

By the Committee on Banking and Insurance; and Senator Rossin

311-1952-01

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           624.319, F.S.; exempting workpapers relating to  
4           examinations and investigations of insurers  
5           from public records requirements; providing for  
6           future legislative review and repeal; amending  
7           s. 627.351, F.S.; providing exemptions from the  
8           public records law for specified records of the  
9           Florida Windstorm Underwriting Association;  
10          providing for future legislative review and  
11          repeal; providing findings of public necessity;  
12          providing an effective date.

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

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16           Section 1. Subsection (3) of section 624.319, Florida  
17   Statutes, is amended to read:

18           624.319 Examination and investigation reports.--  
19           (3)(a) Examination reports, until filed, are  
20   confidential and exempt from the provisions of s. 119.07(1).  
21   Investigation reports are confidential and exempt from the  
22   provisions of s. 119.07(1) until the investigation is  
23   completed or ceases to be active. For purposes of this  
24   subsection, an investigation is active while it is being  
25   conducted by the department with a reasonable, good faith  
26   belief that it could lead to the filing of administrative,  
27   civil, or criminal proceedings. An investigation does not  
28   cease to be active if the department is proceeding with  
29   reasonable dispatch and has a good faith belief that action  
30   could be initiated by the department or other administrative  
31   or law enforcement agency. After an investigation is completed

1 or ceases to be active, portions of the investigation report  
2 relating to the investigation remain confidential and exempt  
3 from the provisions of s. 119.07(1) if disclosure would:

- 4 1. Jeopardize the integrity of another active  
5 investigation;
- 6 2. Impair the safety and financial soundness of the  
7 licensee or affiliated party;
- 8 3. Reveal personal financial information;
- 9 4. Reveal the identity of a confidential source;
- 10 5. Defame or cause unwarranted damage to the good name  
11 or reputation of an individual or jeopardize the safety of an  
12 individual; or
- 13 6. Reveal investigative techniques or procedures.

14 (b) Workpapers, or portions of workpapers, prepared by  
15 the department or received from an insurance supervisory  
16 official of another state or federal agency for the use of the  
17 department in the performance of its examination or  
18 investigation duties pursuant to ss. 624.316 and 624.3161 are  
19 confidential and exempt from the provisions of s. 119.07(1)  
20 and s. 24(a), Art. I of the State Constitution. This paragraph  
21 is subject to the Open Government Sunset Review Act of 1995 in  
22 accordance with s. 119.15 and shall stand repealed on October  
23 2, 2006, unless reviewed and saved from repeal through  
24 reenactment by the Legislature.

25 (c)~~(b)~~ Lists of insurers or regulated companies are  
26 confidential and exempt from the provisions of s. 119.07(1)  
27 if:

- 28 1. The financial solvency, condition, or soundness of  
29 such insurers or regulated companies is being monitored by the  
30 department;

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1           2. The list is prepared to internally coordinate  
2 regulation by the department of the financial solvency,  
3 condition, or soundness of the insurers or regulated  
4 companies; and

5           3. The Insurance Commissioner and Treasurer determine  
6 that public inspection of such list could impair the financial  
7 solvency, condition, or soundness of such insurers or  
8 regulated companies.

9           Section 2. Paragraph (f) is added to subsection (2) of  
10 section 627.351, Florida Statutes, to read:

11           627.351 Insurance risk apportionment plans.--

12           (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

13           (f)1. The following records of the Florida Windstorm  
14 Underwriting Association are confidential and exempt from the  
15 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
16 Constitution:

17           a.(I) Appraisals, surveys, applications, and other  
18 information relating to a policyholder's property, including  
19 its location, type of construction, and valuation, and related  
20 information.

21           (II) The name and address of the policyholder and the  
22 producer of record.

23           (III) All information relating to underlying property  
24 coverages on the policyholder's property, including the name  
25 and address of the underlying property insurer and its agent  
26 of record and policy expirations.

27           (IV) All information generated in connection with  
28 applications for coverage.

29           (V) All information included in underwriting files.

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1 However, the policyholder shall have access to all of this  
2 information.

3 b. Claims files until termination of all litigation  
4 and settlement of all claims arising out of the same incident,  
5 although portions of the claims files may remain exempt as  
6 otherwise provided by law. Confidential and exempt claims file  
7 records may be released to other governmental agencies upon  
8 written request and demonstration of need; however, such  
9 records held by the receiving agency remain confidential and  
10 exempt as provided for in this paragraph.

11 c. Records obtained or generated by an internal  
12 auditor pursuant to a routine audit until the audit is  
13 completed or, if the audit is conducted as part of an  
14 investigation, until the investigation is closed or ceases to  
15 be active. An investigation is considered active while the  
16 investigation is being conducted with a reasonable, good faith  
17 belief that the investigation could lead to the filing of  
18 administrative, civil, or criminal proceedings.

19 d. Matters reasonably encompassed in privileged  
20 attorney-client communications.

21 e. All proprietary information and data, including,  
22 but not limited to, computer models, and all data, programs,  
23 or supporting documentation that is a trade secret as defined  
24 in s. 812.081 licensed or furnished to or used by the  
25 association as part of a response to a request for proposals  
26 or under separate contract between the owner and the  
27 association if such response or contract provides for  
28 confidentiality.

29 f. All information relating to the medical condition  
30 or medical status of an association employee which is not  
31 relevant to the employee's capacity to perform his or her

1 duties, except as otherwise provided in this paragraph.

2 Information that is exempt includes, but is not limited to,  
3 information relating to workers' compensation, insurance  
4 benefits, and retirement or disability benefits.

5 g. Upon an employee's entrance into the employee  
6 assistance program or a program to assist any employee who has  
7 a behavioral or medical disorder, substance abuse problem, or  
8 emotional difficulty that affects the employee's job  
9 performance, all records relative to that participation,  
10 except as otherwise provided in s. 112.0455(11).

11 h. Information relating to negotiations for financing,  
12 reinsurance, depopulation, or contractual services until the  
13 conclusion of the negotiations.

14 2. When an authorized insurer is considering assuming  
15 or taking out a risk insured by the association, relevant  
16 underwriting files and confidential claims files may be  
17 released to the insurer if the insurer or licensed agent  
18 agrees in writing, notarized and under oath, to maintain the  
19 confidentiality of such files and use the files only for the  
20 purpose of writing coverage assuming or taking out a risk  
21 insured by the association. A file transferred to an insurer  
22 or authorized agent is not held by an agency subject to the  
23 provisions of the public records law and therefore is no  
24 longer a public record.

25 3. Nothing in this paragraph prohibits the department  
26 from obtaining access to records to which the department is  
27 otherwise entitled. Records in the possession of the  
28 association that are exempt pursuant to this paragraph are  
29 exempt to the same extent as provided by this paragraph if  
30 such records are in the possession of a state agency.

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1           4. The exemptions provided in this paragraph are  
2 subject to the Open Government Sunset Review Act of 1995 in  
3 accordance with s. 119.15 and shall stand repealed on October  
4 2, 2006, unless reviewed and saved from repeal through  
5 reenactment by the Legislature.

6           Section 3. The Legislature finds that the exemption  
7 from public disclosure of workpapers relating to an  
8 examination or investigation is necessary for the effective  
9 and efficient administration of a government program.  
10 Disclosure of workpapers could indicate the contents of  
11 examination reports, which are otherwise confidential until  
12 they are filed, and of investigation reports, which are  
13 otherwise confidential until the investigation is completed or  
14 ceases to be active, and could thus thwart the state's  
15 interest in assuring the integrity of the regulatory process.  
16 Furthermore, workpapers, by the nature of their  
17 incompleteness, have a higher risk of containing inaccurate  
18 information about insurers and persons which, if disclosed,  
19 could harm the business of a regulated entity or an employee  
20 or officer of that entity.

21           Section 4. The Legislature finds that it is a public  
22 necessity that certain records of the Florida Windstorm  
23 Underwriting Association be held confidential and exempt. It  
24 is a public necessity that appraisals, surveys, applications,  
25 and other information relating to a policyholder's property,  
26 and certain policyholder and policy information including  
27 information relating to underlying coverage, as well as  
28 underwriting files, be held confidential and exempt because  
29 such records and information contain proprietary confidential  
30 business information and disclosure of such records and  
31 information could be harmful to the policyholder. It is a

1 public necessity that open claims files records be held  
2 confidential and exempt because if such records were not  
3 confidential and exempt, claimants would have unfettered  
4 access to information held by the association which could be  
5 used as evidence and for purposes of negotiation, claim  
6 evaluation, and settlement considerations, which would result  
7 in higher awards and settlements paid out by the association  
8 and ultimately the consumer. Additionally, it is a public  
9 necessity that records held by an internal auditor, while an  
10 audit is incomplete or while an investigation is pending, be  
11 held confidential and exempt because otherwise inaccurate  
12 information would possibly be released or investigations  
13 jeopardized. It is a public necessity that matters reasonably  
14 encompassed in privileged attorney-client communications be  
15 held confidential and exempt because the release of such  
16 information could jeopardize ongoing or pending litigation or  
17 other business matters. It is a public necessity that all  
18 proprietary information and trade secrets furnished to the  
19 association as part of a response to a request for proposal,  
20 or under separate contract, be held confidential and exempt  
21 when such response or contract provides for confidentiality.  
22 If proprietary information and trade secrets were not held  
23 confidential and exempt, the type and quality of information  
24 the association receives in a response would be limited and  
25 inadequate for the association to make an informed decision  
26 that is in the public interest. Likewise, the association's  
27 ability to enter into necessary contracts that require  
28 confidentiality would be impaired if proprietary information  
29 and trade secrets related to those contracts were not held  
30 confidential and exempt from public disclosure. More  
31 particularly, it is a public necessity that certain medical

1 records of association employees and employee assistance  
2 program participation records be held confidential and exempt  
3 because such records contain personal, sensitive information  
4 regarding an employee's medical condition and behavioral,  
5 emotional, or medical disorders, the disclosure of which would  
6 be harmful to the employee. Finally, it is a public necessity  
7 that information relating to negotiations for financing,  
8 reinsurance, depopulation, or contractual services be held  
9 confidential and exempt. If such information were not  
10 confidential and exempt, those contracting with the  
11 association would have an economic advantage over the  
12 association, thus increasing the costs of doing business,  
13 which could be passed on to the consumer.

14           Section 5. This act shall take effect upon becoming a  
15 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 2218

Removes the provision providing a public records exemption for work papers relating to state or federal agencies responsible for the regulation of financial institutions.

Authorizes that the following information of the Florida Windstorm Underwriting Association would be exempt from the public records provisions:

- \* information relating to a policyholder's property, including information in underwriting files;
- \* claims files, until the termination of litigation arising out of the same incident;
- \* records obtained or generated by internal audits, until the audit is completed;
- \* matters reasonably encompassed within privileged attorney-client communications;
- \* proprietary information;
- \* employee records relating to medical condition or participation in assistance programs; and,
- \* information relating to the negotiations for financing, reinsurance, depopulation, or contractual services, until the negotiations end.