

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-12 OGSR Consumer Complaints and Inquiries

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record 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 personal financial and health information held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR), relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. Such 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 to the National Association of Insurance Commissioners.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It reorganizes the definition of "personal financial and health information" to group like topics. It also allows a consumer, or the consumer's legally authorized representative, to have access to his or her personal financial and health information.

The bill does not appear to have a fiscal impact on 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 Act<sup>1</sup> 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.

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:

- 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.

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.<sup>2</sup> 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<sup>3</sup> 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 department) 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 primarily is responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.<sup>4</sup>

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 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.<sup>5</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> See s. 20.121(2)(h), F.S.

<sup>5</sup> House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 2 and 3.

## 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

## Public Record Exemption under Review

In 2007, the Legislature reenacted and expanded the public record exemption for certain information regarding a consumer complaint.<sup>9</sup> Personal financial and health information<sup>10</sup> held by DFS or OIR, relating to a consumer's<sup>11</sup> complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., is confidential and exempt<sup>12</sup> from public record requirements. Current law provides for retroactive application<sup>13</sup> of the exemption.<sup>14</sup>

Such 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 to the National Association of Insurance Commissioners.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>16</sup>

## **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal financial and health information held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. It reorganizes the definition of "personal financial and health information" to group like topics. The bill also allows the

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<sup>6</sup> See chapter 440, F.S.

<sup>7</sup> See s. 440.191, F.S.

<sup>8</sup> House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 4.

<sup>9</sup> Chapter 2007-70, L.O.F.; codified as s. 624.23, F.S.

<sup>10</sup> Section 624.23(1)(b), F.S., defines "personal financial and health information to mean:

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

<sup>11</sup> Section 624.23(1)(a), F.S., defines "consumer" to mean a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer; or an employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

<sup>12</sup> 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>13</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>14</sup> Section 624.23(2), F.S.

<sup>15</sup> Section 624.23(3), F.S.

<sup>16</sup> Section 624.23(4), F.S.

department or OIR to release personal financial and health information to the consumer or the consumer's legally authorized representative.

**B. SECTION DIRECTORY:**

Section 1 amends s. 624.23, F.S., to reenact the public record exemption for a consumer's personal financial and health information held by DFS or OIR.

Section 2 provides an effective date of October 1, 2012.

**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:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.