

By Senator Geller

29-1197-99

1 A bill to be entitled
 2 An act relating to insurance; providing an
 3 insurance compliance self-evaluation privilege
 4 for insurers and persons conducting activities
 5 regulated under the Florida Insurance Code who
 6 conduct voluntary internal audits of their
 7 compliance programs and management systems to
 8 improve compliance with state and federal law;
 9 providing that such audit documents are
 10 privileged and not discoverable or admissible
 11 as evidence in any civil, criminal, or
 12 administrative proceeding; providing
 13 conditions; providing for inapplicability of
 14 the privilege under certain circumstances;
 15 authorizing the court to require disclosure
 16 upon making a determination that the assertion
 17 of the privilege is fraudulent or that the
 18 material is not subject to the privilege;
 19 prescribing documents to which the privilege
 20 does not apply; providing definitions;
 21 providing an effective date.

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

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 25 Section 1. Insurance compliance self-evaluation
 26 privilege.--
 27 (1)(a) To encourage insurance companies and persons
 28 conducting activities regulated under the Florida Insurance
 29 Code to conduct voluntary internal audits of their compliance
 30 programs and management systems and to assess and improve
 31 compliance with state and federal laws, an insurance

1 compliance self-evaluation privilege is recognized to protect
2 the confidentiality of communications relating to voluntary
3 internal compliance audits. The Legislature finds that
4 protection of insurance consumers is enhanced by companies'
5 voluntary compliance with this state's insurance laws and
6 other laws and that the public will benefit from incentives to
7 identify and remedy insurance and other compliance problems.
8 The Legislature further finds that limited expansion of the
9 protection against disclosure will encourage voluntary
10 compliance and improve insurance market conduct quality.

11 (b)1. Except as provided in paragraphs (c) and (d), an
12 insurance compliance self-evaluation audit document is
13 privileged and is not discoverable or admissible as evidence
14 in any civil, criminal, or administrative proceeding. This
15 privilege is a matter of substantive law and is not merely a
16 procedural matter governing civil or criminal procedures.

17 2. If any company, person, or entity performs or
18 directs the performance of an insurance compliance audit, an
19 officer, employee, or agent involved with the insurance
20 compliance audit or any consultant who is hired for the
21 purpose of performing the insurance compliance audit may not
22 be examined in any civil, criminal, or administrative
23 proceeding as to the insurance compliance audit or any
24 insurance compliance self-evaluation audit document. This
25 subparagraph does not apply if the privilege provided in
26 subparagraph 1. is determined under paragraph (c) or paragraph
27 (d) to be inapplicable.

28 3. Except as provided in paragraph (d):

29 a. Voluntary disclosure of an insurance compliance
30 self-evaluation audit document to the Insurance Commissioner,
31 the Department of Legal Affairs, or any state attorney does

1 not constitute a waiver of the privilege set forth in
2 subparagraph 1.

3 b. Any compliance self-evaluation audit document
4 voluntarily disclosed to the Insurance Commissioner, the
5 Department of Legal Affairs, or any state attorney remains the
6 property of the company and is not subject to disclosure under
7 chapter 119, Florida Statutes.

8 (c)1. The privilege set forth in paragraph (b) does
9 not apply to the extent that it is expressly waived by the
10 company that prepared or caused to be prepared the insurance
11 compliance self-evaluation audit document.

12 2. In a civil proceeding, a court of record may, after
13 an in-camera review, require disclosure of material for which
14 the privilege set forth in paragraph (b) is asserted, if the
15 court determines that:

16 a. The privilege is asserted for a fraudulent purpose;
17 or

18 b. The material is not subject to the privilege.

19 (d) The privilege set forth in paragraph (b) does not
20 apply in any criminal or administrative proceeding initiated
21 by the Insurance Commissioner, the Department of Legal
22 Affairs, or any state attorney, upon the filing of formal
23 administrative or criminal charges against the company. Any
24 compliance self-evaluation audit document produced to the
25 Insurance Commissioner, the Department of Legal Affairs, or
26 any state attorney under this paragraph or otherwise in the
27 possession of the Insurance Commissioner, the Department of
28 Legal Affairs, or any state attorney at the time formal
29 administrative or criminal charges are filed against the
30 company is subject to disclosure under chapter 119, Florida
31 Statutes.

1 (e)1. A company asserting the insurance compliance
2 self-evaluation privilege set forth in paragraph (b) has the
3 burden of demonstrating the applicability of the privilege.
4 Once a company has established the applicability of the
5 privilege, the party seeking disclosure under sub-subparagraph
6 (c)2.a. has the burden of proving that the privilege is
7 asserted for a fraudulent purpose.

8 2. The parties may stipulate in proceedings under
9 paragraph (c) or paragraph (d) to whether the entry of an
10 order directing that specific information contained in an
11 insurance compliance self-evaluation audit document is subject
12 to the privilege provided under paragraph (b). Any such
13 stipulation may be limited to the instant proceeding and,
14 absent specific language to the contrary, does not apply to
15 any other proceeding.

16 (f) The privilege set forth in paragraph (b) does not
17 extend to:

18 1. Documents, communications, data, reports, or other
19 information expressly required to be collected, developed,
20 maintained, or reported to a regulatory agency under the
21 Florida Insurance Code or other federal or state law;

22 2. Information obtained by any regulatory agency
23 through observation or monitoring; or

24 3. Information obtained from a source independent of
25 the insurance compliance audit.

26 (g) As used in this section, the term:

27 1. "Insurance compliance audit" means a voluntary,
28 internal evaluation, review, assessment, audit, or
29 investigation for the purpose of identifying or preventing
30 noncompliance with or promoting compliance with laws,
31 provisions of this code, rules adopted thereunder, or

1 departmental orders which is conducted by or on behalf of a
2 company in reaction to a specific occurrence, circumstance, or
3 activity.

4 2. "Insurance compliance self-evaluation audit
5 document" means a document prepared as a result of or in
6 connection with an insurance compliance audit. An insurance
7 compliance self-evaluation audit document may include a
8 written response to the findings of an insurance compliance
9 audit. An insurance compliance self-evaluation audit document
10 may include, but is not limited to, field notes and records of
11 observations, findings, opinions, suggestions, conclusions,
12 drafts, memoranda, drawings, photographs, exhibits,
13 computer-generated or electronically recorded information,
14 phone records, maps, charts, graphs, and surveys, provided
15 that this supporting information is created for the sole
16 purpose and in the course of an insurance compliance audit. An
17 insurance compliance self-evaluation audit document does not
18 include any document prepared before the commencement of an
19 insurance compliance audit. An insurance compliance
20 self-evaluation audit document also includes, but is not
21 limited to:

22 a. An insurance compliance audit report prepared by an
23 auditor, who may be an employee of the company or an
24 independent contractor, which report may include the audit
25 conclusions and recommendations;

26 b. Memoranda and documents analyzing portions or all
27 of the insurance compliance self-evaluation audit report and
28 discussing potential implementation issues;

29 c. An implementation plan that addresses correcting
30 past noncompliance, improving current compliance, and
31 preventing future noncompliance; or

1 d. Analytic data generated in the course of conducting
2 the insurance compliance self-evaluation audit.

3 3. "Company" means an authorized insurer as defined in
4 section 624.09, Florida Statutes.

5 (h) The insurance compliance self-evaluation privilege
6 created by this section applies to all civil proceedings
7 pending on the effective date of this section.

8 (2) Nothing in this section nor the release of any
9 self-evaluation audit document under this section limits,
10 waives, or abrogates the scope or nature of any statutory or
11 common law privilege, including, but not limited to, the work
12 product doctrine, the attorney-client privilege, or the
13 subsequent remedial measures exclusion.

14 Section 2. This act shall take effect July 1, 1999.

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17 SENATE SUMMARY

18 Provides an insurance compliance self-evaluation
19 privilege for insurers and persons conducting activities
20 regulated under the Florida Insurance Code who conduct
21 voluntary internal audits of their compliance programs
22 and management systems to improve compliance with state
23 and federal law. Provides that such audit documents are
24 privileged and not discoverable or admissible as evidence
25 in any civil, criminal, or administrative proceeding.
26 Provides conditions. Provides for inapplicability of the
27 privilege under certain circumstances. Authorizes the
28 court to require disclosure upon making a determination
29 that the assertion of the privilege is fraudulent or that
30 the material is not subject to the privilege. Provides
31 definitions.

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