

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. 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 records or public meetings 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.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

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

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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

Consumer Inquiries and Complaints

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services is primarily responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.²

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the

¹ Section 119.15, F.S.

² Section 20.121(2)(h), F.S.

insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.

Exemption under Review

Current law provides a public records exemption for certain personal or financial information held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated by the department or OIR.³ Confidential and exempt information includes bank account numbers and debit, charge, and credit card numbers, and all other personal financial and health information of a consumer held by DFS or OIR. This exemption, however, does not include the name and address of an inquirer or complainant or the name of an insurer or other regulated entity that is the subject of the inquiry or complaint.

The law also provides exceptions to the public records exemption. Confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the National Association of Insurance Commissioners. Additionally, such confidential and exempt information may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status is maintained.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2007, unless reenacted by the Legislature.

Rules adopted by DFS and OIR

Subsequent to the enactment of the public records exemption, DFS and OIR adopted Rules 69J-128-025 and 69O-128.025, F.A.C., respectively, which define "personal financial and health information," as used in the public records exemption. "Personal financial and health information," is defined to mean information, which if disclosed would reveal:

- Any individual's personal health condition, disease, or injury;
- The existence, nature, source, or amount of any individual's personal income or expenses;
- Records of or relating to any individual's personal income or expenses;
- Records of or relating to any individual's personal financial transactions of any kind;
- The existence, identification, nature, or value of any individual's assets, liabilities, or net worth;
- A history of any individual's personal medical diagnosis or treatment;
- The existence content, or status under any individual's beneficial interest in any insurance policy or annuity contract; or
- The existence, identification, nature, or value of any individual's interest in any insurance policy, annuity contract, or trust.

The rules adopted by DFS and OIR, pursuant to their general rulemaking authority, limit the scope of records that are deemed financial and personal information, and therefore, confidential and exempt from public records requirements. The statutory exemption, however, provides that "...all bank account numbers, and debit, charge, credit card numbers, and all other personal financial and health information of a consumer held by the department or office...are confidential and exempt..."⁴ Although DFS and OIR have general rulemaking authority, Art. I, s. 24 of the State Constitution provides that public records exemptions may only be created by the Legislature in a general law. Further, Art. II, s. 3 of the State Constitution provides that no person belonging to one branch of government shall exercise any powers appertaining to either of the branches unless expressly provided. As such, it appears DFS and OIR do not have the authority to define, by rule, what records are within the scope of a public records exemption.

³ Section 624.23, F.S.

⁴ *Id.*

Workers' Compensation

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements.⁵ The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an employee and the employer or carrier. Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.

A public records exemption does not exist for financial and medical information held by the Division of Workers' Compensation. Although consumers are providing financial and medical information to the Division of Workers' Compensation, which is located in DFS, the exemption under review⁶ does not apply to such information because the workers' compensation chapter is not part of the Florida Insurance Code. Therefore, personal financial and medical information provided by consumers to the division is not exempt from public records requirements, even though this is the same type of information that is exempt if provided to DFS regarding an activity regulated under the Florida Insurance Code.

EFFECT OF BILL

The bill reenacts the public records exemption found in s. 624.23, F.S. It also:

- Narrows the exemption by specifying what "other personal financial and health information" is confidential and exempt based on the current definition provided in rules adopted by DFS and OIR.
- Expands the exemption to include the same personal financial and health information provided by consumers to the Division of Workers' Compensation of DFS for the purpose of resolving disputes and complaints of employees since this information is not confidential and exempt under chapter 440, F.S., the Workers' Compensation Law.
- Deletes the exemption for bank account numbers and debit, charge, and credit card numbers since it is duplicative of the general public records exemption provided in the Public Records Act.⁷

Because the exemption is expanded to include financial and health information provided by consumers to the Division of Workers' Compensation, the repeal date has been extended to October 2, 2012. In addition, a statement of public necessity has been provided.

C. SECTION DIRECTORY:

Section 1 amends s. 624.23, F.S., to reorganize and expand the public records exemption.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁵ Section 440.192, F.S.

⁶ Section 624.23, F.S.

⁷ Section 119.071(5)(b), F.S., provides a public records exemption for bank account, debit, charge, and credit card numbers, which is applicable to all agencies.

2. Expenditures:

The bill likely could create a minimal fiscal impact on the Department of Financial Services and the Office of Insurance Regulation, because staff responsible for complying with public records requests will require training related to changes made to the current public records exemption. In addition, the department and office could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The department and office, however, would absorb these costs as they are part of their day-to-day responsibilities.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

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 passage of a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created or substantially amended public records or public meetings exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.