



HB 0011C

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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).



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



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

138 Section 4. This act shall take effect upon becoming a law  
139 if HB 15-C or similar legislation is adopted in the same  
140 legislative session or an extension thereof and becomes law.