

# 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 840

SPONSOR: Committee on Health, Aging and Long-Term Care and Senator Saunders

SUBJECT: Public Records Exemption; Identifying Information

DATE: April 1, 2001                      REVISED: \_\_\_\_\_

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

**I. Summary:**

The bill creates an exemption from chapter 119, Florida Statutes, relating to the Public Records Law, and Section 24(a), Article I of the State Constitution, to make all personally 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 maintained by the Department of Health or its authorized service providers confidential and exempt from the Public Records Law. The department or its authorized service providers may not release or make public such information, with specified exceptions. The bill makes the exemption subject to a future review and repeal date of October 2, 2006, as required by s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The bill provides findings and statements of public necessity to justify the creation of the exemption.

This bill creates one undesignated section of law and amends s. 119.07, Florida Statutes.

**II. Present Situation:**

Public Records Law - The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. While the state constitution provides that records and meetings of public bodies are to be open to the public, it also provides that the Legislature may create exemptions to these requirements 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.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle begins in 2001. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

**Department of Health** - The Department of Health administers a variety of health-related programs and provides a variety of health care services, some of which are delivered through designated service providers. Client services include medical care and case management. Services are provided to children and adults who live in Florida.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 119.07, F.S., to make all personally 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 maintained by the Department of Health or its authorized service providers confidential and exempt from the Public Records Law. The department or its authorized service providers may not release or make public such information, except: 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; or by an order of the court upon a showing of good cause.

The Department of Health is permitted to release the information to a health research entity if the entity seeks the records pursuant to a research protocol approved by the department and maintains the records or data in accordance with the approved protocol and a purchase and data-use agreement with the department. The fee provisions of the purchase and data-use agreement must be consistent with the requirements of s.119.07(1)(a), F.S. The Department of Health may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information that would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Any copies of records or data released under a Department of Health-approved research protocol remain the property of the department. The exemption is subject to the Open Government Sunset Review Act of 1995 and stands repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2.** Creates an undesignated section, to provide legislative findings and a statement of public necessity for the exemption from the Public Records Law provided in the bill. The section provides legislative findings that the exemption for personal identifying information, bank numbers, and debit, charge, and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services maintained by the Department of Health is a public necessity to protect health related information that is of a sensitive personal nature. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both public and private health care sectors. For these reasons, the individual's bank account numbers and debit, charge, and credit card numbers contained in records relating to an individual's health or eligibility for health care services is also of sensitive and personal nature and it is a public necessity that such information be held confidential and exempt because the disclosure of such information could create the opportunity for theft and fraud.

**Section 3.** Provides that this act shall take effect July 1, 2001.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates an exemption from ch. 119, F.S., relating to the Public Records Law, and Section 24(a), Article I, Fla. Const. for specified records maintained by the Department of Health and provides findings of public necessity to justify the creation of the exemption.

C. Trust Funds Restrictions:

None.

**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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