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 HB 1097, Engrossed 1

2006 Legislature

1 A bill to be entitled
 2 An act relating to public records; amending s. 119.07,
 3 F.S.; requiring an agency head who appoints a designee to
 4 act as a custodian of public records to provide notice to
 5 the public of such designation; providing notice
 6 requirements; prohibiting a person who is not a custodian
 7 of public records or a designee from denying the existence
 8 of a record or misleading anyone as to the existence of a
 9 record; requiring custodians of public records and their
 10 designees to respond to requests to inspect and copy
 11 public records promptly and in good faith; amending ss.
 12 497.140, 627.311, and 627.351, F.S.; correcting cross-
 13 references; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (1) of section 119.07, Florida
 18 Statutes, is amended to read:

19 119.07 Inspection and copying of records; photographing
 20 public records; fees; exemptions.--

21 (1) (a) Every person who has custody of a public record
 22 shall permit the record to be inspected and copied by any person
 23 desiring to do so, at any reasonable time, under reasonable
 24 conditions, and under supervision by the custodian of the public
 25 records.

26 (b) Each agency head who appoints a designee to act as a
 27 custodian of public records shall provide notice to the public

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28 | of such designation. Such notice shall contain the name and
29 | title of the designee and the designee's e-mail address, office
30 | telephone number, and office mailing address. At a minimum, the
31 | notice shall be prominently posted in those portions of agency
32 | offices that are accessible to the public and, if the agency
33 | maintains an agency website, the notice shall be prominently
34 | displayed on the home page of such website and shall be made
35 | available by any employee who responds to telephone calls from
36 | the public. A person who is not a custodian of public records or
37 | appointed as a designee may not deny the existence of a public
38 | record nor mislead anyone as to the existence of a public
39 | record.

40 | (c) A custodian of public records and his or her designee
41 | must respond to requests to inspect or copy records promptly and
42 | in good faith. A good faith response includes making reasonable
43 | efforts to determine from other officers or employees whether
44 | such a record exists and, if so, the location at which the
45 | record can be accessed.

46 | (d) A custodian of public records or his or her designee
47 | shall be available to respond to requests to inspect and copy
48 | public records during the regular business hours of the office
49 | at which public records are maintained.

50 | (e) ~~(b)~~ A person who has custody of a public record who
51 | asserts that an exemption applies to a part of such record shall
52 | redact that portion of the record to which an exemption has been
53 | asserted and validly applies, and such person shall produce the
54 | remainder of such record for inspection and copying.

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55 (f)~~(e)~~ If the person who has custody of a public record
56 contends that all or part of the record is exempt from
57 inspection and copying, he or she shall state the basis of the
58 exemption that he or she contends is applicable to the record,
59 including the statutory citation to an exemption created or
60 afforded by statute.

61 (g)~~(d)~~ If requested by the person seeking to inspect or
62 copy the record, the custodian of public records shall state in
63 writing and with particularity the reasons for the conclusion
64 that the record is exempt or confidential.

65 (h)~~(e)~~ In any civil action in which an exemption to this
66 section is asserted, if the exemption is alleged to exist under
67 or by virtue of s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or
68 (4)(c), the public record or part thereof in question shall be
69 submitted to the court for an inspection in camera. If an
70 exemption is alleged to exist under or by virtue of s.
71 119.071(2)(c), an inspection in camera is discretionary with the
72 court. If the court finds that the asserted exemption is not
73 applicable, it shall order the public record or part thereof in
74 question to be immediately produced for inspection or copying as
75 requested by the person seeking such access.

76 (i)~~(f)~~ Even if an assertion is made by the custodian of
77 public records that a requested record is not a public record
78 subject to public inspection or copying under this subsection,
79 the requested record shall, nevertheless, not be disposed of for
80 a period of 30 days after the date on which a written request to
81 inspect or copy the record was served on or otherwise made to

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82 | the custodian of public records by the person seeking access to
 83 | the record. If a civil action is instituted within the 30-day
 84 | period to enforce the provisions of this section with respect to
 85 | the requested record, the custodian of public records may not
 86 | dispose of the record except by order of a court of competent
 87 | jurisdiction after notice to all affected parties.

88 | (j)~~(g)~~ The absence of a civil action instituted for the
 89 | purpose stated in paragraph (h) ~~(e)~~ does not relieve the
 90 | custodian of public records of the duty to maintain the record
 91 | as a public record if the record is in fact a public record
 92 | subject to public inspection and copying under this subsection
 93 | and does not otherwise excuse or exonerate the custodian of
 94 | public records from any unauthorized or unlawful disposition of
 95 | such record.

96 | Section 2. Subsection (5) of section 497.140, Florida
 97 | Statutes, is amended to read:

98 | 497.140 Fees.--

99 | (5) The department shall charge a fee not to exceed \$25
 100 | for the certification of a public record. The fee shall be
 101 | determined by rule of the department. The department shall
 102 | assess a fee for duplication of a public record as provided in
 103 | s. 119.07(1)(a) and (e)~~(b)~~.

104 | Section 3. Paragraph (b) of subsection (4) of section
 105 | 627.311, Florida Statutes, is amended to read:

106 | 627.311 Joint underwriters and joint reinsurers; public
 107 | records and public meetings exemptions.--

108 | (4) The Florida Automobile Joint Underwriting Association:

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109 (b) Shall keep portions of association meetings during
 110 which confidential and exempt underwriting files or confidential
 111 and exempt claims files are discussed exempt from the provisions
 112 of s. 286.011 and s. 24(b), Art. I of the State Constitution.
 113 All closed portions of association meetings shall be recorded by
 114 a court reporter. The court reporter shall record the times of
 115 commencement and termination of the meeting, all discussion and
 116 proceedings, the names of all persons present at any time, and
 117 the names of all persons speaking. No portion of any closed
 118 meeting shall be off the record. Subject to the provisions of
 119 this paragraph and s. 119.07(1) (e) - (g) ~~(b) - (d)~~, the court
 120 reporter's notes of any closed meeting shall be retained by the
 121 association for a minimum of 5 years. A copy of the transcript,
 122 less any confidential and exempt information, of any closed
 123 meeting during which confidential and exempt claims files are
 124 discussed shall become public as to individual claims files
 125 after settlement of that claim.

126 Section 4. Paragraph (n) of subsection (6) of section
 127 627.351, Florida Statutes, is amended to read:

128 627.351 Insurance risk apportionment plans.--

129 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

130 (n)1. The following records of the corporation are
 131 confidential and exempt from the provisions of s. 119.07(1) and
 132 s. 24(a), Art. I of the State Constitution:

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

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136 b. Claims files, until termination of all litigation and
137 settlement of all claims arising out of the same incident,
138 although portions of the claims files may remain exempt, as
139 otherwise provided by law. Confidential and exempt claims file
140 records may be released to other governmental agencies upon
141 written request and demonstration of need; such records held by
142 the receiving agency remain confidential and exempt as provided
143 for herein.

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

152 d. Matters reasonably encompassed in privileged attorney-
153 client communications.

154 e. Proprietary information licensed to the corporation
155 under contract and the contract provides for the confidentiality
156 of such proprietary information.

157 f. All information relating to the medical condition or
158 medical status of a corporation employee which is not relevant
159 to the employee's capacity to perform his or her duties, except
160 as otherwise provided in this paragraph. Information which is
161 exempt shall include, but is not limited to, information

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162 relating to workers' compensation, insurance benefits, and
163 retirement or disability benefits.

164 g. Upon an employee's entrance into the employee
165 assistance program, a program to assist any employee who has a
166 behavioral or medical disorder, substance abuse problem, or
167 emotional difficulty which affects the employee's job
168 performance, all records relative to that participation shall be
169 confidential and exempt from the provisions of s. 119.07(1) and
170 s. 24(a), Art. I of the State Constitution, except as otherwise
171 provided in s. 112.0455(11).

172 h. Information relating to negotiations for financing,
173 reinsurance, depopulation, or contractual services, until the
174 conclusion of the negotiations.

175 i. Minutes of closed meetings regarding underwriting
176 files, and minutes of closed meetings regarding an open claims
177 file until termination of all litigation and settlement of all
178 claims with regard to that claim, except that information
179 otherwise confidential or exempt by law will be redacted.

180

181 When an authorized insurer is considering underwriting a risk
182 insured by the corporation, relevant underwriting files and
183 confidential claims files may be released to the insurer
184 provided the insurer agrees in writing, notarized and under
185 oath, to maintain the confidentiality of such files. When a file
186 is transferred to an insurer that file is no longer a public
187 record because it is not held by an agency subject to the
188 provisions of the public records law. Underwriting files and

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189 confidential claims files may also be released to staff of and
190 the board of governors of the market assistance plan established
191 pursuant to s. 627.3515, who must retain the confidentiality of
192 such files, except such files may be released to authorized
193 insurers that are considering assuming the risks to which the
194 files apply, provided the insurer agrees in writing, notarized
195 and under oath, to maintain the confidentiality of such files.
196 Finally, the corporation or the board or staff of the market
197 assistance plan may make the following information obtained from
198 underwriting files and confidential claims files available to
199 licensed general lines insurance agents: name, address, and
200 telephone number of the residential property owner or insured;
201 location of the risk; rating information; loss history; and
202 policy type. The receiving licensed general lines insurance
203 agent must retain the confidentiality of the information
204 received.

205 2. Portions of meetings of the corporation are exempt from
206 the provisions of s. 286.011 and s. 24(b), Art. I of the State
207 Constitution wherein confidential underwriting files or
208 confidential open claims files are discussed. All portions of
209 corporation meetings which are closed to the public shall be
210 recorded by a court reporter. The court reporter shall record
211 the times of commencement and termination of the meeting, all
212 discussion and proceedings, the names of all persons present at
213 any time, and the names of all persons speaking. No portion of
214 any closed meeting shall be off the record. Subject to the
215 provisions hereof and s. 119.07(1) (e) - (g) ~~(b) - (d)~~, the court

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216 | reporter's notes of any closed meeting shall be retained by the
217 | corporation for a minimum of 5 years. A copy of the transcript,
218 | less any exempt matters, of any closed meeting wherein claims
219 | are discussed shall become public as to individual claims after
220 | settlement of the claim.

221 | Section 5. This act shall take effect July 1, 2006.