

By the Committee on Governmental Operations and
Representative Ball

1 A bill to be entitled
2 An act relating to confidentiality of records
3 and meetings of the Florida Automobile Joint
4 Underwriting Association; amending s. 627.311,
5 F.S.; providing exemptions from public records
6 requirements for underwriting files, open claim
7 files, audit records for a specified time,
8 matters reasonably encompassed in privileged
9 attorney-client communications, licensed
10 proprietary information made confidential by
11 contract, certain employee medical records and
12 employee assistance programs records, certain
13 negotiation information for a specified time,
14 minutes of closed meetings regarding
15 underwriting files, and minutes of closed
16 meetings regarding claims files for a specified
17 time; providing requirements regarding sharing
18 of confidential records; providing an exemption
19 from public meetings requirements for meetings
20 during which underwriting files or open claims
21 files are discussed; providing requirements
22 regarding such closed meetings and records
23 thereof; providing for future review and
24 repeal; providing a finding of public
25 necessity; providing an effective date.

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

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29 Section 1. Paragraph (1) is added to subsection (3) of
30 section 627.311, Florida Statutes, to read:

31 627.311 Joint underwriters and joint reinsurers.--

1 (3) The department may, after consultation with
2 insurers licensed to write automobile insurance in this state,
3 approve a joint underwriting plan for purposes of equitable
4 apportionment or sharing among insurers of automobile
5 liability insurance and other motor vehicle insurance, as an
6 alternate to the plan required in s. 627.351(1). All insurers
7 authorized to write automobile insurance in this state shall
8 subscribe to the plan and participate therein. The plan shall
9 be subject to continuous review by the department which may at
10 any time disapprove the entire plan or any part thereof if it
11 determines that conditions have changed since prior approval
12 and that in view of the purposes of the plan changes are
13 warranted. Any disapproval by the department shall be subject
14 to the provisions of chapter 120. If adopted, the plan and
15 the association created under the plan:

16 (1)1. Shall be subject to the public records
17 requirements of chapter 119 and the public meeting
18 requirements of s. 286.011. However, the following records of
19 the Florida Automobile Joint Underwriting Association are
20 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
21 of the State Constitution:

22 a. Underwriting files, except that a policyholder or
23 an applicant shall have access to his or her own underwriting
24 files.

25 b. Claims files, until termination of all litigation
26 and settlement of all claims arising out of the same incident,
27 although portions of the claims files may remain exempt, as
28 otherwise provided by law. Confidential and exempt claims
29 file records may be released to other governmental agencies
30 upon written request and demonstration of need; such records
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1 held by the receiving agency remain confidential and exempt as
2 provided by this paragraph.

3 c. Records obtained or generated by an internal
4 auditor pursuant to a routine audit, until the audit is
5 completed or, if the audit is conducted as part of an
6 investigation, until the investigation is closed or ceases to
7 be active. An investigation is considered "active" while the
8 investigation is being conducted with a reasonable, good-faith
9 belief that it could lead to the filing of administrative,
10 civil, or criminal proceedings.

11 d. Matters reasonably encompassed in privileged
12 attorney-client communications.

13 e. Proprietary information licensed to the association
14 under contract when the contract provides for the
15 confidentiality of such proprietary information.

16 f. All information relating to the medical condition
17 or medical status of an association employee which is not
18 revelant to the employee's capacity to perform his or her
19 duties, except as otherwise provided in this paragraph.
20 Information which is exempt shall include, but is not limited
21 to, information relating to workers' compensation, insurance
22 benefits, and retirement or disability benefits.

23 g. All records relative to an employee's participation
24 in an employee assistance program designed to assist any
25 employee who has a behavioral or medical disorder, substance
26 abuse problem, or emotional difficulty which affects the
27 employee's job performance, except as otherwise provided in s.
28 112.0455(11).

29 h. Information relating to negotiations for financing,
30 reinsurance, depopulation, or contractual services, until the
31 conclusion of the negotiations.

1 i. Minutes of closed meetings regarding underwriting
2 files, and minutes of closed meetings regarding an open claims
3 file until termination of all litigation and settlement of all
4 claims with regard to that claim, except that information
5 otherwise confidential or exempt by law must be redacted.

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7 When an authorized insurer is considering underwriting a risk
8 insured by the association, relevant underwriting files and
9 confidential claims files may be released to the insurer
10 provided the insurer agrees in writing, notarized and under
11 oath, to maintain the confidentiality of such files. When a
12 file is transferred to an insurer, that file is no longer a
13 public record because it is not held by an agency subject to
14 the provisions of the public records law. The association may
15 make the following information obtained from underwriting
16 files and confidential claims files available to licensed
17 general lines insurance agents: name, address, and telephone
18 number of the automobile owner or insured; location of the
19 risk; rating information; loss history; and policy type. The
20 receiving licensed general lines insurance agent must retain
21 the confidentiality of the information received.

22 2. Portions of meetings of the Florida Automobile
23 Joint Underwriting Association during which confidential
24 underwriting files or confidential open claims files are
25 discussed are exempt from the provisions of s. 286.011 and s.
26 24(b), Art. I of the State Constitution. All portions of
27 association meetings which are closed to the public shall be
28 recorded by a court reporter. The court reporter shall record
29 the times of commencement and termination of the meeting, all
30 discussion and proceedings, the names of all persons present
31 at any time, and the names of all persons speaking. No

1 portion of any closed meeting shall be off the record.
2 Subject to the provisions of this paragraph and s.
3 119.07(2)(a), the court reporter's notes of any closed meeting
4 shall be retained by the association for a minimum of 5 years.
5 A copy of the transcript, less any exempt matters, of any
6 closed meeting during which claims are discussed shall become
7 public as to individual claims after settlement of the claim.
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9 This paragraph is subject to the Open Government Sunset Review
10 Act of 1995 in accordance with s. 119.15, and shall stand
11 repealed on October 2, 2003, unless reviewed and saved from
12 repeal through reenactment by the Legislature.
13 Section 2. The Legislature finds that it is a public
14 necessity that certain records of the Florida Automobile Joint
15 Underwriting Association be held confidential and exempt.
16 Certain medical records of association employees must be held
17 confidential and exempt because they contain personal,
18 sensitive information regarding an employee's medical
19 condition, the disclosure of which would be harmful to the
20 employee. Likewise, underwriting files contain medical
21 information as well as private financial information regarding
22 insureds, the disclosure of which could be harmful to those
23 insureds. Additionally, such files contain proprietary
24 confidential business information. Accordingly, it is a
25 public necessity that those files, and meetings relating to
26 such files, be closed. Additionally, matters reasonably
27 encompassed in privileged attorney-client communications
28 should be held confidential and exempt because the release of
29 such information could jeopardize ongoing or pending
30 litigation or other business matters. Also, open claims files
31 records should be closed, as well as meetings concerning open

1 claims files. If such records and meetings were not exempt,
2 claimants would have unfettered access to information held by
3 the association which could be used as evidence and for
4 purposes of negotiation, claim evaluation, and settlement
5 considerations, which would result in higher awards and
6 settlements paid out by the association and ultimately the
7 consumer. Records held by an internal auditor while an audit
8 is incomplete, or while an investigation is pending, should be
9 held confidential and exempt because otherwise possibly
10 inaccurate information would be released or investigations
11 jeopardized. Finally, it is a public necessity that
12 information relating to negotiations for financing,
13 reinsurance, depopulation, or contractual services be held
14 confidential and exempt. If such information were not
15 confidential and exempt, those with whom the association
16 contracted would have an economic advantage over the
17 association, thus driving up the costs of doing business,
18 which cost would be passed on to the consumer.

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

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