

By Senators Silver, Gutman and Forman

38-1155-98

See HB

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A bill to be entitled
An act relating to public records exemptions;
amending s. 627.351, F.S.; providing for
confidentiality of certain insurance policies;
amending s. 627.3518, F.S.; providing for
confidentiality of certain information relating
to the FAIR Plan; providing legislative intent,
findings, and declarations; providing a
contingent effective date.

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

Section 1. Paragraph (o) is added to subsection (6) of
section 627.351, Florida Statutes, to read:

627.351 Insurance risk apportionment plans.--

(6) RESIDENTIAL PROPERTY AND CASUALTY JOINT
UNDERWRITING ASSOCIATION.--

(o) Prior to January 1, 1999, the FAIR Plan
established under s. 627.3518 shall analyze policies insured
by the association and designate those policies for removal by
the FAIR Plan. Policies designated for removal by the FAIR
Plan shall be privileged and confidential and exempt from the
provisions of s. 119.07(1) and s. 24(a), Article 1 of the
State Constitution.

Section 2. Paragraph (x) is added to subsection (4) of
section 627.3518, Florida Statutes, and subsection (10) is
added to said section, to read:

627.3518 Florida Access to Insurance Requirements
(FAIR) Plan.--

(4) THE PLAN OF OPERATION.--

1 (x) Any books, records, files, papers, and documents
2 or copies of such materials obtained by the department or a
3 person designated by the department in the course of any
4 examination conducted under paragraph (c) shall retain any
5 confidential character such materials would possess had such
6 materials remained in the possession of the FAIR Plan.

7 (10) CONFIDENTIALITY OF DOCUMENTS.--Except as provided
8 in this subsection, the association is subject to the
9 provisions of s. 119.07(1) and s. 24(a), Article I of the
10 State Constitution.

11 (a) The following association records are confidential
12 and exempt from the provisions of s. 119.07(1) and s. 24(a),
13 Art. I of the State Constitution:

14 1. Underwriting files, except that a policyholder or
15 an applicant shall have access to his or her own underwriting
16 files.

17 2. The identity of policies of the Florida Residential
18 Property and Casualty Joint Underwriting Association
19 designated by the FAIR Plan pursuant to s. 627.351(6) until
20 such policies are removed from the association by the FAIR
21 Plan.

22 3. Claims files, until termination of all litigation
23 and settlement of all claims arising out of the same incident,
24 except that portions of the claims files may remain exempt as
25 otherwise provided by law. Confidential and exempt claims file
26 records may be released to other governmental agencies upon
27 written request and demonstration of need, and such records
28 held by the receiving agency shall remain confidential and
29 exempt as provided in this subsection.

30 4. Records obtained or generated by an internal
31 auditor pursuant to a routine audit, until the audit is

1 completed, or if the audit is conducted as part of an
2 investigation, until the investigation is closed or ceases to
3 be active. An investigation is considered active while the
4 investigation is being conducted with a reasonable, good faith
5 belief that the investigation could lead to the filing of
6 administrative, civil, or criminal proceedings.

7 5. Matters reasonably encompassed in privileged
8 attorney-client communications.

9 6. Proprietary information licensed to the association
10 under contract and the contract provides for the
11 confidentiality of such proprietary information.

12 7. All information relating to the medical condition
13 or medical status of an association employee which is not
14 relevant to the employee's capacity to perform his or her
15 duties, except as otherwise provided in this paragraph.
16 Information that is exempt shall include, but is not limited
17 to, information relating to workers' compensation, insurance
18 benefits, and retirement or disability benefits.

19 8. All records relating to participation by an
20 employee, upon the employee's entrance into an employee
21 assistance program, in a program to assist any employee who
22 has a behavioral or medical disorder, substance abuse problem,
23 or emotional difficulty that affects the employee's job
24 performance, except as otherwise provided in s. 112.0455(11).

25 9. Information relating to negotiations for financing,
26 reinsurance, depopulation, or contractual services, until the
27 conclusion of the negotiations.

28 10. Minutes of closed meetings regarding underwriting
29 files and minutes of closed meetings regarding an open claims
30 file until termination of all litigation and settlement of all
31 claims with regard to that claim, except that any information

1 otherwise confidential or exempt by law shall be redacted.
2 When an authorized insurer is considering underwriting a risk
3 insured by the association, relevant underwriting files and
4 confidential claim files may be released to the insurer
5 provided that the insurer agrees in writing, notarized and
6 under oath, to maintain the confidentiality of such files.

7 (b) Any file transferred to an insurer is not a public
8 record subject to the public records law. Notwithstanding this
9 subsection, underwriting files and confidential claims files
10 may be released to the staff and board of governors of the
11 market assistance plan established pursuant to s. 627.3515,
12 who shall maintain the confidentiality of such files, except
13 that such files may be released to authorized insurers who are
14 considering assuming the risks, or who are subject to the
15 assignment of the risks, to which the files apply. In such
16 cases the insurer shall agree in writing, notarized and under
17 oath, to maintain the confidentiality of such files.

18 Additionally, the association or the board or staff of the
19 market assistance plan may make available to licensed general
20 lines insurance agents the following information obtained from
21 underwriting files and confidential claims files: the name,
22 address, and telephone number of the residential property
23 owner or insured, the location of the risk, rating
24 information, loss history, and policy type. The receiving
25 licensed general lines insurance agent must maintain the
26 confidentiality of the information received.

27 (c) Portions of meetings of the association in which
28 confidential underwriting files or confidential open claims
29 files are discussed are exempt from the provisions of s.
30 286.011 and s. 24(b), Art. I of the State Constitution. All
31 portions of association meetings which are closed to the

1 public shall be recorded by a court reporter. The association
2 shall cause the court reporter to record the times of
3 commencement and termination of the meeting, all discussion
4 and proceedings, the names of all persons present at any time,
5 and the names of all persons speaking. No portion of any
6 closed meeting shall be off the record. Subject to the
7 provisions of this subsection and s. 119.07(2)(a), the court
8 reporter's notes of any closed meeting shall be retained by
9 the association for a minimum of 5 years. A copy of the
10 transcript, less any exempt matters, of any closed meeting at
11 which claims are discussed shall become public as to
12 individual claims after settlement of such claims.

13 Section 3. The Legislature finds that it is a public
14 necessity that certain records of the Residential Property and
15 Casualty Joint Underwriting Association be held confidential
16 and exempt. Designated policies must be confidential to
17 ensure that the stigma of designation does not preclude fair
18 consideration by the voluntary market of underwriting the
19 risk. Certain medical records and employee assistance program
20 records of association employees should be held confidential
21 and exempt because they contain personal, sensitive
22 information regarding an employee's medical or other
23 condition, the disclosure of which could be harmful to the
24 employee. Underwriting files contain medical information as
25 well as private financial information regarding insureds, the
26 disclosure of which could be harmful to those insureds. Such
27 files also contain proprietary confidential business
28 information. It is therefore a public necessity that those
29 files, and meetings relating to such files, be closed to
30 public scrutiny. Matters reasonably encompassed in privileged
31 attorney-client communications must be held confidential and

1 exempt because the release of such information could
2 jeopardize ongoing or pending litigation or other business
3 matters. Proprietary information licensed to the association
4 under contract must be held confidential in order to allow for
5 the association to obtain information that would be
6 unavailable otherwise. Open claims file records should be
7 closed, as well as meetings concerning open claims files, to
8 prevent claimants from having unrestricted access to claims
9 information which might subvert the claims process, including,
10 but not limited to, negotiation, claim evaluation, and
11 settlement considerations. Records held by an internal
12 auditor while an audit is incomplete, or while an
13 investigation is pending, should be held confidential and
14 exempt because possibly inaccurate information could be
15 released or investigations jeopardized. It is a public
16 necessity that information relating to negotiations for
17 financing, reinsurance depopulation, or contractual services
18 be held confidential and exempt to prevent the abrogation of
19 any contractual rights.

20 Section 4. This act shall take effect on the same date
21 that House Bill or similar legislation creating s.
22 627.3518, Florida Statutes, takes effect, if such legislation
23 is adopted in the same legislative session or an extension
24 thereof.

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27 LEGISLATIVE SUMMARY

28 Provides for confidentiality and exemption from public
29 records requirements for insurance policies removed from
30 the Residential Property and Casualty Joint Underwriting
31 Association to the FAIR Plan and for specified materials,
information, and documents of the FAIR Plan. (See bill
for details.)