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DATE: February 21, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 1355

RELATING TO: Public Records/Insurer's Workpapers

SPONSOR(S): Committee on State Administration, Representative(s) Mealor and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
- (2) STATE ADMINISTRATION YEAS 4 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

This committee substitute creates a public records exemption for workpapers and other information held by the Department of Insurance, and workpapers and other information received from another governmental entity or the National Association of Insurance Commissioners (NAIC) for the department's use in the performance of its examination or investigation duties pursuant to certain sections of law. Such information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Such information may also be disclosed to the NAIC. The receiving governmental entity and the NAIC must maintain the confidential and exempt status of the information. Additionally, such confidential and exempt information may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information is maintained.

This committee substitute provides for retroactive application of the public records exemption. The exemption is subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 2, 2007, unless reviewed and saved from repeal through enactment of the Legislature.

The committee substitute provides a public necessity statement, as required by the Florida Constitution, which states that the exemption is necessary in order to effectively and efficiently administer a government program. Disclosure of such information would impair the ability of the department to gather information needed in order to complete examinations and investigations because persons who would otherwise provide confidential information are unwilling to do so for fear that such information will not remain confidential.

The committee substitute appears to have no fiscal impact on state or local governments.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Department of Insurance examination and investigation duties

The Department of Insurance is required to conduct an examination of the "affairs, transactions, accounts, records, and assets of each authorized insurer and of the attorney in fact of a reciprocal insurer as to its transactions affecting the insurer as often as" the department deems necessary.¹ The department is also required conduct market conduct investigations² in addition to investigations of agents, adjusters, administrators, service companies, and others.³ As a result of those examinations and investigations, the department might prepare workpapers or collect workpapers and other information from other governmental entities and the National Association of Insurance Commissioners.

At present, workpapers and any other information received by the department, which may include reports and correspondence from other states, draft reports, notes, or memorandums, are not exempt from public disclosure.⁴ Because workpapers and other information are available pursuant to a public records request, examiners are often unable to obtain necessary information from other states in the performance of the department's examination or investigation duties.

C. EFFECT OF PROPOSED CHANGES:

This committee substitute creates a public records exemption for workpapers and other information held by the Department of Insurance, and workpapers and other information received from another governmental entity or the National Association of Insurance Commissioners (NAIC) for the

¹ Section 624.316(1)(a), F.S.

² Section 624.3161, F.S.

³ Section 624.317, F.S.

⁴ 119(1)(a), F.S.

department's use in the performance of its examination or investigation duties pursuant to ss. 624.316⁵, 624.3161⁶, 624.317⁷, 624.318⁸, and 624.319⁹, F.S. Such information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Such information may also be disclosed to the NAIC. The receiving governmental entity and the NAIC must maintain the confidential and exempt status of the information. Additionally, such confidential and exempt information may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information is maintained.

This committee substitute provides for retroactive application of the public records exemption. This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the exemption is necessary in order to effectively and efficiently administer a government program. Disclosure of such confidential and exempt information would reveal information that could be used in preparing examination reports and investigation reports, and could thus thwart the state's interest in assuring the integrity of the regulatory process. Furthermore, disclosure of such information would impair the ability of the department to gather information needed in order to complete examinations and investigations because persons who would otherwise provide confidential information are unwilling to do so for fear that such information will not remain confidential.

D. SECTION-BY-SECTION ANALYSIS:

See "EFFECT OF PROPOSED CHANGES".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁵ Section 624.316, F.S., relates to the examination of insurers.

⁶ Section 624.3161, F.S., relates to market conduct examinations.

⁷ Section 624.317, F.S., relates to the investigation of agents, adjusters, administrators, service companies, and others.

⁸ Section 624.318, F.S., relates to the conduct of examinations and investigations.

⁹ Section 624.319, F.S., relates to examination and investigation reports.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The committee substitute does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The committee substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Insurance

On February 13, 2002, the Committee on Insurance adopted the following amendment to the bill:

The amendment by the Committee on Insurance (page 2, line 15 through page 3, line 27): The amendment makes conforming changes in usage throughout the bill, includes workpapers and other information received from the National Association of Insurance Commissioners (NAIC) in connection with investigations and examinations within the exemption; requires the receiving governmental entity or the NAIC to maintain the confidential and exempt status of the workpapers and other information; provides that information made confidential and exempt may be used in a criminal, civil, or administrative proceeding as long as the confidential and exempt status is maintained; and includes an additional reason for the exemption in the public necessity statement—that disclosure of the information would impair the Department's ability to gather information or be misleading because it is incomplete.

Committee on State Administration

On February 21, 2002, the Committee on State Administration heard HB 1355 and adopted an amendment to the traveling amendment. The amendment to the amendment added a cross-reference and made an editorial change. The bill was reported favorably as a committee substitute.

The committee substitute expands the public records exemption by making confidential and exempt workpapers and other information *held* by the Department of Insurance pursuant to ss. 624.316, 624.3161, 624.317, 624.318, and 624.319, F.S., whereas the exemption contained in the bill was for workpapers *prepared* by the department for its use in the performance of the department's examination or investigation duties pursuant to ss. 624.316 and 624.3161, F.S.

The committee substitute also expands the public records exemption by additionally making confidential and exempt workpapers and other information received from *another governmental entity or the National Association of Insurance Commissioners (NAIC)* for the department's use in the performance of its examination or investigation duties pursuant to ss. 624.316, 624.3161, 624.317, 624.318, and 624.319, F.S., whereas the exemption contained in the bill was only for workpapers received by the department from an *insurance supervisory official of another state or federal agency* for the department's use in its examination or investigation duties pursuant to ss. 624.316 and 624.3161, F.S.

The committee substitute creates exceptions to the public records exemption for other governmental entities if disclosure is necessary for the receiving entity to perform its duties and responsibilities; for the NAIC; and for use in a criminal, civil, or administrative proceeding. The confidential and exempt status of such information must be maintained by the receiving entities. Additionally, the committee substitute allows for retroactive application of the public records exemption, removes superfluous language, and makes editorial changes. The bill did not provide exceptions to the exemption, nor did it provide for retroactive application of the public records exemption.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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