

By Senator Justice

16-1188A-07

1                                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           119.07, F.S.; authorizing a custodian of public  
4           records to designate another officer or  
5           employee of the agency to permit the inspection  
6           and copying of public records; requiring that  
7           the designee be identified; requiring  
8           custodians of public records and their  
9           designees to respond to requests to inspect and  
10          copy public records promptly and in good faith;  
11          amending ss. 497.140, 627.311, and 627.351,  
12          F.S.; conforming cross-references; providing an  
13          effective date.

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

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

19           119.07 Inspection and copying of records;  
20 photographing 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  
23 person desiring to do so, at any reasonable time, under  
24 reasonable conditions, and under supervision by the custodian  
25 of the public records.

26           (b) A custodian of public records or a person having  
27 custody of public records may designate another officer or  
28 employee of the agency to permit the inspection and copying of  
29 public records, but must disclose the identity of the designee  
30 to the person requesting to inspect or copy public records.

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1           (c) A custodian of public records and his or her  
2 designee must respond to requests to inspect or copy records  
3 promptly and in good faith. A good faith response includes  
4 making reasonable efforts to determine from other officers or  
5 employees within the agency whether such a record exists and,  
6 if so, the location at which the record can be accessed.

7           (d) A custodian of public records or his or her  
8 designee shall be available to respond to requests to inspect  
9 and copy public records during the regular business hours of  
10 the office at which public records are maintained.

11           ~~(e)(b)~~ A person who has custody of a public record who  
12 asserts that an exemption applies to a part of such record  
13 shall redact that portion of the record to which an exemption  
14 has been asserted and validly applies, and such person shall  
15 produce the remainder of such record for inspection and  
16 copying.

17           ~~(f)(e)~~ If the person who has custody of a public  
18 record contends that all or part of the record is exempt from  
19 inspection and copying, he or she shall state the basis of the  
20 exemption that he or she contends is applicable to the record,  
21 including the statutory citation to an exemption created or  
22 afforded by statute.

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

27           ~~(h)(e)~~ In any civil action in which an exemption to  
28 this section is asserted, if the exemption is alleged to exist  
29 under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or  
30 (f), or (4)(c), the public record or part thereof in question  
31 shall be submitted to the court for an inspection in camera.

1 If an exemption is alleged to exist under or by virtue of s.  
2 119.071(2)(c), an inspection in camera is discretionary with  
3 the court. If the court finds that the asserted exemption is  
4 not applicable, it shall order the public record or part  
5 thereof in question to be immediately produced for inspection  
6 or copying as requested by the person seeking such access.

7 (i)~~(f)~~ Even if an assertion is made by the custodian  
8 of public records that a requested record is not a public  
9 record subject to public inspection or copying under this  
10 subsection, the requested record shall, nevertheless, not be  
11 disposed of for a period of 30 days after the date on which a  
12 written request to inspect or copy the record was served on or  
13 otherwise made to the custodian of public records by the  
14 person seeking access to the record. If a civil action is  
15 instituted within the 30-day period to enforce the provisions  
16 of this section with respect to the requested record, the  
17 custodian of public records may not dispose of the record  
18 except by order of a court of competent jurisdiction after  
19 notice to all affected parties.

20 (j)~~(g)~~ The absence of a civil action instituted for  
21 the purpose stated in paragraph (h)~~(e)~~ does not relieve the  
22 custodian of public records of the duty to maintain the record  
23 as a public record if the record is in fact a public record  
24 subject to public inspection and copying under this subsection  
25 and does not otherwise excuse or exonerate the custodian of  
26 public records from any unauthorized or unlawful disposition  
27 of such record.

28 Section 2. Subsection (5) of section 497.140, Florida  
29 Statutes, is amended to read:

30 497.140 Fees.--  
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1           (5) The department shall charge a fee not to exceed  
2 \$25 for the certification of a public record. The fee shall be  
3 determined by rule of the department. The department shall  
4 assess a fee for duplication of a public record as provided in  
5 s. 119.07(1)(a) and ~~(e)(b)~~.

6           Section 3. Paragraph (b) of subsection (4) of section  
7 627.311, Florida Statutes, is amended to read:

8           627.311 Joint underwriters and joint reinsurers;  
9 public records and public meetings exemptions.--

10           (4) The Florida Automobile Joint Underwriting  
11 Association:

12           (b) Shall keep portions of association meetings during  
13 which confidential and exempt underwriting files or  
14 confidential and exempt claims files are discussed exempt from  
15 the provisions of s. 286.011 and s. 24(b), Art. I of the State  
16 Constitution. All closed portions of association meetings  
17 shall be recorded by a court reporter. The court reporter  
18 shall record the times of commencement and termination of the  
19 meeting, all discussion and proceedings, the names of all  
20 persons present at any time, and the names of all persons  
21 speaking. No portion of any closed meeting shall be off the  
22 record. Subject to the provisions of this paragraph and s.  
23 119.07(1)(e)-(g) ~~s. 119.07(1)(b)-(d)~~, the court reporter's  
24 notes of any closed meeting shall be retained by the  
25 association for a minimum of 5 years. A copy of the  
26 transcript, less any confidential and exempt information, of  
27 any closed meeting during which confidential and exempt claims  
28 files are discussed shall become public as to individual  
29 claims files after settlement of that claim.

1           Section 4. Paragraph (w) of subsection (6) of section  
2 627.351, Florida Statutes, as amended by section 21 of chapter  
3 2007-1, Laws of Florida, is amended to read:

4           627.351 Insurance risk apportionment plans.--

5           (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

6           (w)1. The following records of the corporation are  
7 confidential and exempt from the provisions of s. 119.07(1)  
8 and s. 24(a), Art. I of the State Constitution:

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

12           b. Claims files, until termination of all litigation  
13 and settlement of all claims arising out of the same incident,  
14 although portions of the claims files may remain exempt, as  
15 otherwise provided by law. Confidential and exempt claims file  
16 records may be released to other governmental agencies upon  
17 written request and demonstration of need; such records held  
18 by the receiving agency remain confidential and exempt as  
19 provided for herein.

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

28           d. Matters reasonably encompassed in privileged  
29 attorney-client communications.  
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1 e. Proprietary information licensed to the corporation  
2 under contract and the contract provides for the  
3 confidentiality of such proprietary information.

4 f. All information relating to the medical condition  
5 or medical status of a corporation employee which is not  
6 relevant to the employee's capacity to perform his or her  
7 duties, except as otherwise provided in this paragraph.  
8 Information which is exempt shall include, but is not limited  
9 to, information relating to workers' compensation, insurance  
10 benefits, and retirement or disability benefits.

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

19 h. Information relating to negotiations for financing,  
20 reinsurance, depopulation, or contractual services, until the  
21 conclusion of the negotiations.

22 i. Minutes of closed meetings regarding underwriting  
23 files, and minutes of closed meetings regarding an open claims  
24 file until termination of all litigation and settlement of all  
25 claims with regard to that claim, except that information  
26 otherwise confidential or exempt by law will be redacted.

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28 When an authorized insurer is considering underwriting a risk  
29 insured by the corporation, relevant underwriting files and  
30 confidential claims files may be released to the insurer  
31 provided the insurer agrees in writing, notarized and under

1 | oath, to maintain the confidentiality of such files. When a  
2 | file is transferred to an insurer that file is no longer a  
3 | public record because it is not held by an agency subject to  
4 | the provisions of the public records law. Underwriting files  
5 | and confidential claims files may also be released to staff of  
6 | and the board of governors of the market assistance plan  
7 | established pursuant to s. 627.3515, who must retain the  
8 | confidentiality of such files, except such files may be  
9 | released to authorized insurers that are considering assuming  
10 | the risks to which the files apply, provided the insurer  
11 | agrees in writing, notarized and under oath, to maintain the  
12 | confidentiality of such files. Finally, the corporation or the  
13 | board or staff of the market assistance plan may make the  
14 | following information obtained from underwriting files and  
15 | confidential claims files available to licensed general lines  
16 | insurance agents: name, address, and telephone number of the  
17 | residential property owner or insured; location of the risk;  
18 | rating information; loss history; and policy type. The  
19 | receiving licensed general lines insurance agent must retain  
20 | the confidentiality of the information received.

21 |         2. Portions of meetings of the corporation are exempt  
22 | from the provisions of s. 286.011 and s. 24(b), Art. I of the  
23 | State Constitution wherein confidential underwriting files or  
24 | confidential open claims files are discussed. All portions of  
25 | corporation meetings which are closed to the public shall be  
26 | recorded by a court reporter. The court reporter shall record  
27 | the times of commencement and termination of the meeting, all  
28 | discussion and proceedings, the names of all persons present  
29 | at any time, and the names of all persons speaking. No portion  
30 | of any closed meeting shall be off the record. Subject to the  
31 | provisions hereof and s. 119.07(1)(e)-(g) ~~s. 119.07(1)(b)-(d)~~,

1 the court reporter's notes of any closed meeting shall be  
2 retained by the corporation for a minimum of 5 years. A copy  
3 of the transcript, less any exempt matters, of any closed  
4 meeting wherein claims are discussed shall become public as to  
5 individual claims after settlement of the claim.

6 Section 5. This act shall take effect July 1, 2007.

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SENATE SUMMARY

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