

By the Committee on Banking and Insurance; and Senator Atwater

597-1839-05

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A bill to be entitled

An act relating to public records and meetings exemptions; creating s. 440.3851, F.S.; exempting from public-records and public-meetings requirements certain records of the Florida Self-Insurers Guaranty Association, Incorporated, and certain meetings of the board of directors of the association or any subcommittee of the board; providing for release of such records under certain circumstances; providing requirements; providing for future legislative review and repeal; providing findings of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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.

1 (c) Minutes of exempt portions of meetings, as
2 provided in subsection (3), until termination of all
3 litigation and settlement of all claims with regard to that
4 accident.

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

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

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30 shall stand repealed on October 2, 2010, unless reviewed and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

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

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

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

1 individual files in an open and public setting might reveal
2 private, sensitive medical information that is otherwise
3 confidential.

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

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 Senate Bill 1442

10 The committee substitute makes technical conforming changes.

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