

## Senate Bill No. 1760

An act relating to public records; amending s. 119.07, F.S.; authorizing a custodian of public records to designate another officer or employee of the agency to permit the inspection and copying of public records; requiring that the designee be identified; requiring custodians of public records and their designees to respond to requests to inspect and copy public records promptly and in good faith; amending ss. 497.140, 627.311, and 627.351, F.S.; conforming cross-references; providing an effective date.

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

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

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

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

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

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

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

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

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

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

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

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

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

497.140 Fees.—

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

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

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(4) The Florida Automobile Joint Underwriting Association:

(b) Shall keep portions of association meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All closed portions of association meetings shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all

persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions of this paragraph and ~~s. 119.07(1)(e)-(g) s. 119.07(1)(b)-(d)~~, the court reporter's notes of any closed meeting shall be retained by the association for a minimum of 5 years. A copy of the transcript, less any confidential and exempt information, of any closed meeting during which confidential and exempt claims files are discussed shall become public as to individual claims files after settlement of that claim.

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

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

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

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

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

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

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

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

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employ-

ee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

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

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

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

2. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and ~~s. 119.07(1)(e)-(g)~~ s. 119.07(1)(b)-(d), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

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

Approved by the Governor May 22, 2007.

Filed in Office Secretary of State May 22, 2007.