

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-10 OGSR/Animal Medical Records
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N	Villa	Smith

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act 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 is 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Animal Medical Records Held by Licensed Veterinarians

Currently, animal medical records generated or held by licensed veterinarians must be furnished, upon request, to a client in a timely manner.⁵ Otherwise, such records may not be furnished to any person other than the client except under the following circumstances:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the client or the client's legal representative by the party seeking such records.
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.
- In any criminal action or situation where a veterinarian suspects a criminal violation.⁶

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 474.2165(3), F.S.

⁶ Section 474.2165(4), F.S.

Council on Education.^{7,8} Specifically, the exemption provides that the following records are confidential and exempt⁹ from public record requirements:

- Medical records generated that relate to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal; and
- Any such medical records that are transferred by a previous record owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.¹⁰

Such records may be disclosed to a governmental entity in the performance of its duties and responsibilities, and pursuant to existing laws governing animal medical records held by licensed veterinarians.¹¹

The 2015 public necessity statement¹² for the exemption provides that:

[T]he release of such animal medical records compromises the confidentiality protections otherwise afforded the owners of such animals treated by licensed veterinarians in this state pursuant to [chapter 474, F.S.] The Legislature finds that the owners of animals have the right to privacy of the medical records of their animals. The Legislature finds that this exemption permits a state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine. Without this exemption, this mission would be significantly impaired. The Legislature finds that the privacy concerns that result from the release of animal medical records outweigh any public benefit that may be derived from the disclosure of the information.¹³

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.¹⁴

During the 2019 interim, subcommittee staff sent a questionnaire to the University of Florida College of Veterinary Medicine (UF-CVM).¹⁵ UF-CVM explained that its core business is training the next

⁷ Chapter 2015-62, L.O.F.; codified as s. 474.2167, F.S.

⁸ The American Veterinary Medical Association Council on Education is recognized by the Council of Higher Education Accreditation as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See American Veterinary Medical Association, *COE Accreditation Policies and Procedures: Overview*, <https://www.avma.org/education/accreditation/colleges/coe-accreditation-policies-and-procedures-overview> (last visited January 26, 2020).

⁹ There is a difference between records the Legislature designates as exempt from public record 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. The School Board of Seminole*, 874 So. 2d 48, 53 (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 1994); *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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁰ Section 474.2167(1), F.S.

¹¹ Section 474.2165, F.S., relates to ownership and control of veterinary medical patient records and provides instances when animal medical records can be released.

¹² Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

¹³ Section 2, ch. 2015-62, L.O.F.

¹⁴ Section 474.2167(4), F.S.

¹⁵ UF-CVM is Florida's only veterinary medical college, and is the only Florida University accredited by the American Veterinary Medical Association Council on Education. See University of Florida College of Veterinary Medicine, *About the College*, <https://www.vetmed.ufl.edu/about-the-college/> (last visited October 29, 2019); See also American Veterinary Medical Association,

generation of veterinarians. Over 90 percent of the clinical teaching and almost 100 percent of the resident training is based on patient care cases in the UF-CVM Hospital. If the exemption is repealed, the UF-CVM Hospital would be the only veterinary medical practice in the state without confidentiality protections for records and information concerning veterinary medical service. As such, maintaining the public record exemption for the animal medical records is critical to the success of the program and in “providing the caliber of public service that Florida taxpayers support and expect.”¹⁶

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

B. SECTION DIRECTORY:

Section 1 amends s. 474.2167, F.S., to save from repeal the public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

Section 2 provides an effective date of October 1, 2020.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Accredited Veterinary Colleges, https://www.avma.org/ProfessionalDevelopment/Education/Accreditation/Colleges/Pages/colleges-accredited_results.aspx?college=Florida (last visited October 29, 2019).

¹⁶ Open Government Sunset Review Questionnaire, UF-CVM Response, July 8, 2019, on file with the House Oversight, Transparency & Public Management Subcommittee.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.