

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #: SB 1700

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Bean

112 Y's

2 N's

**COMPANION
BILLS:** None

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

SB 1700 passed the Senate on April 28, 2014. The bill was amended by the House on May 1, 2014, and subsequently passed the Senate on May 2, 2014. The senate bill had no House companion.

The bill is tied to CS/CS/SB 1030, which creates a regulatory scheme overseen by the Department of Health (DOH) that authorizes the use of low-THC cannabis for limited medicinal purposes.

The bill makes patient and physician personal identifying information held by DOH in the compassionate use registry (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, 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 and exempt information remain confidential and exempt once released from the registry and provides penalties for violating the provisions of the exemption.

This bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Subject to the Governor's veto powers, the effective date of this bill is on the same date that SB 1030, or similar legislation takes effect.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Records

Article I, s. 24(a) of the State 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 Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Effect of the Bill

The bill is tied to CS/CS/SB 1030, which, in part:

- Creates s. 381.986, F.S., which establishes a regulatory scheme overseen by the Department of Health (DOH) that authorizes the use of low-THC cannabis for limited medicinal purposes; and
- Requires DOH to create a compassionate use registry (registry) that will be a secure, electronic, and online registry of physicians and patients who order and use low-THC cannabis.

The bill makes patient and physician personal identifying information³ held by DOH in the 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 the following entities to access the information in the registry:

- 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. 381.986, F.S.;
- A dispensing organization approved by DOH which is attempting to verify the authenticity of a physician's order for low-THC cannabis, including whether the order had been previously filled and whether the order was written for the person attempting to have it filled;

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ This information includes the patient and physician's name, address, telephone number, and government-issued identification number, and all information pertaining to the physician's order for low-THC cannabis and the dispensing thereof, as well as a physician's and Drug Enforcement Administration number.

- A physician who has written an order for low-THC cannabis for the purpose of monitoring the patient's use of such cannabis or for the purpose of determining, before issuing an order for low-THC cannabis, whether another physician has ordered the patient's use of low-THC cannabis;⁴
- A DOH employee for the purposes of maintaining the registry and periodic reporting or disclosure of information that has been redacted to exclude personal identifying information;
- DOH's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a physician if he or she is involved in a specific investigation of a violation of s. 381.986, F.S.;⁵ and
- A person engaged in bona fide research if the person agrees:
 - To submit a research plan to DOH which specifies the exact nature of the information requested and the intended use of the information;
 - To maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
 - To destroy any confidential and exempt records or information obtained after the research is concluded; and
 - Not to contact, directly or indirectly, for any purpose, a patient or physician whose information is in the registry.

The bill also requires that any confidential and exempt information remain confidential and exempt once released from the registry and makes it a third degree felony⁶ to violate the provisions of the exemption.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative prison bed impact on the Department of Corrections because it creates a new third degree felony offense.

⁴ The physician may access the confidential and exempt information only for the patient for whom he or she has ordered or is determining whether to order the use of low-THC cannabis pursuant to s. 381.986, F.S.

⁵ If a health care regulatory board's investigation reveals potential criminal activity, the board may provide any relevant information to the appropriate law enforcement agency.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

B. ISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.