



HB 0071B

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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, Florida Statutes, is created to read:

627.3576 Public records exemption for the Health Care Professional Liability Insurance Facility.--



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

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

37 (b) Claims files, until termination of all litigation and
38 settlement of all claims arising out of the same incident.
39 Confidential and exempt claims files may be released to other
40 governmental agencies in the furtherance of their statutory
41 duties and responsibilities. The receiving agency must maintain
42 the confidential and exempt status of the claims file.

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

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

54 (e) All records relating to an employee's participation in
55 an employee assistance program designed to assist any employee
56 who has a behavioral or medical disorder, substance abuse
57 problem, or emotional difficulty which affects the employee's
58 job performance, except as otherwise provided in s.
59 112.0455(11).

60 (f) Information relating to negotiations for financing,



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61 reinsurance, or contractual services, until the conclusion of
62 the negotiations.

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

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

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



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90 Section 3. The Legislature finds that it is a public
91 necessity that certain records held by the Health Care
92 Professional Liability Insurance Facility created by s.
93 627.3575, Florida Statutes, be made confidential and exempt from
94 public records requirements and that certain meetings of the
95 facility be made exempt from public meetings requirements. It
96 is a public necessity that underwriting files remain
97 confidential and exempt because such files contain proprietary
98 confidential business information and disclosure could be
99 harmful to the policyholder. It is also a public necessity that
100 open claims files be held confidential and exempt from public
101 disclosure. If open claims files were not protected from public
102 disclosure then claimants would have unfettered access to
103 information held by the facility, which could be used as
104 evidence and for purposes of negotiation, claim evaluation, and
105 settlement considerations. Such use of claim file information
106 could result in higher awards and settlements paid out by the
107 facility, and ultimately result in higher costs for
108 policyholders and their patients. As such, the Legislature
109 finds that it is a public necessity to close access to portions
110 of meetings of the board of governors of the facility wherein
111 confidential and exempt underwriting files and confidential and
112 exempt claims files are discussed, and to make confidential and
113 exempt those portions of the meeting minutes regarding such
114 confidential and exempt files. It is a public necessity that
115 records held by an internal auditor while an audit is incomplete
116 or while an investigation is pending should be held confidential
117 and exempt because otherwise inaccurate information could be
118 released or investigations jeopardized. Also, it is a public
119 necessity that proprietary information licensed to the facility



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

138 Section 4. This act shall take effect July 1, 2003, or
 139 upon becoming a law, whichever occurs later, if HB 55-B, HB 63-
 140 B, HB 65-B, or HB 67-B or similar legislation is adopted in the
 141 same legislative session or an extension thereof and becomes
 142 law.