

House Bill No. 729

An act relating to public records and meetings exemptions; creating s. 440.3851, F.S.; exempting from public records and public meetings requirements certain records of the Florida Self-Insurers Guaranty Association, Incorporated, and certain meetings of the board of directors of the association or any subcommittee of the board; providing for release of such records under certain circumstances; providing requirements; providing for future legislative review and repeal; providing findings of public necessity; providing an effective date.

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

Section 1. Section 440.3851, Florida Statutes, is created to read:

440.3851 Public records and public meetings exemptions.—

(1) The following records of the Florida Self-Insurers Guaranty Association, Incorporated, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Claims files, until termination of all litigation and settlement of all claims arising out of the same accident.

(b) Medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant.

(c) Minutes of exempt portions of meetings, as provided in subsection (3), until termination of all litigation and settlement of all claims with regard to that claim.

(2) Records or portions of records made confidential and exempt by this section may be released, upon written request, to another agency in the performance of that agency's official duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of a record.

(3) That portion of a meeting of the association's board of directors or any subcommittee of the association's board at which records made confidential and exempt by this section are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of meetings shall be recorded and transcribed. The board shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. An exempt portion of any meeting may not be off the record. Subject to this section and s. 119.021(2), the court reporter's notes of any exempt portion of a meeting shall be retained by the association for a minimum of 5 years. A copy of the transcript of any exempt portion of a meeting in which claims files are discussed shall become public as to individual claims after settlement of the claim with any confidential and exempt information redacted.

(4) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that claims files of the Florida Self-Insurers Guaranty Association, Incorporated, be held confidential and exempt from public records requirements and that portions of meetings of the board of directors of the association or of any subcommittee of the board, wherein these claims files are reviewed and evaluated be made exempt from public meetings requirements. The Legislature finds that the association was created to stand in the place of private businesses that are self-insured for workers' compensation claims if any of such businesses becomes insolvent. The Legislature finds that the exemption of the open claims files of the association is necessary for the effective and efficient administration of a government program created to insure workers with claims against insolvent businesses which can otherwise seek compensation from the funds collected by the association from its member businesses. Claims files are created by the association after a claim against one of its insolvent members is made; contain detailed information about the claim, medical information, and other personal information about the claimant; and also contain information detailing the evaluation of the legitimacy of the claim, the extent of incapacity, and a valuation of the award, if any, that should be made. Information in a claims file held by the association includes the medical records and other information related to the medical condition or medical status of a claimant. The Legislature finds that the claimants' medical records and other medical-related information are personal and sensitive. Therefore, the Legislature finds that an exemption for medical records and other information related to the medical condition or medical status of a claimant is a public necessity in order to protect a claimant's health-related information. Matters of personal health are traditionally a private and confidential concern. The release of the medical records of a claimant or personal identifying information concerning a claimant would violate the privacy of the individual or could cause unwarranted damage to the name or reputation of the individual. When a claim is contested, the work product of legal counsel may also be included in the file in the form of direction to claims professionals. Allowing the claimant or claimant's lawyers access to the files, which could be used for purposes of negotiation, claim evaluation, and settlement considerations, would weaken the legal position of the association and could result in higher awards and settlements paid out by the guaranty fund and ultimately the membership of the association.

(2) The Legislature further finds that closing access to meetings of the board of directors of the association or of a subcommittee of the board, wherein claims files are reviewed and evaluated, is necessary for the effective and efficient administration of the claims evaluation work of the association. The directors of the fund act in a trustee capacity and must take care that the assets of the fund are managed wisely. Their efforts to meet as a collegial body to closely review individual files in an open and frank setting that includes staff are thwarted by the current requirement that such meetings be open. Furthermore, discussion of individual files in an open and

public setting might reveal private, sensitive medical information that is otherwise confidential.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.