

CHAPTER 98-407

Committee Substitute for Senate Bill No. 1408

An act relating to public records; creating s. 440.108, F.S.; providing an exemption from public records requirements for certain information obtained in administering the Workers' Compensation Law; providing for the applicability of confidentiality provisions; authorizing the furnishing of information under certain conditions; providing for future review and repeal; providing a finding of public necessity; amending s. 440.185, F.S.; providing an exemption from public records requirements for information in a report of injury or illness filed pursuant to the Workers' Compensation Law; providing a finding of public necessity; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 440.108, Florida Statutes, is created to read:

440.108 Investigatory records relating to workers' compensation employer compliance; confidentiality.—

(1) All investigatory records of the Division of Workers' Compensation made or received pursuant to s. 440.107 and any records necessary to complete an investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. For purposes of this section, an investigation is considered "active" while such investigation is being conducted by the division with a reasonable, good-faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the agency is proceeding with reasonable dispatch and there is a good-faith belief that action may be initiated by the agency or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, records relating to the investigation remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

- (a) Jeopardize the integrity of another active investigation;
 - (b) Reveal a trade secret, as defined in s. 688.002;
 - (c) Reveal business or personal financial information;
 - (d) Reveal the identity of a confidential source;
 - (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
 - (f) Reveal investigative techniques or procedures.
- (2) This exemption 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.

Section 2. The Legislature finds that it is a public necessity that these investigatory and examination records be held confidential and exempt during an investigation in order not to compromise the investigation and disseminate potentially inaccurate information. To the extent this information is made available to the public, those persons being investigated will not have access to such information which would potentially defeat the purpose of the investigation. This would impede the effective and efficient operation of investigatory governmental functions. Additionally, the Legislature finds that it is a public necessity that trade secrets or business or personal financial records remain confidential and exempt after an investigation is completed or ceases to be active because the disclosure of such information would injure the affected party in the marketplace. Further, information that would defame or cause unwarranted damage to the name or reputation of an individual, or jeopardize the safety of an individual, must remain confidential and exempt after an investigation is completed or ceases to be active to protect that individual's name or reputation or personal safety. As well, information that would jeopardize the integrity of another active investigation or that would reveal investigative techniques or procedures must remain confidential and exempt after an investigation is completed or ceases to be active in order to permit the effective and efficient operation of the program.

Section 3. Subsection (10) of section 440.185, Florida Statutes, is created to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(10) 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.

Section 4. The Legislature finds that it is a public necessity that any information in a report of injury or illness filed pursuant to section 440.185, Florida Statutes, that would identify an ill or injured employee, be held confidential and exempt because such information is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an employee is an invasion of that employee's privacy. Further, the release of such information could lead to discrimination against the employee by coworkers, potential employers, and others. The harm caused to such an employee by the release of this information outweighs any public benefit derived from its release.

Section 5. Sections 1 and 2 of this act shall take effect on the effective date of CS/CS/SB 1406, or similar legislation, relating to the powers of the

Division of Workers' Compensation of the Department of Labor and Employment Security, and Sections 3 and 4 of this act shall take effect upon becoming law.

Became a law without the Governor's approval June 17, 1998.

Filed in Office Secretary of State June 11, 1998.