



HB 1905

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A bill to be entitled

An act relating to a public records and public meetings exemption for the Health Care Professional Liability Insurance Facility; creating s. 627.3576, F.S.; creating exemptions from public records requirements for underwriting files, open claims files, records obtained or generated by an internal auditor for a specified time, licensed proprietary information made confidential by contract, employee assistance program records, information relating to negotiations for financing, reinsurance, or contractual services for a specified time, minutes of closed meetings regarding confidential and exempt underwriting files, and minutes of closed meetings regarding confidential and exempt claims files for a specified time, held by the facility; creating an exemption from public meetings requirements for Health Care Professional Liability Insurance Facility meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed; providing requirements regarding such closed meetings and records thereof; providing for future review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 627.3576, F.S., is created to read:  
627.3576 Public records exemption for the Health Care Professional Liability Insurance Facility.--

(1) The following records and information held by the



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31 Health Care Professional Liability Insurance Facility created by  
32 s. 627.3575 are confidential and exempt from the provisions of  
33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

34 (a) Underwriting files, except that a policyholder or an  
35 applicant shall have access to his or her own underwriting file.

36 (b) Claims files, until termination of all litigation and  
37 settlement of all claims arising out of the same incident.

38 Confidential and exempt claims files may be released to other  
39 governmental agencies in the furtherance of their statutory  
40 duties and responsibilities. The receiving agency must maintain  
41 the confidential and exempt status of the claims file.

42 (c) Records obtained or generated by an internal auditor  
43 pursuant to a routine audit, until the audit is completed or, if  
44 the audit is conducted as part of an investigation, until the  
45 investigation is closed or ceases to be active. An  
46 investigation is considered "active" while the investigation is  
47 being conducted with a reasonable, good faith belief that it  
48 could lead to the filing of administrative, civil, or criminal  
49 proceedings.

50 (d) Proprietary information licensed to the facility under  
51 contract when the contract provides for the confidentiality of  
52 such information.

53 (e) All records relating to an employee's participation in  
54 an employee assistance program designed to assist any employee  
55 who has a behavioral or medical disorder, substance abuse  
56 problem, or emotional difficulty which affects the employee's  
57 job performance, except as otherwise provided in s.  
58 112.0455(11).

59 (f) Information relating to negotiations for financing,  
60 reinsurance, or contractual services, until the conclusion of



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61 the negotiations.

62 (g) Minutes of closed meetings regarding confidential and  
63 exempt underwriting files or confidential and exempt claims  
64 files until termination of all litigation and settlement of all  
65 claims with regard to that claim, except that information  
66 otherwise made exempt or confidential by law will be redacted.

67 (2) Portions of meetings of the board of governors of the  
68 facility are exempt from the provisions of s. 286.011 and s.  
69 24(b), Art. I of the State Constitution wherein confidential and  
70 exempt underwriting files or confidential and exempt claims  
71 files are discussed. All closed portions of board meetings shall  
72 be recorded by a court reporter. The court reporter shall record  
73 the times of commencement and termination of the meeting, all  
74 discussion and proceedings, the names of all persons present at  
75 any time, and the names of all persons speaking. No portion of  
76 any closed meeting shall be off the record. Subject to the  
77 provisions hereof and s. 119.07(2)(a), the court reporter's  
78 notes of any closed meeting shall be retained by the corporation  
79 for a minimum of 5 years. A copy of the transcript, less any  
80 confidential and exempt information, of any closed meeting  
81 wherein confidential and exempt claims files are discussed shall  
82 become public as to individual claims files after settlement of  
83 that claim.

84 Section 2. Section 627.3576, F.S., is subject to the Open  
85 Government Sunset Review Act of 1995 in accordance with s.  
86 119.15, Florida Statutes, and shall stand repealed on October 2,  
87 2008, unless reviewed and saved from repeal through reenactment  
88 by the Legislature.

89 Section 3. The Legislature finds that it is a public  
90 necessity that certain records held by the Health Care



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91 Professional Liability Insurance Facility created by s.  
92 627.3575, Florida Statutes, be made confidential and exempt from  
93 public records requirements and that certain meetings of the  
94 facility be made exempt from public meetings requirements. It  
95 is a public necessity that underwriting files remain  
96 confidential and exempt because such files contain proprietary  
97 confidential business information and disclosure could be  
98 harmful to the policyholder. It is also a public necessity that  
99 open claims files be held confidential and exempt from public  
100 disclosure. If open claims files were not protected from public  
101 disclosure then claimants would have unfettered access to  
102 information held by the facility, which could be used as  
103 evidence and for purposes of negotiation, claim evaluation, and  
104 settlement considerations. Such use of claim file information  
105 could result in higher awards and settlements paid out by the  
106 facility, and ultimately result in higher costs for  
107 policyholders and their patients. As such, the Legislature  
108 finds that it is a public necessity to close access to portions  
109 of meetings of the board of governors of the facility wherein  
110 confidential and exempt underwriting files and confidential and  
111 exempt claims files are discussed, and to make confidential and  
112 exempt those portions of the meeting minutes regarding such  
113 confidential and exempt files. It is a public necessity that  
114 records held by an internal auditor while an audit is incomplete  
115 or while an investigation is pending should be held confidential  
116 and exempt because otherwise inaccurate information could be  
117 released or investigations jeopardized. Also, it is a public  
118 necessity that proprietary information licensed to the facility  
119 under contract be kept confidential and exempt when the contract  
120 provides for such confidentiality because the facility's ability



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121 to enter into necessary contracts would be impaired if  
122 proprietary information relating to those contracts was not held  
123 confidential and exempt from public disclosure. The Legislature  
124 also finds that it is a public necessity to keep confidential  
125 and exempt records relating to an employee's participation in an  
126 employee assistance program because such records contain  
127 personal, sensitive information regarding an employee's  
128 behavioral, emotional, or medical disorders, the disclosure of  
129 which could be harmful to the employee. Finally, it is a public  
130 necessity that information relating to negotiations for  
131 financing, reinsurance, or contractual services be held  
132 confidential and exempt. If such information were not protected  
133 from public disclosure, those with whom the facility contracted  
134 could have an economic advantage over the facility, thus driving  
135 up the costs of doing business, which costs could be passed on  
136 to policyholders and their patients.

137 Section 4. This act shall take effect July 1, 2003, if HB  
138 1713 or similar legislation is adopted in the same legislative  
139 session or an extension there of and becomes law.