

STORAGE NAME: s1408s1z.fs  
DATE: June 17, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FINANCIAL SERVICES  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/SB 1408, 2nd Engrossed  
**RELATING TO:** Workers' Compensation Public Records Exemptions  
**SPONSOR(S):** Committee on Banking and Insurance and Senator Clary  
**COMPANION BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BANKING AND INSURANCE YEAS 9 NAYS 0
- (2) GOVERNMENTAL REFORM & OVERSIGHT YEAS 5 NAYS 0
- (3)
- (4)
- (5)

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I. FINAL ACTION STATUS:

On April 29, 1998, CS/SB 1408 was taken up by the House on the floor, amended to include a public records exemption relating to notices of injury, and passed by a vote of 119-0. On April 30, 1998, the Senate amended CS/SB 1408 (as amended by the House on April 29) to further include a public records exemption relating to information uncovered by the Agency for Health Care Administration in background investigations of nurses, and then passed CS/SB 1408 by a vote of 40-0. On April 30, 1998, the House refused to concur in the Senate amendment relating to AHCA. On May 1, 1998, the Senate receded and passed CS/SB 1408 as amended by the House on April 29, 1998, by a vote of 40-0. It became law without the Governor's signature on June 17, 1998: Chapter 98-407, Laws of Florida.

II. SUMMARY:

This bill creates two exemptions from the Public Records Law.

The bill exempts investigatory records of the Division of Workers' Compensation which are received from employers pursuant to its authority to enter work sites and inspect business records to ascertain compliance with workers' compensation coverage requirements. The bill provides that the investigation or business records become public and are disclosed when the division's investigation is completed or ceases to be active. Under limited circumstances, certain business records remain confidential. This public records exemption provision is similar to current law for other state agencies which obtain records through their compliance-type activities, such as the Department of Insurance and the Agency for Health Care Administration.

The bill also exempts any information contained in notices of injury, required to be filed with the Division of Workers' Compensation pursuant to s. 440.185, F.S., which identifies an injured employee. This exemption, and the rationale for it, are almost identical to the public records exemption in current law which exempts medical records and identifying information of an employee in medical records. This portion of the bill changes current law only to the extent that a notice of injury is not now considered to be a medical record and, therefore, exempt pursuant to s. 440.125, F.S.

The effective date of this bill is January 1, 1999, unless otherwise provided.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Public Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.<sup>1</sup> In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24, of the State Constitution, provides:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law<sup>2</sup> specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. The Public Records Law states that, unless specifically exempted, all agency<sup>3</sup> records are to be available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>4</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to

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<sup>1</sup> Section 1, ch. 5942 (1909).

<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>4</sup> Section 119.011(1), F.S.

perpetuate, communicate or formalize knowledge.<sup>5</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>6</sup>

Exemptions to s. 24, Art. I of the State Constitution and the Public Records Law are permitted. Article I, s. 24(c), of the State Constitution, requires:

1. The Legislature to create exemptions in general law;
2. A law creating an exemption to specifically state the public necessity justifying the exemption; and
3. That an exemption be no broader than necessary to accomplish the stated purpose of the law.

Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **Workers' Compensation Insurance**

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<sup>5</sup> Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633, 640 (Fla. 1980).

<sup>6</sup> Wait v. Florida Power & Light Company, 372 So.2d 420 (1979).

<sup>7</sup> Article I, s. 24(c), of the State Constitution.

Under chapter 440, F.S., all public and private employers and employees, unless specifically exempted, must be covered for workers' compensation insurance. The Division of Workers' Compensation within the Department of Labor and Employment Security is responsible for ensuring that employers comply with the mandate of providing coverage for both themselves and their employees. Currently, s. 440.107, F.S., authorizes the division to issue stop-work orders and issue civil penalties for employers who do not comply with the insurance requirements. Division investigators visit job sites to determine compliance with the law and often must review work or business records. However, express statutory authority to enter workplaces, to inspect and copy records, and to issue subpoenas is not currently provided. A separate bill, CS/SB 1406, provides such express authority.

### **Public Records Exemption for Medical Records Under Ch. 440**

Pursuant to current law, "medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills" which are provided to the Division of Workers' Compensation pursuant to s. 440.13, F.S., are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. See Section 440.125(1), F.S.

According to its public necessity statement, this information is exempt from public disclosure because:

Public access to such information is an invasion of the injured employee's right to privacy in that personal, sensitive information would be revealed, and public knowledge of such information could lead to discrimination against the employee by coworkers and others.

See Section 440.125(2), F.S.

Although s. 440.125, F.S., protects medical records and medical reports from public disclosure, there is no statutory definition of the terms "medical records" or "medical reports" in the workers' compensation law, Chapter 440.

### **Notices of Injury**

According to Florida law, employees injured while in the course and scope of employment must notify their employer with 30 days of their injury.<sup>8</sup> The basic purpose of this requirement is to enable the employer to make prompt investigation of accidents and ensuing injuries, while witnesses are readily available and facts are fresh.<sup>9</sup>

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<sup>8</sup> Section 440.185(1), F.S.

<sup>9</sup> See eg. Overholser Const. Co. v. Porter, 173 So.2d 697 (Fla. 1964); Cameron v. City of Miami Beach, 152 So.2d 163 (Fla. 1963).

Florida law also requires employers to provide notice to their workers' compensation insurance carrier within 7 days after obtaining knowledge of an employee's injury.<sup>10</sup> This notice, often called a "notice of injury," is provided to the carrier on a form created by the Division of Workers' Compensation. Then, after receipt of the notice of injury, the workers' compensation carrier has 14 days to provide the notice of injury to the Division of Workers' Compensation.<sup>11</sup> The notice of injury form is required by statute to contain the following information:

- the name, address, and business of the employer;
- the name, social security number, street, mailing address, telephone number, and occupation of the employee;
- the cause and nature of the injury or death;
- the year, month, day, and hour when, and the particular locality where, the injury or death occurred; and
- such other information as the Division of Workers' Compensation may require.

See Section 440.185(2)(a)-(e), F.S. Other information required by the Division of Workers' Compensation on the notice of injury form includes:

- the employer's Federal Identification Number;
- the name, address, and telephone number of workers' compensation insurance carrier;
- the employer's policy number;
- the name, address, and phone number of hospital or physician treating the employee;
- the employee's rate of pay and an indication of whether the employer intends to continue paying the employee; and
- an indication of whether the employer agrees with the employee's description of the workplace accident.

Notwithstanding the required information described above, notice of injury forms are not required to be filled out or signed by a physician.

The Division of Workers' Compensation's current policy, after receiving a public records request for notices of injury held by the Division, is to release to the public all of the information contained on the notice of injury form.

#### B. EFFECT OF PROPOSED CHANGES:

Florida law would specifically exempt the following records from disclosure under the Public Records Law:

- investigatory records of the Division of Workers' Compensation received from employers during active compliance investigations pursuant to its authority to enter work sites and inspect business records;

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<sup>10</sup> Section 440.185(2), F.S.

<sup>11</sup> Id.

- investigatory records held by the Division of Workers' Compensation when a compliance investigation is no longer active if releasing the records would:
  - (a) Jeopardize the integrity of another active investigation;
  - (b) Reveal a trade secret, as defined by s. 688.002, F.S.;
  - (c) Reveal business or personal financial information;
  - (d) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - (e) Reveal investigative techniques or procedures.
- any identifying information contained in a report or notice of injury filed with the Division of Workers' Compensation pursuant to s. 440.185, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill prevents the disclosure of identifying information contained in notices of injury, which are filed with the Division of Workers' Compensation pursuant to s. 440.185, F.S. This bill changes the current policy of the Division of Workers' Compensation, which is to release all information contained in notices of injury. This portion of the bill changes current law only to the extent that a notice of injury (which contains specific information relating to the employee, the employee's accident, and the employee's injury or illness) is not now considered to be a medical record and, therefore, exempt pursuant to s. 440.125, F.S.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A



- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

This bill creates ss. 440.108 and 440.185(10), Florida Statutes.

**E. SECTION-BY-SECTION RESEARCH:**

**Section 1.** Creates s. 440.108, F.S., to provide that investigatory records of the Division of Workers' Compensation which are obtained from businesses pursuant to the division's compliance activities under s. 440.107, F.S., (as amended by CS/SB 1406) and any records necessary to complete an investigation are confidential and exempt from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The investigatory or business records become public and are disclosed when the division's investigation is completed or ceases to be active. An investigation is considered to be active while such investigation is being conducted by the division with a reasonable, good faith belief that it may lead to the filing of administrative, civil or criminal proceedings.

Under the bill, certain records remain confidential. Specifically, records that:

(a) Jeopardize the integrity of another active investigation;

(b) Reveal a trade secret, as defined by s. 688.002, F.S.;<sup>12</sup>

(c) Reveal business or personal financial information;

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<sup>12</sup>Section 688.002(4), F.S., defines the term "trade secret" to mean: information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(d) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(e) Reveal investigative techniques or procedures.

The exemption created in this section would be repealed on October 2, 2003, subject to prior legislative review, in accordance with s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

**Section 2.** The Legislative findings provided in this section state that it is a public necessity that these investigatory records be held confidential and exempt during an investigation in order not to compromise the investigation and disseminate potentially inaccurate information. Additionally, revealing such information would impede the effective and efficient operation of investigatory governmental functions.

**Section 3.** Creates s. 440.185(10), F.S., to provide that identifying information in any report of injury or illness filed pursuant to s. 440.185, F.S., is confidential and exempt from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The exemption created in this section would be repealed on October 2, 2003, subject to prior legislative review, in accordance with s. 119.15, F.S., the Open Government Sunset Review Act of 1995.

**Section 4.** The Legislative findings provided in this section state that it is a public necessity that any information in a report of injury or illness, filed pursuant to s. 440.185, F.S., which would identify an ill or injured employee, be held confidential because such information is of a sensitive and personal nature. The Legislature also finds in this section that to disclose such sensitive, personal information is an invasion of that employee's privacy. Moreover, the Legislature finds in this section that the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others.

**Section 5.** This section provides that sections 1 and 2 of this bill take effect on the effective date of SB 1406, or similar legislation relating to the powers of the Division of Workers' Compensation. This section also provides that sections 3 and 4 of this bill take effect upon the bill's becoming law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The engrossed version of CS/SB 1408 differs from CS/SB 1408 by including a public records exemption relating to notices of injury.

VIII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

ROBERT E. WOLFE, JR.

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