

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7013 PCB GOS 22-04 OGSR/Workers' Compensation/Department of Financial Services

SPONSOR(S): Government Operations Subcommittee, Fabricio

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Villa	Toliver
1) Insurance & Banking Subcommittee	15 Y, 0 N	Herendeen	Luczynski
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Workers' compensation is a required form of employer insurance that provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics to employees for work-related injuries. It also provides compensation for disability when the injury causes an employee to miss more than seven days of work. The Department of Financial Services, Division of Workers' Compensation (DWC) administers Florida's workers' compensation system. In carrying out its duties and responsibilities under the workers' compensation law, the DWC receives various documents that contain the personal identifying information of injured workers, including the initial notice of injury or death, copies of medical bills and reports, and wage statements.

Current law provides a public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law. The term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number. The exemption authorizes the DWC to disclose the confidential and exempt information to specified parties under certain circumstances; however, the information is required to be maintained as confidential and exempt by the receiving party.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2022 if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Workers' Compensation Law

Chapter 440, F.S., is Florida's workers' compensation law. It is the stated intent of the Legislature that the workers' compensation system be self-executing and for the law to be interpreted to "assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer."⁵ Workers' compensation is a required form of employer insurance that provides all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics to employees for work-related injuries.⁶ It also provides compensation for disability when the injury causes an employee to miss more than seven days of work.⁷ The DWC has the primary responsibility for administering the workers' compensation system.⁸

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 440.015, F.S.

⁶ Section 440.13(2)(a), F.S.

⁷ Section 440.12(1), F.S.

⁸ The Office of Insurance Regulation and the Office of Judges of Compensation Claims within the Division of Administrative Hearings are also responsible for administering provisions of the workers' compensation law.

The workers' compensation law sets forth reporting requirements for employees, employers, and insurers.⁹ For example, employees must inform their employer of the injury within 30 days after the initial date of manifestation of the injury, except as otherwise specified.¹⁰ Employers are required to report an injury or death to their workers' compensation insurer within seven days of having knowledge of the injury.¹¹ Insurers must then report the injury to the DWC within 14 days of the employer's receipt of the notice of injury or death.¹²

In addition to the initial notice of injury or death, employers and insurers are required to file subsequent reports with the DWC that contain information that would identify an injured worker. These reports or forms include, but are not limited to the: employee wage statements, notices of action/change, notices of denial, and claim cost reports.¹³

The workers' compensation law provides two other exemptions to the Public Records Law, for records produced as part of a drug-free workplace program¹⁴ and for medical records of injured workers submitted to the DWC as part of a reimbursement dispute or utilization review.¹⁵

Public Record Exemption under Review

In 2017, the Legislature created a public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law.¹⁶ The term "personal identifying information" means the injured or deceased employee's name, date of birth, home address or mailing address, e-mail address, or telephone number.¹⁷ The exemption allows the DWC to disclose the confidential and exempt¹⁸ information:

- To the injured employee, the surviving spouse or dependents of a deceased employee, the spouse or dependent of the injured employee (if authorized by the employee), or the legal representative of the deceased employee's estate;
- To participants in workers' compensation claims litigation at Division of Administrative Hearings;
- To an anti-fraud unit of an insurer;
- In an aggregate reporting format, subject to certain content limitations;
- Pursuant to a court order or subpoena;
- To a state agency for purposes of anti-fraud investigations; and
- To other state or federal agencies in the furtherance of those agencies' official duties and responsibilities.¹⁹

⁹ See s. 440.185, F.S. The term "insurer" means a group self-insurers' fund authorized by s. 624.4621, F.S., an individual self-insurer authorized by s. 440.38, F.S., a commercial self-insurance fund authorized by s. 624.462, F.S., an assessable mutual insurer authorized by s. 628.6011, F.S., and an insurer licensed to write workers' compensation and employer's liability insurance in this state. Section 440.02(38), F.S.

¹⁰ Section 440.185(1), F.S.

¹¹ Section 440.185(2), F.S.

¹² *Id.*

¹³ See r. 69L-3.025, F.A.C.

¹⁴ S. 440.102(8), F.S.

¹⁵ S. 440.13, F.S. Health care providers who treat injured workers are subject to the privacy rules of the Health Insurance Portability and Accountability Act enacted by Congress in 1996, but the federal law does not apply to insurers, workers' compensation administrative agencies, or employers. See, U.S. Department of Health and Human Services, HIPAA Guidance Materials, *Disclosures for Workers' Compensation Purposes*, www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-workers-compensation/index.html (last visited Dec. 16, 2021).

¹⁶ Section 440.1851, F.S.

¹⁷ Section 440.1851(1)(a), F.S.

¹⁸ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04- 09 (2004).

¹⁹ Section 440.1851(1)(b), F.S.

An employer, insurer, agency, or governmental entity receiving an injured or deceased employee's personal identifying information from the DWC must maintain its confidential and exempt status. The knowing and willful disclosure of the confidential and exempt information to an unauthorized person or entity is a first degree misdemeanor.²⁰

The 2017 public necessity statement²¹ for the exemption provides that:

[Personal identifying] information is of a sensitive, personal nature, and disclosure of such information about an injured or deceased employee is an invasion of that employee's privacy or the privacy of his or her family. . . . Public records requests for this information have resulted in unwanted solicitation of injured workers and their families. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others because of perceived social stigma related to injuries or disabilities.²²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2022, unless reenacted by the Legislature.

During the 2021 interim, the House Government Operations Subcommittee staff conducted an interview with staff from the DWC as part of its review under the Open Government Sunset Review Act. The DWC staff indicated that the exemption is functioning well and that it has not received any complaints regarding the exemption. The DWC staff emphasized the importance of the exemption as it mitigates unnecessary litigation between injured workers and insurers on claim disputes. As such, the DWC recommended the exemption be reenacted in its current form.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for the personal identifying information of an injured or deceased employee contained in records held by the DWC pursuant to the workers' compensation law.

B. SECTION DIRECTORY:

Section 1 amends s. 440.1851, F.S., relating to a public record exemption for the personal identifying information of an injured or deceased employee.

Section 2 provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁰ Section 440.1851(2), F.S. A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year and a \$1,000 fine. See ss. 775.082 and 775.083, F.S.

²¹ Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

²² Chapter 2017-185, L.O.F.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES