

ENROLLED
 HB 729, Engrossed 1

2005 Legislature

1 A bill to be entitled
 2 An act relating to public records and meetings exemptions;
 3 creating s. 440.3851, F.S.; exempting from public records
 4 and public meetings requirements certain records of the
 5 Florida Self-Insurers Guaranty Association, Incorporated,
 6 and certain meetings of the board of directors of the
 7 association or any subcommittee of the board; providing
 8 for release of such records under certain circumstances;
 9 providing requirements; providing for future legislative
 10 review and repeal; providing findings of public necessity;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 440.3851, Florida Statutes, is created
 16 to read:

17 440.3851 Public records and public meetings exemptions.--

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

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

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

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27 | (c) Minutes of exempt portions of meetings, as provided in
28 | subsection (3), until termination of all litigation and
29 | settlement of all claims with regard to that claim.

30 | (2) Records or portions of records made confidential and
31 | exempt by this section may be released, upon written request, to
32 | another agency in the performance of that agency's official
33 | duties and responsibilities. The receiving agency shall maintain
34 | the confidential and exempt status of such record or portion of
35 | a record.

36 | (3) That portion of a meeting of the association's board
37 | of directors or any subcommittee of the association's board at
38 | which records made confidential and exempt by this section are
39 | discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
40 | State Constitution. All exempt portions of meetings shall be
41 | recorded and transcribed. The board shall record the times of
42 | commencement and termination of the meeting, all discussion and
43 | proceedings, the names of all persons present at any time, and
44 | the names of all persons speaking. An exempt portion of any
45 | meeting may not be off the record. Subject to this section and
46 | s. 119.021(2), the court reporter's notes of any exempt portion
47 | of a meeting shall be retained by the association for a minimum
48 | of 5 years. A copy of the transcript of any exempt portion of a
49 | meeting in which claims files are discussed shall become public
50 | as to individual claims after settlement of the claim with any
51 | confidential and exempt information redacted.

52 | (4) This section is subject to the Open Government Sunset
53 | Review Act of 1995 in accordance with s. 119.15 and shall stand

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54 repealed on October 2, 2010, unless reviewed and saved from
55 repeal through reenactment by the Legislature.

56 Section 2. (1) The Legislature finds that it is a public
57 necessity that claims files of the Florida Self-Insurers
58 Guaranty Association, Incorporated, be held confidential and
59 exempt from public records requirements and that portions of
60 meetings of the board of directors of the association or of any
61 subcommittee of the board, wherein these claims files are
62 reviewed and evaluated be made exempt from public meetings
63 requirements. The Legislature finds that the association was
64 created to stand in the place of private businesses that are
65 self-insured for workers' compensation claims if any of such
66 businesses becomes insolvent. The Legislature finds that the
67 exemption of the open claims files of the association is
68 necessary for the effective and efficient administration of a
69 government program created to insure workers with claims against
70 insolvent businesses which can otherwise seek compensation from
71 the funds collected by the association from its member
72 businesses. Claims files are created by the association after a
73 claim against one of its insolvent members is made; contain
74 detailed information about the claim, medical information, and
75 other personal information about the claimant; and also contain
76 information detailing the evaluation of the legitimacy of the
77 claim, the extent of incapacity, and a valuation of the award,
78 if any, that should be made. Information in a claims file held
79 by the association includes the medical records and other
80 information related to the medical condition or medical status
81 of a claimant. The Legislature finds that the claimants' medical

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82 records and other medical-related information are personal and
83 sensitive. Therefore, the Legislature finds that an exemption
84 for medical records and other information related to the medical
85 condition or medical status of a claimant is a public necessity
86 in order to protect a claimant's health-related information.
87 Matters of personal health are traditionally a private and
88 confidential concern. The release of the medical records of a
89 claimant or personal identifying information concerning a
90 claimant would violate the privacy of the individual or could
91 cause unwarranted damage to the name or reputation of the
92 individual. When a claim is contested, the work product of legal
93 counsel may also be included in the file in the form of
94 direction to claims professionals. Allowing the claimant or
95 claimant's lawyers access to the files, which could be used for
96 purposes of negotiation, claim evaluation, and settlement
97 considerations, would weaken the legal position of the
98 association and could result in higher awards and settlements
99 paid out by the guaranty fund and ultimately the membership of
100 the association.

101 (2) The Legislature further finds that closing access to
102 meetings of the board of directors of the association or of a
103 subcommittee of the board, wherein claims files are reviewed and
104 evaluated, is necessary for the effective and efficient
105 administration of the claims evaluation work of the association.
106 The directors of the fund act in a trustee capacity and must
107 take care that the assets of the fund are managed wisely. Their
108 efforts to meet as a collegial body to closely review individual
109 files in an open and frank setting that includes staff are

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110 | thwarted by the current requirement that such meetings be open.

111 | Furthermore, discussion of individual files in an open and

112 | public setting might reveal private, sensitive medical

113 | information that is otherwise confidential.

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