., relating to confidential and identification of parent leaving a newborn infant at hospital or fire station, to include the leaving of a newborn infant at an emergency medical services stations.

Section 2. Provides the following Legislative findings addressing the public necessity of the preservation of anonymity and confidentiality of parents who leave newborn infants at emergency medical stations as a means of encouraging parents to leave infants safely and to protect the life and health of those infants; and expresses that the public policy provided for in the creation of s. 383.50, F.S., relating to the treatment of an abandoned newborn infant, will be served if the anonymity of parents who leave newborns at the emergency medical services stations is maintained.

Section 3. Provides that this act shall become effective the same day that HB 475 or similar legislation takes effect is such legislation is adopted in the same legislative session and becomes law.

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

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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

As required by Art. 1, s. 24, Fla.Const., a public necessity statement accompanies this proposed public records exemption.

B. RULE-MAKING AUTHORITY:

None.

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 already specified in s. 383.51, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2001, the Committee on Health Promotion passed HB 477, with one amendment [page 2, line 7], providing a cross reference to the linked bill, HB 475.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Tonya Sue Chavis, Esq.

Staff Director:

Phil E. Williams

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.