

Bill No. SB 1442

Barcode 172978

CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Atwater) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 440.3851, Florida Statutes, is created to read:

440.3851 Public records and public meetings exemptions.--

(1) The following records of the Florida Self-Insurers Guaranty Association, Incorporated, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Claims files, until termination of all litigation and settlement of all claims arising out of the same accident.

(b) Medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant.

(c) Minutes of exempt portions of meetings, as

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1 provided in subsection (3), until termination of all
2 litigation and settlement of all claims with regard to that
3 claim.

4 (2) Records or portions of records made confidential
5 and exempt by this section may be released, upon written
6 request, to another agency in the performance of that agency's
7 official duties and responsibilities. The receiving agency
8 shall maintain the confidential and exempt status of such
9 record or portion of a record.

10 (3) That portion of a meeting of the association's
11 board of directors or any subcommittee of the association's
12 board at which records made confidential and exempt by this
13 section are discussed is exempt from s. 286.011 and s. 24(b),
14 Art. I of the State Constitution. All exempt portions of
15 meetings shall be recorded and transcribed. The board shall
16 record the times of commencement and termination of the
17 meeting, all discussion and proceedings, the names of all
18 persons present at any time, and the names of all persons
19 speaking. An exempt portion of any meeting may not be off the
20 record. Subject to this section and s. 119.021(2), the court
21 reporter's notes of any exempt portion of a meeting shall be
22 retained by the association for a minimum of 5 years. A copy
23 of the transcript of any exempt portion of a meeting in which
24 claims files are discussed shall become public as to
25 individual claims after settlement of the claim with any
26 confidential and exempt information redacted.

27 (4) This section is subject to the Open Government
28 Sunset Review Act of 1995 in accordance with s. 119.15 and
29 shall stand repealed on October 2, 2010, unless reviewed and
30 saved from repeal through reenactment by the Legislature.

31 Section 2. (1) The Legislature finds that it is a

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1 public necessity that claims files of the Florida
2 Self-Insurers Guaranty Association, Incorporated, be held
3 confidential and exempt from public-records requirements and
4 that portions of meetings of the board of directors of the
5 association or of any subcommittee of the board, wherein these
6 claims files are reviewed and evaluated be made exempt from
7 public-meetings requirements. The Legislature finds that the
8 association was created to stand in the place of private
9 businesses that are self-insured for workers' compensation
10 claims if any of such businesses becomes insolvent. The
11 Legislature finds that the exemption of the open-claims files
12 of the association is necessary for the effective and
13 efficient administration of a government program created to
14 insure workers with claims against insolvent businesses which
15 can otherwise seek compensation from the funds collected by
16 the association from its member businesses. Claims files are
17 created by the association after a claim against one of its
18 insolvent members is made; contain detailed information about
19 the claim, medical information, and other personal information
20 about the claimant; and also contain information detailing the
21 evaluation of the legitimacy of the claim, the extent of
22 incapacity, and a valuation of the award, if any, which should
23 be made. Information in a claims file held by the association
24 includes the medical records and other information related to
25 the medical condition or medical status of a claimant. The
26 Legislature finds that the claimants' medical records and
27 other medical-related information are personal and sensitive.
28 Therefore, the Legislature finds that an exemption for medical
29 records and other information related to the medical condition
30 or medical status of a claimant is a public necessity in order
31 to protect a claimant's health-related information. Matters of

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1 personal health are traditionally a private and confidential
2 concern. The release of the medical records of a claimant or
3 personal identifying information concerning a claimant would
4 violate the privacy of the individual or could cause
5 unwarranted damage to the name or reputation of the
6 individual. When a claim is contested, the work product of
7 legal counsel may also be included in the file in the form of
8 direction to claims professionals or other attorney-client
9 privileged communications. Allowing the claimant or claimant's
10 lawyers access to the files, which could be used for purposes
11 of negotiation, claim evaluation, and settlement
12 considerations, would weaken the legal position of the
13 association and could result in higher awards and settlements
14 paid out by the guaranty fund and ultimately the membership of
15 the association. Additionally, information in claims files
16 which reasonably encompass privileged attorney-client
17 communications should be held confidential and exempt because
18 the release of such information could jeopardize ongoing or
19 pending litigation.

20 (2) The Legislature further finds that closing access
21 to meetings of the board of directors of the association or of
22 a subcommittee of the board, wherein claims files are reviewed
23 and evaluated, is necessary for the effective and efficient
24 administration of the claims evaluation work of the
25 association. The directors of the fund act in a trustee
26 capacity and must take care that the assets of the fund are
27 managed wisely. Their efforts to meet as a collegial body to
28 closely review individual files in an open and frank setting
29 that includes staff are thwarted by the current requirement
30 that such meetings be open. Furthermore, discussion of
31 individual files in an open and public setting might reveal

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1 private, sensitive medical information that is otherwise
2 confidential.

3 Section 3. This act shall take effect upon becoming a
4 law.

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7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 Delete everything before the enacting clause

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and insert:

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A bill to be entitled

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An act relating to public records and meetings

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exemptions; creating s. 440.3851, F.S.;

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exempting from public-records and

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public-meetings requirements certain records of

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the Florida Self-Insurers Guaranty Association,

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Incorporated, and certain meetings of the board

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of directors of the association or any

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subcommittee of the board; providing for

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release of such records under certain

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circumstances; providing requirements;

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providing for future legislative review and

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repeal; providing findings of public necessity;

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providing an effective date.

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