

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1107 Pub. Rec./Workers' Compensation
SPONSOR(S): Commerce Committee; Insurance & Banking Subcommittee; Albritton
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Lloyd	Luczynski
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Toliver	Harrington
3) Commerce Committee	25 Y, 0 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

The Department of Financial Services (department), the Agency for Health Care Administration (AHCA), and the Division of Administrative Hearing (DOAH) are charged by the workers' compensation law with the administration and oversight of workers' compensation insurers and health care providers. Each of these entities receives records concerning injured or deceased workers.

The bill provides that personal identifying information of an injured or deceased worker filed with the department, AHCA, and DOAH is confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill allows the disclosure of this information in the following circumstances:

- To an injured employee or the surviving spouse or dependents of a deceased employee;
- In an aggregate reporting format, subject to content and time limitations;
- To participants in workers' compensation claims litigation at DOAH;
- Pursuant to a court order or subpoena;
- To an anti-fraud unit of an insurer; or
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2017.

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for personal identifying information of an injured or deceased worker; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may by general law exempt records from the constitutional requirements.² An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.⁵ A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.⁶

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Confidential & Exempt Treatment of Workers' Compensation Records

The Workers' Compensation Law⁸ charges the Department of Financial Services (department), Agency for Health Care Administration (AHCA), and Division of Administrative Hearings (DOAH) with various roles in the administration and oversight of Florida's workers' compensation system.⁹ Those entities each receive records concerning injured or deceased workers.¹⁰ Employers are required to report every injury or death to their workers' compensation insurance carrier (carrier).¹¹ Information in the report of injury or death, as required by statute, includes:

- The name and address of the employer;
- The name, social security number, street, mailing address, telephone number, and occupation of the injured worker;
- 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 department may require.¹²

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ s. 119.15, F.S.

⁶ s. 119.15(6)(b), F.S.

⁷ s. 119.15(3), F.S.

⁸ Ch. 440, F.S., may be cited as the "Workers' Compensation Law." S. 440.01, F.S.

⁹ The Office of Insurance Regulation is also charged with a role in administering the workers' compensation system, but they do not receive personal identifying information of injured or deceased workers.

¹⁰ See s. 440.185(2), F.S.

¹¹ s. 440.185(2), F.S.

¹² s. 440.185(2), F.S.

By rule,¹³ the report must also include:

- The address of the accident location; and
- Employee's:
 - Date of birth;
 - Date of death;
 - Sex;
 - Description of accident;
 - Part of body affected;
 - Rate of pay;
 - Date first employed; and
 - Date last employed.

Carriers are required to report to the department every injury that results in payment of lost wages.¹⁴ Additionally, reports of every medical bill for treatment of an injured worker are required to be filed with the department.¹⁵ Information in the medical reports, include:

- The name and address of the injured worker;
- Date of accident; and
- Procedure and diagnosis codes describing the treatment provided and nature of the injury or ongoing need for treatment.

When a dispute arises between an injured worker and carrier over benefits and the injured worker wishes to enforce their entitlement to the benefit(s), the law requires the injured worker to file a petition for benefits with DOAH's Office of the Judges of Compensation Claims.¹⁶ Among other things, the petition must include:

- Name, address, telephone number, and social security number of the employee;
- A detailed description of the injury and cause of the injury, including the location of the occurrence and the date or dates of the accident; and
- The type or nature of treatment care or attendance sought and the justification for such treatment.¹⁷

There are two public records exemptions directly related to an injured or deceased injured worker. The first, s. 440.125, F.S., provides that any medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills which are provided to the department, pursuant to s. 440.13, F.S., are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The exemption allows the department to share the records with AHCA

The second public record exemption, s. 440.102(8)(a), F.S., protects all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program.

From 1998 until 2003, the Workers' Compensation Law contained an exemption related to personal identifying information in reports of injury that protected any information in a report of injury or illness that would identify an ill or injured employee.

The exemption was subject to the Open Government Sunset Review Act and was allowed to repeal in 2003. This occurred during the same period as the passage of the most recent major workers' compensation reform bill, SB 50-A(2003).¹⁸ A Florida Senate interim report, issued in November 2002,

¹³ Rule 69L-3.025, F.A.C. incorporating form DFS-F2-DWC-1 by reference.

¹⁴ Rule 69L-56, F.A.C.

¹⁵ s. 440.13(4)(b), F.S.; Rules 69L-7.710-7.750, F.A.C.

¹⁶ s. 440.192, F.S.

¹⁷ s. 440.192(2), F.S.

¹⁸ ch. 2003-412, L.O.F.

recommended the exemption be repealed or amended.¹⁹ The recommendation was founded on the observation that the protected information was readily available from other sources, including department and DOAH databases that were not sourced from reports of injury.²⁰

The department reports that it receives approximately 90 requests monthly for the names and contact information of injured or deceased workers reported to the department during the previous month.²¹ Once received, the requestor can use and share the information in any manner to anyone. On average, the list of names, addresses and phone numbers provided to the public monthly include about 4,750 injured or deceased workers.²² The department reports that the requests are primarily from law firms.²³

Effect of the Bill

The bill provides that personal identifying information of an injured or deceased worker filed with the department, AHCA, or DOAH is confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill allows the disclosure of this information only in the following ways:

- To an injured employee or the surviving spouse or dependents of a deceased employee;
- In an aggregate reporting format, subject to content and time limitations;
- To participants in workers' compensation claims litigation at DOAH;
- Pursuant to a court order or subpoena;
- To an anti-fraud unit of an insurer; or
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

The bill provides a statement of public necessity and provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The public necessity statement cites the sensitive and personal nature of the individual's workers' compensation claims information and potential use of that information to harm the injured worker or the survivors of the injured workers.

B. SECTION DIRECTORY:

Section 1. Creates s. 440.1851, F.S., relating to personal identifying information of an injured or deceased employee; public records exemption.

Section 2. Provides a statement of public necessity as required by the Florida Constitution.

Section 3. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁹ Florida Senate, *Interim Project Report 2003-203*, Nov. 2002, available at http://archive.flsenate.gov/data/Publications/2003/Senate/reports/interim_reports/pdf/2003-203bi.pdf (last visited Mar. 22, 2017).

²⁰ *Id.*

²¹ Florida Department of Financial Services, Agency Analysis of 2017 HB 1107, p. 1, (Mar. 8, 2017). CS/HB 1107 is substantively similar to HB 1107.

²² *Id.*

²³ *Id.*

Indeterminate, but likely minimal. The bill could create a minimal fiscal impact on the department, AHCA, and the DOAH because of software redesign or training of those responsible for complying with public record requests regarding the new public records exemption. The department noted that HB 1107 is estimated to require non-recurring expenditures of \$400 in fiscal year 2017-2018.²⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill may reduce attorney involvement in workers' compensation litigation, which could lead to more efficient claims processing and lower workers' compensation premiums.

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

On March 14, 2017, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute made multiple changes, as follows:

- Created s. 440.1851, F.S., rather than amending s. 440.185, F.S.
- Expanded the proposed exemption from only personal identifying information contained in reports filed under s. 440.185, F.S., to all personal identifying information held pursuant to ch. 440, F.S.
- Applied the exemption to the department, AHCA, and DOAH, instead of only the Division of Workers' Compensation.
- Expanded the exceptions to the exemption to allow otherwise exempt information to be provided to:
 - The injured worker or his or her dependent(s), and
 - Party litigants in a matter pending before the Office of the Judges of Compensation Claims.
- Placed certain conditions on the release of aggregated information.

²⁴ *Id.* at 2.

On April 6, 2017, the Commerce Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment allowed personal identifying information of an injured worker that is confidential and exempt from disclosure under the bill to be shared with the anti-fraud unit of an insurer. It also clarified that a surviving spouse may receive the information, rather than only dependents, and that disclosure can be made in response to a subpoena, rather than only by court order.

The staff analysis has been updated to reflect the committee substitute.