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CHAMBER ACTION

Senate

House

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Floor: 1/AD/3R  
4/16/2008 10:45 AM

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1 Senator Geller moved the following **amendment**:

2  
3 Senate Amendment (with directory and title amendments)  
4 Between line(s) 2798 and 2799,

5 insert:

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

9 a. Underwriting files, except that a policyholder or an  
10 applicant shall have access to his or her own underwriting files.  
11 Confidential and exempt underwriting file records may also be  
12 released to other governmental agencies upon written request and  
13 demonstration of need; such records held by the receiving agency  
14 remain confidential and exempt as provided herein.

15 b. Claims files, until termination of all litigation and  
16 settlement of all claims arising out of the same incident,  
17 although portions of the claims files may remain exempt, as



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18 otherwise provided by law. Confidential and exempt claims file  
19 records may be released to other governmental agencies upon  
20 written request and demonstration of need; such records held by  
21 the receiving agency remain confidential and exempt as provided  
22 ~~for~~ herein.

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

30 d. Matters reasonably encompassed in privileged attorney-  
31 client communications.

32 e. Proprietary information licensed to the corporation  
33 under contract and the contract provides for the confidentiality  
34 of such proprietary information.

35 f. All information relating to the medical condition or  
36 medical status of a corporation employee which is not relevant to  
37 the employee's capacity to perform his or her duties, except as  
38 otherwise provided in this paragraph. Information that ~~which~~ is  
39 exempt shall include, but is not limited to, information relating  
40 to workers' compensation, insurance benefits, and retirement or  
41 disability benefits.

42 g. Upon an employee's entrance into the employee assistance  
43 program, a program to assist any employee who has a behavioral or  
44 medical disorder, substance abuse problem, or emotional  
45 difficulty which affects the employee's job performance, all  
46 records relative to that participation shall be confidential and  
47 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I



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48 | of the State Constitution, except as otherwise provided in s.  
49 | 112.0455(11).

50 |       h. Information relating to negotiations for financing,  
51 | reinsurance, depopulation, or contractual services, until the  
52 | conclusion of the negotiations.

53 |       i. Minutes of closed meetings regarding underwriting files,  
54 | and minutes of closed meetings regarding an open claims file  
55 | until termination of all litigation and settlement of all claims  
56 | with regard to that claim, except that information otherwise  
57 | confidential or exempt by law shall ~~will~~ be redacted.

58 |       2. ~~If~~ ~~When~~ an authorized insurer is considering  
59 | underwriting a risk insured by the corporation, relevant  
60 | underwriting files and confidential claims files may be released  
61 | to the insurer provided the insurer agrees in writing, notarized  
62 | and under oath, to maintain the confidentiality of such files. If  
63 | ~~When~~ a file is transferred to an insurer that file is no longer a  
64 | public record because it is not held by an agency subject to the  
65 | provisions of the public records law. Underwriting files and  
66 | confidential claims files may also be released to staff ~~of~~ and  
67 | the board of governors of the market assistance plan established  
68 | pursuant to s. 627.3515, who must retain the confidentiality of  
69 | such files, except such files may be released to authorized  
70 | insurers that are considering assuming the risks to which the  
71 | files apply, provided the insurer agrees in writing, notarized  
72 | and under oath, to maintain the confidentiality of such files.  
73 | Finally, the corporation or the board or staff of the market  
74 | assistance plan may make the following information obtained from  
75 | underwriting files and confidential claims files available to  
76 | licensed general lines insurance agents: name, address, and  
77 | telephone number of the residential property owner or insured;



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78 location of the risk; rating information; loss history; and  
79 policy type. The receiving licensed general lines insurance agent  
80 must retain the confidentiality of the information received.

81 3. A policyholder who has filed suit against the  
82 corporation has the right to discover the contents of his or her  
83 own claims file to the same extent that discovery of such  
84 contents would be available from a private insurer in litigation  
85 as provided by the Florida Rules of Civil Procedure, the Florida  
86 Evidence Code, and other applicable law. Pursuant to subpoena, a  
87 third party has the right to discover the contents of an  
88 insured's or applicant's underwriting or claims file to the same  
89 extent that discovery of such contents would be available from a  
90 private insurer by subpoena as provided by the Florida Rules of  
91 Civil Procedure, the Florida Evidence Code, and other applicable  
92 law, and subject to any confidentiality protections requested by  
93 the corporation and agreed to by the seeking party or ordered by  
94 the court. The corporation may release confidential underwriting  
95 and claims file contents and information as it deems necessary  
96 and appropriate to underwrite or service insurance policies and  
97 claims, subject to any confidentiality protections deemed  
98 necessary and appropriate by the corporation.

99 4.2. Portions of meetings of the corporation are exempt  
100 from the provisions of s. 286.011 and s. 24(b), Art. I of the  
101 State Constitution wherein confidential underwriting files or  
102 confidential open claims files are discussed. All portions of  
103 corporation meetings which are closed to the public shall be  
104 recorded by a court reporter. The court reporter shall record the  
105 times of commencement and termination of the meeting, all  
106 discussion and proceedings, the names of all persons present at  
107 any time, and the names of all persons speaking. No portion of



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108 any closed meeting shall be off the record. Subject to the  
109 provisions hereof and s. 119.07(1)(e)-(g), the court reporter's  
110 notes of any closed meeting shall be retained by the corporation  
111 for a minimum of 5 years. A copy of the transcript, less any  
112 exempt matters, of any closed meeting wherein claims are  
113 discussed shall become public as to individual claims after  
114 settlement of the claim.

115  
116 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

117 And the directory clause is amended as follows:

118 On line(s) 1084, after "(p),"

119 insert:

120 (w),

121  
122 ===== T I T L E A M E N D M E N T =====

123 And the title is amended as follows:

124 On line(s) 203, after the semicolon,

125 insert:

126 clarifying the right of certain parties to discover  
127 underwriting and claims file records; authorizing the  
128 corporation to release such records as it deems necessary;