

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1015 Pub.Rec./ Protection from Discrimination Based on Health Care Choices

SPONSOR(S): Commerce Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

Current law prohibits a private employer from imposing a COVID-19 vaccination mandate for any employee without providing certain exemptions, or terminating such an employee who refuses to comply. Employees may file a complaint with Department of Legal Affairs (DLA) within the Office of the Attorney General alleging violations, for investigation and enforcement. Similarly, current law prohibits private businesses, governmental entities and educational institutions from requiring a person to document COVID-19 vaccination or post-infection recovery. The Department of Health (DOH) investigates complaints of violations of this provision.

Current law makes complaint and investigation materials held by DLA confidential and exempt public record information; there is no public records exemption for similar records held by DOH.

HB 1013, to which this bill is linked, establishes additional prohibitions against businesses, governmental entities and educational institutions, related to requirements for COVID-19 testing and face masks, and authorizes DLA and DOH to enforce these provisions.

This bill establishes a public records exemption for complaint and investigation information related to violations of the new prohibitions established in the linked bill, held by either DLA or DOH. The exemption applies until the investigation is completed or ceases to be active, after which, the information remains confidential and exempt if disclosure would jeopardize the integrity of another active investigation, reveal medical information, or reveal information regarding religious beliefs.

Information made confidential and exempt may be released to another business, governmental entity, or educational institution in the furtherance of that entity's lawful duties and responsibilities. Additionally, the bill provides that it does not prohibit the disclosure of information in an aggregated format.

The bill provides a public necessity statement as required by the Florida Constitution. It also provides that the public record exemption is repealed on October 2, 2028.

The bill has an insignificant negative fiscal impact on the state and no impact on local government.

The bill is effective on the same date as in HB 1013 or similar legislation, which is July 1, 2023.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

Florida Attorney General and the Department of Legal Affairs

The Attorney General is an elected constitutional officer who serves as the chief state legal officer and as a member of the cabinet.⁶ The Attorney General must perform the duties prescribed by the Florida Constitution and any other duties appropriate to his or her office as may from time to time be required of the Attorney General by law or by resolution of the Legislature.⁷

The Attorney General is the head of the Department of Legal Affairs (DLA),⁸ which is responsible for providing all legal services required by any department, unless otherwise provided by law,⁹ including defending the state in civil litigation cases; representing the people of Florida in criminal appeals in state and federal courts; protecting the rights of children, consumers, and victims through its various protection programs; and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.¹⁰

¹ Article I, s. 24(c), FLA. CONST.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Article I, s. 24(c), FLA. CONST.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ Art. IV, s. 4, FLA. CONST.

⁷ See s. 16.01(2), F.S.

⁸ S. 20.11, F.S.

⁹ S. 16.015, F.S.

¹⁰ OPPAGA, *Office of the Attorney General (Department of Legal Affairs)*,

<https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026> (last visited Nov. 8, 2021).

Department of Health

The Department of Health (DOH) is established under s. 20.43, F.S., to “protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties”. The head of DOH is the Surgeon General, also designated as the State Health Officer. DOH also administers state epidemiology functions, and is required to identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends. As part of those functions, DOH maintains vital statistics and other health data, including vaccination information. Current law also requires DOH to conduct a communicable disease prevention and control program as part of fulfilling its public health mission.¹¹

COVID-19 Vaccination Mandate Investigations

Private Business Prohibition

Section 381.00317, F.S., generally prohibits businesses from requiring any employee or contracted worker to be vaccinated for COVID-19. This prohibition applies to any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state, and any charitable organization.

Businesses can require employee vaccination, if they allow the employees to opt out of vaccination for these or any other reasons:

- for medical or religious reasons;
- based on immunity to COVID-19;
- if the employee agrees to periodic testing; or
- if the employee uses employer-provided personal protective equipment (PPE).

The statute lays out specific criteria for claiming each of the above exemptions, and requires employers to use DOH forms for employees to submit statements of exemption.

Enforcement

This prohibition is enforced by the Department of Legal Affairs (DLA) within the Office of the Attorney General. Employees may file complaints with DLA, which investigates them. DLA must offer the employer the opportunity to comply with the law. However, DLA is required to fine an employer who violates this prohibition and terminates an employee due to a vaccination mandate: up to \$10,000 per violation for employers with under 100 employees; and up to \$50,000 per violation for employers with 100 or more employees. The statute authorizes the Attorney General to consider various factors and mitigating circumstances when determining the amount of the fine.

Since enactment, DLA has received 927 complaints, the majority of which were closed due to lack of a statutory violation. DLA found probable cause for nine complaints, and filed a single administrative complaint against an employer.¹²

Public Records Exemption

Section 381.00318, F.S., provides a public records exemption for information related to vaccination mandate investigation of a private business. All such information is both confidential and exempt from disclosure during an active investigation, and remains so when the investigation is no longer active if the disclosure, as determined by the Attorney General, would jeopardize another, active, investigation, or result in certain harms to the complaining employee.

Documentation of COVID-19 Vaccination or Post-Infection Recovery

¹¹ 2 S. 381.003, F.S. A communicable disease is any disease caused by transmission of a specific infectious agent, or its toxic products, from an infected person, an infected animal, or the environment to a susceptible host, either directly or indirectly.

¹² Department of Legal Affairs, email to committee staff from Libby Guzzo, Legislative Affairs Director, Feb. 7, 2023 (on file with committee staff).

Section 381.00316, F.S., prohibits business, governmental entities and educational institutions from requiring customers, persons seeking access to government operations, and students or residents, respectively, from requiring documentation of COVID-19 vaccination or post-infection recovery.

This provision is enforced by DOH, which is authorized to impose a fine up to \$5,000 for each incident.

Face Masks

Section 1002.20(1)(n), F.S., prohibits public schools from requiring a student to wear a face mask, other than when required by occupational or laboratory safety standards.

This provision is enforced by private actions for declaratory and injunctive relief by parents or adult students.

Current law does not prohibit face mask requirements by private businesses or governmental entities.

House Bill 1013 (2023)

The HB 1013, to which this bill is linked, adds to current COVID-19-related prohibitions on private businesses, governmental entities, and educational institutions, and expands enforcement functions. That bill prohibits private businesses, governmental entities, and educational institutions from imposing requirements to take a COVID-19 test or wear a facial covering as a condition of accessing the business or governmental or educational services.

That bill prohibits businesses and governmental entities from refusing to hire, terminating, or adversely affecting a person's status as an employee or applicant, or otherwise discriminate in any way against a person for failing to comply with a prohibited requirement.

That bill authorizes DLA to enforce these provisions against private businesses and governmental entities, authorizes DOH to enforce these provisions against educational institutions, and moves enforcement from DOH to DLA to enforce the current law prohibition against requiring documentation of COVID-19 vaccination or post-infection recovery against all three types of entities.

That bill expands current ss. 381.00316 and 381.00319, F.S., for these purposes.

Effect of the Bill

This bill, which is linked to the passage of HB 1013 (2023), amends s. 381.00318 to create a public records exemption for records related to violations of ss. 381.00316 and 381.00319, F.S., as amended by HB 1013 or similar legislation.

Specifically, the bill makes records related to violations of s. 381.00316, F.S., or s. 381.00319, F.S., by business entities, governmental entities and educational institutions, held by DLA or DOH, confidential and exempt. The exemptions and confidentiality applies to complaints and investigation records related to testing and mask mandates, vaccination or post-infection recovery status, and COVID-19-related discrimination.

Provisions in the current public records exemption applicable to investigations of violations of s. 381.00017, F.S., will apply to this new exemption. The complaint and investigative information are confidential and exempt¹³ from public records requirements until the investigation is completed or

¹³ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 statute. See Op. Att'y Gen. Fla. 04-09 (2004).

ceases to be active. For purposes of the public record exemption, an investigation is considered “active” while such investigation is being conducted by DLA with a reasonable, good faith, belief that it may lead to a determination of whether there was a violation of either s. 381.00316 or s. 381.00319, F.S. An investigation does not cease to be active if DLA is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by DLA.

After an investigation is completed or ceases to be active, information relating to the investigation remains confidential and exempt from public records requirements if disclosure of that information would jeopardize the integrity of another active investigation, reveal medical information about an employee, or reveal information regarding an employee’s religious beliefs.

Information made confidential and exempt may be released to another governmental entity in the furtherance of that entity’s lawful duties and responsibilities. In addition, the bill provides that it does not prohibit the disclosure of information in an aggregated format.

The bill also provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. In part, the public necessity statement provides that protection of the complaint or investigative information

is required to safeguard an individual’s private information regarding medical information or religious beliefs and to ensure the integrity of an active investigation [....]

Lastly, the bill provides that the public record exemption repeals on October 2, 2028.

The bill is effective on the same date that HB 1013 or similar legislation takes effect in the same legislative session.

B. SECTION DIRECTORY:

- Section 1:** Amending s. 381.00318, F.S., relating to complaints and investigations regarding COVID-19 vaccination mandates; public records exemption.
- Section 2:** Provides a public necessity statement as required by the Florida Constitution.
- Section 3:** Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could have an insignificant negative fiscal impact on DLA and DOH staff for training and complying with the newly-created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of DLA and DOH.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for an employee complaint alleging a private employer's violation of state law regarding such employer's COVID-19 vaccination policies or practices, and all information relating to an investigation of such complaint, until the investigation is completed or ceases to be active. As such, the public record exemption does not appear to be broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES