

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1107 Public Records/Workers' Compensation

SPONSOR(S): Insurance & Banking Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Lloyd	Luczynski

SUMMARY ANALYSIS

The proposed committee substitute (PCS) creates a new section of statute providing that personal identifying information of an injured or deceased worker filed with the Department of Financial Services (department), the Agency for Health Care Administration (AHCA), and the Division of Administrative Hearings (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 department, AHCA, and DOAH are charged by the workers' compensation law with the administration and oversight of workers' compensation insurers and health care providers. The PCS allows the disclosure of this confidential and exempt public record information only in the following ways:

- To an injured employee or the 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
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

The PCS 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 cited 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 worker.

The PCS has no fiscal impact on state revenues and local government revenue or expenditures; a minimal impact on state expenditures; and a positive impact on the private sector.

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

Article I, s. 24(c) of the State 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 PCS 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.

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.⁶ The Act directs the Legislature to consider the following as part of the review process:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Confidential & Exempt Treatment of Workers' Compensation Records

The workers' compensation law⁷ 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.⁸ They each receive records concerning injured or deceased workers. Employers are required to report every injury

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(3), F.S.

⁷ ch. 440, F.S.

⁸ 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.

or death to their workers' compensation insurance carrier (carrier).⁹ 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.

By rule,¹⁰ the report must also include:

- The address of the accident location;
- 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.¹¹ Additionally, reports of every medical bill for treatment of an injured worker are required to be filed with the department.¹² 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.¹³ 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.

There are two public records exemptions directly related to an injured or deceased injured worker. Section 440.125, F.S., provides the following exemption related to personal identifying information:

440.125 Medical records and reports; identifying information in employee medical bills; confidentiality.—Any medical records and medical reports of an injured employee and any information identifying an injured

⁹ s. 440.185(2), F.S.

¹⁰ Rule 69L-3.025, F.A.C.

¹¹ Rule ch. 69L-56, F.S.

¹² s. 440.13(4)(b), F.S., and rules 69L-7.710-7.750, F.A.C.

¹³ s. 440.192, F.S.

employee in medical bills which are provided to the department, pursuant to s. 440.13, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided by this chapter. The department may share any such confidential and exempt records, reports, or information received pursuant to s. 440.13 with the Agency for Health Care Administration in furtherance of their official duties under ss. 440.13 and 440.134. The agency and the department shall maintain the confidential and exempt status of such records, reports, and information received.

Paragraph 440.102(8)(a), F.S., provides the following exemption related to drug testing under the Drug-Free Workplace provisions of the workers' compensation law:

(8) CONFIDENTIALITY.—

(a) Except as otherwise provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter.

From 1998 until 2003, the workers' compensation law contained the following exemption related to personal identifying information in reports of injury under s. 440.185, F.S.:

(11) Any information in a report of injury or illness filed pursuant to this section that would identify an ill or injured employee is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

This section was repealed without reenactment in 2003. This occurred during the same period as the passage of the last major workers' compensation reform bill, SB 50-A.¹⁴ Interim Project Report 2003-203 of the Florida Senate, issued November 2002, recommended the repeal or expansion of the exemption. 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.

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.¹⁵ 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. The department reports that the requests are primarily from law firms.

Effect of the Proposed Committee Substitute

The proposed committee substitute (PCS) creates a new section of statute providing that personal identifying information of an injured or deceased worker filed with the department, AHCA, or DOAH is

¹⁴ Ch. 2003-415, L.O.F.

¹⁵ Florida Department of Financial Services, Agency Analysis of 2017 HB 1107, p. 1, (Mar. 8, 2017). PCS for HB 1107 is substantively similar to HB 1107.

confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The PCS allows the disclosure of this information only in the following ways:

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

The PCS 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 State 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:

Indeterminate, but likely minimal. The PCS could create a minimal fiscal impact on DFS, AHCA, and the Division of Administrative Hearings because of software redesign or training of those responsible for complying with public record requests regarding the new public records exemption. The DFS noted that HB 1107 is estimated to require non-recurring expenditures of \$400 in fiscal year 2017-2018.¹⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

¹⁶ *Id.* at 2.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This PCS 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