

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1700

INTRODUCER: Senator Bean

SUBJECT: Public Records/Personal Identifying Information/Compassionate Use Registry

DATE: March 27, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Looke | Stovall | HP | Favorable |
| 2. | | | GO | |
| 3. | | | RC | |

I. Summary:

SB 1700 makes patient and physician personal identifying information held by the Department of Health (DOH) in the compassionate use registry¹ (registry) confidential and exempt from the public records requirements of section 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution. The bill allows law enforcement agencies, low-THC marijuana dispensing organizations, physicians, the DOH's relevant health care regulatory boards, and persons engaged in bona fide research to access the information in the registry under certain circumstances. The bill also requires that such confidential information remain confidential once released from the registry and provides penalties for violating the provisions of the exemption.

Since this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for its passage.²

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.³ The records of the legislative, executive, and judicial branches are specifically included.⁴

¹ That will be established under s. 456.60, F.S., if SB 1030 passes.

² FLA. CONST., art. I, s. 24(c).

³ FLA. CONST., art. I, s. 24(a).

⁴ *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁵ guarantees every person's right to inspect and copy any state or local government public record⁶ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷

Only the Legislature may create an exemption to public records requirements.⁸ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹² It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹³ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁴

The Compassionate Use Registry

SB 1030, if passed, will require the DOH to create a compassionate use registry that will be a secure, electronic, and online registry of physicians and patients who order and use low-THC

⁵ Chapter 119, F.S.

⁶ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁷ Section 119.07(1)(a), F.S.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹³ Section 119.15(3), F.S.

¹⁴ Section 119.15(6)(b), F.S.

marijuana. The registry must be able to be accessed by law enforcement and the dispensing organization in order to verify patient orders. Also, dispensing organizations must be able to record the low-THC marijuana dispensed and the registry must prevent an active registration of a patient by multiple physicians.

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 456.61, F.S., to make confidential and exempt from the public records requirements of s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution any patient and physician personal identifying information in the compassionate use registry. The bill specifically excludes a registered patient's and physician's name, address, telephone number, government issued identification number; the physician's Drug Enforcement Administration (DEA) number; and all information pertaining to the physician's order for low-THC marijuana.

Access to the registry, including excluded information, is allowed for:

- A law enforcement agency that is investigating a violation of law regarding cannabis in which the subject of the investigation claims an exception established under s. 456.60, F.S.;
- A dispensing organization approved by the DOH under s. 456.60, F.S., which is attempting to verify the authenticity of a physician's order for low-THC marijuana;
- A physician, for his or her patient only:
 - Before issuing an order for low-THC marijuana, for the purpose of determining whether another physician has ordered that patient low-THC marijuana; and
 - After issuing an order for low-THC marijuana, to monitor the patient's use of the marijuana.
- The DOH for the purpose of maintaining the registry and periodic reporting or disclosure of information that has been redacted so as not to include personal identifying information.
- The DOH's relevant health care regulatory boards when specifically investigating a physician for a violation of s. 456.60, F.S. If the board uncovers criminal activity, the board may provide relevant information to the appropriate law enforcement agency; and
- Persons engaged in bona fide research who agree to:
 - Submit a research plan to the department;
 - Maintain the confidentiality of the information;
 - Destroy confidential information when the research is concluded; and
 - Not to contact a patient or physician whose information is in the registry.

The bill states that all information that is released from the registry remains confidential and exempt and requires any person receiving information from the registry to maintain the confidentiality of that information. Any person who willingly and knowingly violates the provision of the exemption commits a third degree felony.

The bill also provides for the automatic repeal of the exemption on October 2, 2019, unless reenacted by the Legislature.

Section 2 of the bill provides legislative findings. The bill states that the Legislature finds it is a public necessity to protect the information in the compassionate use registry in order to protect the privacy of patients who choose to use low-THC marijuana and physicians who choose to

order it. The Legislature finds that the public availability of the registry information could make the public aware of a patient's medical diseases or conditions and may also open patients and physicians up to discrimination for their use or ordering of low-THC marijuana.

Section 3 of the bill establishes an effective date that is the same as the effective date of SB 1030 or similar legislation passed in the same legislative session. The bill only takes effect if SB 1030, or similar legislation, is passed and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. As such, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. As such, this bill includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.61 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
