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A bill to be entitled

An act relating to a public records and public meetings exemption for the Florida Automobile Joint Underwriting Association; amending s. 627.311, F.S.; narrowing the exemption for specified records and meetings of the association; removing the exemption for matters reasonably encompassed in privileged attorney-client communications; making editorial changes; adding conforming language; removing the October 2, 2003, repeal thereof scheduled pursuant to the Open Government Sunset Review Act of 1995; amending ss. 440.51 and 631.912, F.S.; correcting cross references, to conform; providing an effective date.

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

Section 1. Notwithstanding the October 2, 2003, repeal of paragraph (1) of subsection (3) of section 627.311, Florida Statutes, scheduled pursuant to the Open Government Sunset Review Act of 1995, subsection (3) of section 627.311, Florida Statutes, is amended, and present subsections (4) and (5) of said section are renumbered as subsections (5) and (6), respectively, to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.--

(3) The office ~~department~~ may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write



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31 automobile insurance in this state shall subscribe to the plan and
 32 participate therein. The plan shall be subject to continuous review
 33 by the office ~~department~~ which may at any time disapprove the
 34 entire plan or any part thereof if it determines that conditions
 35 have changed since prior approval and that in view of the purposes
 36 of the plan changes are warranted. Any disapproval by the office
 37 ~~department~~ shall be subject to the provisions of chapter 120. The
 38 Florida Automobile Joint Underwriting Association is created under
 39 the plan. ~~If adopted, The plan and the association created under~~
 40 ~~the plan:~~

41 (a) Must be subject to all provisions of s. 627.351(1),
 42 except apportionment of applicants.

43 (b) May provide for one or more designated insurers, able
 44 and willing to provide policy and claims service, to act on
 45 behalf of all other insurers to provide insurance for applicants
 46 who are in good faith entitled to, but unable to, procure
 47 insurance through the voluntary insurance market at standard
 48 rates.

49 (c) Must provide that designated insurers will issue
 50 policies of insurance and provide policyholder and claims
 51 service on behalf of all insurers for the joint underwriting
 52 association.

53 (d) Must provide for the equitable apportionment among
 54 insurers of losses and expenses incurred.

55 (e) Must provide that the joint underwriting association
 56 will operate subject to the supervision and approval of a board
 57 of governors consisting of 11 individuals, including 1 who will
 58 be elected as chair. Five members of the board must be appointed
 59 by the Chief Financial Officer ~~Insurance Commissioner~~. Two of
 60 the officer's ~~commissioner's~~ appointees must be chosen from the



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61 insurance industry. Any board member appointed by the Chief
62 Financial Officer ~~Insurance Commissioner~~ may be removed and
63 replaced by her or him at any time without cause. Six members of
64 the board must be appointed by the participating insurers, two
65 of whom must be from the insurance agents' associations. All
66 board members, including the chair, must be appointed to serve
67 for 2-year terms beginning annually on a date designated by the
68 plan.

69 (f) Must provide that an agent appointed to a servicing
70 carrier must be a licensed general lines agent of an insurer
71 which is authorized to write automobile liability and physical
72 damage insurance in the state and which is actively writing such
73 coverage in the county in which the agent is located, or the
74 immediately adjoining counties, or an agent who places a volume
75 of other property and casualty insurance in an amount equal to
76 the premium volume placed with the Florida Joint Underwriting
77 Association. The office ~~department~~ may, however, determine that
78 an agent may be appointed to a servicing carrier if, after
79 public hearing, the office ~~department~~ finds that consumers in
80 the agent's operating area would not have adequate and
81 reasonable access to the purchase of automobile insurance if the
82 agent were not appointed to a servicing carrier.

83 (g) Must make available noncancelable coverage as provided
84 in s. 627.7275(2).

85 (h) Must provide for the furnishing of a list of insureds
86 and their mailing addresses upon the request of a member of the
87 association or an insurance agent licensed to place business
88 with an association member. The list must indicate whether the
89 insured is currently receiving a good driver discount from the



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90 association. The plan may charge a reasonable fee to cover the
 91 cost incurred in providing the list.

92 (i) Must not provide a renewal credit or discount or any
 93 other inducement designed to retain a risk.

94 (j) Must not provide any other good driver credit or
 95 discount that is not actuarially sound. In addition to other
 96 criteria that the plan may specify, to be eligible for a good
 97 driver credit, an insured must not have any criminal traffic
 98 violations within the most recent 36-month period preceding the
 99 date the discount is received.

100 (k) Shall have no liability, and no cause of action of any
 101 nature shall arise against, any member insurer or its agents or
 102 employees, agents or employees of the association, members of
 103 the board of governors of the association, or the office
 104 ~~department~~ or its representatives, for any action taken by them
 105 in the performance of their duties or responsibilities under
 106 this subsection. Such immunity does not apply to actions for or
 107 arising out of breach of any contract or agreement pertaining to
 108 insurance, or any willful tort.

109 (4) The Florida Automobile Joint Underwriting Association:

110 (a)(1)1. Shall keep ~~be subject to the public records~~
 111 ~~requirements of chapter 119 and the public meeting requirements~~
 112 ~~of s. 286.011. However,~~ the following records ~~of the Florida~~
 113 ~~Automobile Joint Underwriting Association~~ are confidential and
 114 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 115 Constitution:

116 1.a. Underwriting files, except that a policyholder or an
 117 applicant shall have access to his or her own underwriting
 118 files.



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119 ~~2.b.~~ Claims files, until termination of all litigation and
 120 settlement of all claims arising out of the same incident,
 121 ~~although portions of the claims files may remain exempt, as~~
 122 ~~otherwise provided by law.~~ Confidential and exempt claims files
 123 ~~file records~~ may be released to other governmental agencies in
 124 the furtherance of their duties and responsibilities. The
 125 receiving agency must maintain the confidential and exempt
 126 status of the claims file upon written request and demonstration
 127 ~~of need; such records held by the receiving agency remain~~
 128 ~~confidential and exempt as provided by this paragraph.~~

129 ~~3.e.~~ Records obtained or generated by an internal auditor
 130 pursuant to a routine audit, until the audit is completed or, if
 131 the audit is conducted as part of an investigation, until the
 132 investigation is closed or ceases to be active. An investigation
 133 is considered "active" while the investigation is being
 134 conducted with a reasonable, good faith belief that it could
 135 lead to the filing of administrative, civil, or criminal
 136 proceedings.

137 ~~d.~~ ~~Matters reasonably encompassed in privileged attorney-~~
 138 ~~client communications.~~

139 ~~4.e.~~ Proprietary information licensed to the association
 140 under contract when the contract provides for the
 141 confidentiality of such ~~proprietary~~ information.

142 ~~5.f.~~ All information relating to the medical condition or
 143 medical status of an association employee which is not relevant
 144 to that ~~the~~ employee's capacity to perform his or her duties,
 145 except as otherwise provided in this paragraph. Information
 146 which is confidential and exempt shall include, but is not
 147 limited to, information relating to workers' compensation,
 148 insurance benefits, and retirement or disability benefits.



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149 ~~6.g.~~ All records relating ~~relative~~ to an employee's
 150 participation in an employee assistance program designed to
 151 assist any employee who has a behavioral or medical disorder,
 152 substance abuse problem, or emotional difficulty which affects
 153 the employee's job performance, except as otherwise provided in
 154 s. 112.0455(11).

155 ~~7.h.~~ Information relating to negotiations for financing,
 156 reinsurance, depopulation, or contractual services, until the
 157 conclusion of the negotiations.

158 ~~8.i.~~ Minutes of closed meetings regarding confidential and
 159 exempt underwriting files or confidential and exempt, ~~and~~
 160 ~~minutes of closed meetings regarding an open~~ claims files file
 161 until termination of all litigation and settlement of all claims
 162 with regard to that claim, except that information otherwise
 163 made confidential or exempt by law must be redacted.

164
 165 When an authorized insurer is considering underwriting a risk
 166 insured by the association, relevant confidential and exempt
 167 underwriting files and confidential and exempt claims files may
 168 be released to the insurer, provided the insurer agrees in
 169 writing, notarized and under oath, to maintain the confidential
 170 and exempt status ~~confidentiality~~ of such files. When a file is
 171 transferred to an insurer, that file is no longer a public
 172 record because it is not held by an agency subject to the
 173 provisions of the public records law. The association may make
 174 the following information obtained from confidential and exempt
 175 underwriting files and confidential and exempt claims files
 176 available to licensed general lines insurance agents: name,
 177 address, and telephone number of the automobile owner or
 178 insured; location of the risk; rating information; loss history;



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179 and policy type. The receiving licensed general lines insurance
 180 agent must maintain ~~retain~~ the confidential and exempt status
 181 ~~confidentiality~~ of the information received.

182 (b)2. Shall keep portions ~~Portions~~ of association meetings
 183 ~~of the Florida Automobile Joint Underwriting Association~~ during
 184 which confidential and exempt underwriting files or confidential
 185 and exempt ~~open~~ claims files are discussed ~~are~~ exempt from the
 186 provisions of s. 286.011 and s. 24(b), Art. I of the State
 187 Constitution. All closed portions of association meetings ~~which~~
 188 ~~are closed to the public~~ shall be recorded by a court reporter.
 189 The court reporter shall record the times of commencement and
 190 termination of the meeting, all discussion and proceedings, the
 191 names of all persons present at any time, and the names of all
 192 persons speaking. No portion of any closed meeting shall be off
 193 the record. Subject to the provisions of this paragraph and s.
 194 119.07(2)(a), the court reporter's notes of any closed meeting
 195 shall be retained by the association for a minimum of 5 years. A
 196 copy of the transcript, less any confidential and exempt
 197 information ~~matters~~, of any closed meeting during which
 198 confidential and exempt claims files are discussed shall become
 199 public as to individual claims files after settlement of that
 200 ~~the~~ claim.

201
 202 ~~This paragraph is subject to the Open Government Sunset Review~~
 203 ~~Act of 1995 in accordance with s. 119.15, and shall stand~~
 204 ~~repealed on October 2, 2003, unless reviewed and saved from~~
 205 ~~repeal through reenactment by the Legislature.~~

206 Section 2. Paragraph (a) of subsection (13) of section
 207 440.51, Florida Statutes, is amended to read:

208 440.51 Expenses of administration.--



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209 (13) As used in s. 440.50 and this section, the term:

210 (a) "Plan" means the workers' compensation joint
211 underwriting plan provided for in s. 627.311(5) ~~627.311(4)~~.

212 Section 3. Subsection (3) of section 631.912, Florida
213 Statutes, is amended to read:

214 631.912 Board of directors.--

215 (3) Effective upon this act becoming a law, the persons on
216 the board of governors ~~directors~~ created pursuant to s.
217 627.311(5)(b) ~~627.311(4)(a)~~ who evidence a willingness to serve
218 in writing, shall serve as an interim board of directors of the
219 corporation until the initial board of directors has been
220 appointed for the corporation in accordance with the provisions
221 of subsection (1). The interim board of directors shall serve
222 for a period not to exceed 6 months. The initial meeting shall
223 be called by the commissioner within 30 days after this act
224 becomes a law. The interim board of directors shall establish a
225 process for the selection of persons to serve on the board of
226 the Florida Workers' Compensation Insurance Guaranty Association
227 in accordance with the terms of subsection (1). The board of
228 directors shall adopt an interim plan of operation to effect the
229 merger in s. 631.911 and avoid any interruption of benefit
230 payments to injured workers. When necessary and upon approval of
231 the chairs of their respective board of directors, the Florida
232 Self-Insurance Fund Guaranty Association and the Florida
233 Insurance Guaranty Association shall provide staff support to
234 the interim board of directors. The board shall submit the
235 interim plan to the commissioner, who shall approve or
236 disapprove the plan within 30 days after receipt.

237 Section 4. This act shall take effect October 1, 2003.