

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1009	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Pub. Rec./Insurance Fraud Information/DFS	119	Y's 0	N's
SPONSOR(S):	Insurance & Banking Subcommittee; Raschein	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/CS/CS/HB 1007, CS/SB 1014			

SUMMARY ANALYSIS

CS/HB 1009 passed the House on May 2, 2017, and subsequently passed the Senate on May 5, 2017.

The bill creates a public record exemption that makes the following information, when submitted to the Division of Forensic Services (DIFS) within the Department of Financial Services, exempt from s. 119.07(1), F.S., and s. 24(a), Art I of the Florida Constitution:

- The description of an insurer's anti-fraud education and training;
- The description of an insurer's anti-fraud investigative unit;
- An insurer's rationale for the level of staffing and resources for the anti-fraud investigative unit;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims accepted or investigated by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies.

The exemption applies to records held before, on, or after the effective date of the exemption.

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

The bill may have a minimal fiscal impact on state government.

The bill was approved by the Governor on June 26, 2017, ch. 2017-179, L.O.F., and became effective on that date.

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 record or open meeting 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

Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) within the Department of Financial Services (Department) encompasses all law enforcement and forensic components residing within the Department. The DIFS investigates a wide range of fraudulent and criminal acts including:

- Insurance Fraud
- Workers' Compensation Fraud
- Fire, Arson, and Explosives Investigations
- Theft/Misuse of State Funds
- Fire and Explosives Sample Analysis

Insurer Anti-Fraud Investigative Units and Plans

Florida law requires every insurer admitted to do business in this state to have some form of fraud prevention program in place.⁸ Insurers with direct written premiums of at least \$10 million in the prior year must establish and maintain "a unit or division"⁹ to investigate fraudulent claims, typically referred to as a special investigative unit (SIU), or contract for SIU services. These insurers are required to file a

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 s. 626.9891(1) - (4), F.S.

⁹ A "unit or division" may include assigning fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. s. 626.9891(5), F.S.

detailed description of their SIU or the contract for services, whichever is applicable, with the DIFS. Insurers with direct written premiums of less than \$10 million in the prior year must adopt an anti-fraud plan, or comply with the requirements applicable to larger insurers. An anti-fraud plan must be filed with the DIFS and must include:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the DIFS;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and
- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.

An insurer that writes workers' compensation coverage is subject to additional requirements.¹⁰ A workers' compensation insurer is required to submit a report to the DIFS by August 1 of each year on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan. The report must include:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other.
- The number of referrals to the Bureau of Workers' Compensation Fraud for the prior year.
- A description of the organization of the anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing.
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis.
- The in-service education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities.
- A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it.

None of the information required to be reported today is protected by a public record exemption.

CS/CS/CS/HB 1007, which is tied to this bill, establishes uniform fraud prevention standards for all insurers, regardless of size. In effect, the bill imposes two new requirements: large insurers will be required to adopt an anti-fraud plan and smaller insurers will be required both to adopt an anti-fraud plan and to establish and maintain an SIU, or contract for SIU services. The tied bill expands the requirements for an anti-fraud plan to include two requirements, with some modifications, that apply only to workers' compensation insurers today: the rationale for staffing levels and a description of the anti-fraud education and training. In addition, the tied bill revises the requirements for those portions of the anti-fraud plan that are specific to a workers' compensation insurer by adding a requirement to report, by fraud type, the number of cases referred to the DIFS.

Finally, the tied bill creates a new requirement for all insurers to report fraud-related data for each line of insurance written in the prior calendar year. The data must be submitted by March 1, 2019, and annually thereafter, and include:

¹⁰ s. 626.9891(6), F.S.

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the DIFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies.

Effect of the Bill on Insurer Anti-Fraud Investigative Units and Plans

The bill creates a public record exemption that makes the following information, when submitted to the Department, exempt¹¹ from s. 119.07(1), F.S., and s. 24(a), Art I of the Florida Constitution:

- The description of an insurer's anti-fraud education and training;
- The description of an insurer's anti-fraud investigative unit;
- An insurer's rationale for the level of staffing and resources for the anti-fraud investigative unit;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims accepted or investigated by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the DIFS or other agencies.

The exemption applies to records held before, on, or after the effective date of the exemption.

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 potential for misuse of the information to commit insurance fraud and the potential for business injury if fraud data is accessed by competitors.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹¹ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

None

2. Expenditures:

The bill may have a minimal fiscal impact on the Department for training that may be provided to employees who are responsible for complying with public record requests. In addition, the Department could incur costs for labor associated with redacting the exempt information prior to releasing a record. However, these costs should be absorbed as part of the day-to-day responsibilities of the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.