

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 1107	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Pub. Rec./Workers' Compensation	120	Y's 0	N's
SPONSOR(S):	Commerce Committee; Insurance & Banking Subcommittee; Albritton	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/CS/SB 1008			

SUMMARY ANALYSIS

CS/CS/HB 1107 passed the House on April 20, 2017. The bill was amended by the Senate on May 1, 2017. The Senate passed the bill, as amended, on May 2, 2017, and returned the bill to the House. The House concurred in the Senate amendment and passed the bill, as amended, on May 3, 2017.

The Department of Financial Services (department) is charged by the workers' compensation law with the administration and oversight of workers' compensation insurers and the workers' compensation health care delivery system. The department receives records concerning injured or deceased workers that include sensitive and personal identifying information.

The bill provides that specified personal identifying information of an injured or deceased worker held by the department 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, the surviving spouse or dependents of a deceased employee, the spouse or dependent of a living employee (if authorized by the employee), or the legal representative of the deceased employee's estate;
- To participants in workers' compensation claims litigation at the Office of the Judges of Compensation Claims;
- To an anti-fraud unit of an insurer;
- In an aggregate reporting format, subject to 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 such agency's official duties and responsibilities.

An employer, carrier, agency, or governmental entity receiving an injured or deceased employee's personal identifying information from the department must maintain the confidential and exempt status of the information. The bill specifies that the knowing and willful disclosure of information made confidential and exempt by the bill is a first degree misdemeanor punishable by up to one year in jail or a \$1,000 fine. The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also 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 was approved by the Governor on June 26, 2017, ch. 2017-185, L.O.F., and will become effective July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

By rule,¹³ the report must also include:

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.

- 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 specified personal identifying information of an injured or deceased worker held by the department 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, the surviving spouse or dependents of a deceased employee, the spouse or dependent of a living employee (if authorized by the employee), or the legal representative of the deceased employee's estate;
- To participants in workers' compensation claims litigation at DOAH;
- To an anti-fraud unit of an insurer;
- In an aggregate reporting format, subject to 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 such agency's official duties and responsibilities.

An employer, carrier, agency, or governmental entity receiving an injured or deceased employee's personal identifying information from the department must maintain the confidential and exempt status of the information. The bill specifies that the knowing and willful disclosure of information made confidential and exempt by the bill is a first degree misdemeanor punishable by up to one year in jail or a \$1,000 fine. The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution. 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 or solicit the injured worker or the survivors of the injured workers.

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).

²² *Id.*

²³ *Id.*

Indeterminate, but likely minimal. The bill could create a minimal fiscal impact on the department because of software redesign or training of those responsible for complying with public record requests regarding the new public records exemption.

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.