

By Senator Williams

4-562-98

See CS/HB 1887

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. Must 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 that is exempt must include information relating  
21 to workers' compensation, insurance benefits, and retirement  
22 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 that 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 must 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 may be off the record. Subject  
2 to the provisions of this paragraph and s. 119.07(2)(a), the  
3 court reporter's notes concerning any closed meeting must be  
4 retained by the association for a minimum of 5 years. A copy  
5 of the transcript, less any exempt matters, of any closed  
6 meeting during which claims are discussed becomes public as to  
7 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 those 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 are not exempt,  
2 claimants will 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, resulting in higher awards and settlements  
6 paid out by the association and ultimately by the consumer.  
7 Records held by an internal auditor while an audit is  
8 incomplete, or while an investigation is pending, should be  
9 held confidential and exempt because otherwise possibly  
10 inaccurate information might 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 is not  
15 confidential and exempt, those with whom the association has  
16 contracted will have an economic advantage over the  
17 association, thus driving up the costs of doing business,  
18 which cost will be passed on to the consumer.

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

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SENATE SUMMARY

Provides exemptions from public records requirements for the following records of the Florida Automobile Joint Underwriting Association: underwriting files; open claims files; audit records for a specified time; matters reasonably encompassed in privileged attorney-client communications; licensed proprietary information made confidential by contract; certain employee medical records and employee assistance program records; certain negotiation information for a specified time; minutes of closed meetings regarding underwriting files; and minutes of closed meetings regarding claims files for a specified time. Provides requirements regarding sharing of confidential records.

Provides an exemption from public meeting requirements for association meetings during which underwriting files or open claims files are discussed. Provides requirements regarding such closed meetings and records thereof.

Provides for future review and repeal.