

By Representative Lippman

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

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) 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 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 which 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 which 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 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 the insurer agrees in writing, notarized and under  
6 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 who  
12 shall maintain the confidentiality of such files, except such  
13 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 would 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 which 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.

25  
26 \*\*\*\*\*

27 HOUSE 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.