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HB 1041

2003 Legislature

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

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

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

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

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

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



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

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

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

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



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

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

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

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

(4) The Florida Automobile Joint Underwriting Association:

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

440.51 Expenses of administration.--



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

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

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

631.912 Board of directors.--

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

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