

## CHAPTER 98-315

### Committee Substitute for House Bill No. 1887

An act relating to confidentiality of records and meetings of the Florida Automobile Joint Underwriting Association; amending s. 627.311, F.S.; providing exemptions from public records requirements for underwriting files, open claim files, audit records for a specified time, matters reasonably encompassed in privileged attorney-client communications, licensed proprietary information made confidential by contract, certain employee medical records and employee assistance programs records, certain negotiation information for a specified time, minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding claims files for a specified time; providing requirements regarding sharing of confidential records; providing an exemption from public meetings requirements for meetings during which underwriting files or open claims files are discussed; providing requirements regarding such closed meetings and records thereof; providing for future review and repeal; providing a finding of public necessity; providing an effective date.

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

Section 1. Paragraph (l) is added to subsection (3) of section 627.311, Florida Statutes, to read:

627.311 Joint underwriters and joint reinsurers.—

(3) The department may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the department which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the department shall be subject to the provisions of chapter 120. If adopted, the plan and the association created under the plan:

(l)1. Shall be subject to the public records requirements of chapter 119 and the public meeting requirements of s. 286.011. However, the following records of the Florida Automobile Joint Underwriting Association are confidential and exempt from 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 by this paragraph.

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 association under contract when the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of an association 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. All records relative to an employee's participation in an employee assistance program designed to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, 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 must be redacted.

When an authorized insurer is considering underwriting a risk insured by the association, 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. The association 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 automobile 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 Florida Automobile Joint Underwriting Association during which confidential underwriting files or confidential open claims files are discussed are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. All portions of association 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 of this paragraph and s. 119.07(2)(a), 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 exempt matters, of any closed meeting during which claims are discussed shall become public as to individual claims after settlement of the claim.

This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2003, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain records of the Florida Automobile Joint Underwriting Association be held confidential and exempt. Certain medical records of association employees must be held confidential and exempt because they contain personal, sensitive information regarding an employee's medical condition, the disclosure of which would be harmful to the employee. Likewise, underwriting files contain medical information as well as private financial information regarding insureds, the disclosure of which could be harmful to those insureds. Additionally, such files contain proprietary confidential business information. Accordingly, it is a public necessity that those files, and meetings relating to such files, be closed. Additionally, matters reasonably encompassed in privileged attorney-client communications should be held confidential and exempt because the release of such information could jeopardize ongoing or pending litigation or other business matters. Also, open claims files records should be closed, as well as meetings concerning open claims files. If such records and meetings were not exempt, claimants would have unfettered access to information held by the association which could be used as evidence and for purposes of negotiation, claim evaluation, and settlement considerations, which would result in higher awards and settlements paid out by the association and ultimately the consumer. Records held by an internal auditor while an audit is incomplete, or while an investigation is pending, should be held confidential and exempt because otherwise possibly inaccurate information would be released or investigations jeopardized. Finally, it is a public necessity that information relating to negotiations for financing, reinsurance, depopulation, or contractual services be held confidential and exempt. If such information were not confidential and exempt, those with whom the association contracted would have an economic advantage over the association, thus driving up the costs of doing business, which cost would be passed on to the consumer.

Section 3. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1998.

Filed in Office Secretary of State May 29, 1998.