

By the Committee on Banking and Insurance; and Senator Garcia

597-2358-06

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 627.3121, F.S.; providing an
4 exemption from public-records requirements for
5 certain records of the Florida Workers'
6 Compensation Joint Underwriting Association,
7 Inc.; authorizing the release of records that
8 are confidential and exempt from disclosure to
9 another agency in the performance of that
10 agency's official duties; requiring the
11 receiving agency to maintain the
12 confidentiality of the records; providing an
13 exemption from public-meetings requirements for
14 portions of a meeting of the association's
15 board of governors or a subcommittee during
16 which confidential records are discussed;
17 requiring that exempt portions of meetings be
18 recorded, transcribed, and maintained for a
19 specified period; providing for future
20 legislative review and repeal of the exemptions
21 under the Open Government Sunset Review Act;
22 providing a statement of public necessity;
23 providing a contingent effective date.
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25 Be It Enacted by the Legislature of the State of Florida:
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27 Section 1. Section 627.3121, Florida Statutes, is
28 created to read:
29 627.3121 Public-records and public-meetings
30 exemptions.--
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1 (1) The following records of the Florida Workers'
2 Compensation Joint Underwriting Association, Inc., are
3 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
4 of the State Constitution:

5 (a) Underwriting files, except that a policyholder or
6 an applicant shall be provided access to his or her own
7 underwriting files.

8 (b) Claims files until termination of all litigation
9 and the settlement of all claims arising out of the same
10 accident, except that portions of the claims files may remain
11 exempt from disclosure if otherwise provided by law.

12 (c) Medical records that are part of a claims file and
13 other information relating to the medical condition or medical
14 status of a claimant.

15 (d) Records obtained or generated by an auditor
16 pursuant to a routine audit until the audit is completed or,
17 if the audit is conducted as part of an investigation, until
18 the investigation is closed or ceases to be active. An
19 investigation is considered "active" while the investigation
20 is being conducted with a reasonable, good-faith belief that
21 it could lead to the filing of administrative, civil, or
22 criminal proceedings.

23 (e) Matters reasonably encompassed in privileged
24 attorney-client communications.

25 (f) Proprietary information licensed to the
26 association under contract if the contract requires the
27 association to maintain the confidentiality of such
28 proprietary information.

29 (g) All information relating to the medical condition
30 or medical status of an association employee which is not
31 relevant to the employee's capacity to perform his or her

1 duties, except as otherwise provided in this paragraph, and
2 all information relating to the medical status of the
3 employee's dependents. Information that is exempt under this
4 paragraph includes, but is not limited to, information
5 relating to a workers' compensation claims files, insurance
6 benefits, and retirement or disability benefits.

7 (h) All records relative to an employee's
8 participation in an employee assistance program upon the
9 entrance of the employee into the program, except as otherwise
10 provided in s. 112.0455(11).

11 (i) Information relating to negotiations for
12 financing, reinsurance, reinsurance commutation agreements,
13 depopulation, or contractual services until the conclusion of
14 the negotiations.

15 (j) Minutes of exempt portions of meetings, as
16 provided in subsection (3), until termination of all
17 litigation with regard to that claim.

18 (k) Reports provided to or submitted by the
19 association regarding suspected fraud or other criminal
20 activity and producer appeals and related reporting regarding
21 suspected misconduct until such investigation is closed or
22 ceases to be active.

23 (l) Information secured from the Department of Revenue
24 regarding payroll information and client lists of employee
25 leasing companies obtained pursuant to ss. 440.381 and
26 468.529.

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28 Underwriting files and confidential claims files shall be
29 released to a carrier that is considering underwriting a risk
30 insured by the association, a producer seeking to place such a
31 risk with such a carrier, or another entity seeking to arrange

1 voluntary market coverage for association risks if the
2 carrier, producer, or other entity agrees in writing,
3 notarized and under oath, to maintain the confidentiality of
4 such files. When a file is transferred to a carrier, producer,
5 or other entity, that file is no longer a public record
6 because it is not held by an agency that is subject to the
7 public-records law.

8 (2) Records or portions of records made confidential
9 and exempt by this section may be released, upon written
10 request, to another agency in the performance of that agency's
11 official duties and responsibilities. The receiving agency
12 shall maintain the confidential and exempt status of such
13 record or portion of a record.

14 (3) That portion of a meeting of the association's
15 board of governors, or any subcommittee of the association's
16 board, at which records made confidential and exempt by this
17 section are discussed is exempt from s. 286.011 and s. 24(b),
18 Art. I of the State Constitution. All exempt portions of
19 meetings shall be recorded and transcribed. The board shall
20 record the times of commencement and termination of the
21 meeting, all discussion and proceedings, the names of all
22 persons present at any time, and the names of all persons
23 speaking. An exempt portion of any meeting may not be off the
24 record. Subject to this section and s. 119.021(2), the court
25 reporter's notes of any exempt portion of a meeting shall be
26 retained by the association for a minimum of 5 years. A copy
27 of the transcript of any exempt portion of a meeting in which
28 claims files are discussed becomes a public record as to
29 individual claims after settlement of the claim, and any
30 confidential and exempt information shall be redacted.

1 (4) This section is subject to the Open Government
2 Sunset Review Act in accordance with s. 119.15, and shall
3 stand repealed on October 2, 2011, unless reviewed and saved
4 from repeal through reenactment by the Legislature.

5 Section 2. (1) The Legislature finds that it is a
6 public necessity to make certain records and meetings
7 delineated in s. 627.3121, Florida Statutes, confidential and
8 exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art.
9 I of the State Constitution. The Legislature finds that the
10 Florida Workers' Compensation Joint Underwriting Association,
11 Inc., was created to provide workers' compensation and
12 employer's liability insurance to applicants who are required
13 by law to maintain workers' compensation and employer's
14 liability insurance and who are in good faith entitled to but
15 are unable to procure such insurance through the voluntary
16 market. The Legislature finds that the exemption from
17 public-records requirements for open claims files of the
18 association is necessary for the effective and efficient
19 administration of an entity created to provide workers'
20 compensation and employer's liability insurance as described
21 in this section and in s. 627.311(5), Florida Statutes. Claims
22 files contain detailed information concerning the claim,
23 medical information, and other personal information concerning
24 the claimant, and also contain information detailing the
25 evaluation of the legitimacy of the claim, the extent of
26 incapacity, and a valuation of the award, if any, which should
27 be made. Information in a claims file that is held by the
28 association includes the medical records and other information
29 related to the medical condition or medical status of a
30 claimant. The Legislature finds that the claimants' medical
31 records and other medical-related information are personal and

1 sensitive. Therefore, the Legislature finds that an exemption
2 from public-records requirements for medical records and other
3 information related to the medical condition or medical status
4 of a claimant is a public necessity in order to protect a
5 claimant's health-related information. Matters of personal
6 health are traditionally a private and confidential concern.
7 The release of the medical records of a claimant or personal
8 identifying information concerning a claimant would violate
9 the privacy of the individual or could cause unwarranted
10 damage to the name or reputation of the individual. When a
11 claim is contested, the work product of legal counsel may also
12 be included in the claims file in the form of direction to
13 claims professionals. Allowing the claimant or claimant's
14 lawyers access to the file, which could be used for purposes
15 of negotiation, claim evaluation, and settlement
16 considerations, would weaken the legal position of the
17 association and could result in higher awards and settlements
18 paid out by the association and ultimately contribute to the
19 creation of deficits to be funded by assessments against
20 certain association policyholders or all workers' compensation
21 policyholders. The Legislature finds that the internal-audit
22 process, and therefore accountability to the public, will be
23 damaged if records relating to an incomplete internal audit or
24 investigation are made public. The Legislature finds that
25 information relating to the medical, mental, or behavioral
26 condition of an employee of the association or the employee's
27 dependents is private and that matters of personal health are
28 traditionally a private and confidential concern. The
29 Legislature finds that if information regarding ongoing
30 negotiations for financing, reinsurance, contractual services,
31 or related matters were made public prior to the conclusion of

1 the negotiations, the association's bargaining position would
2 be severely damaged, resulting in additional cost to the
3 association and the public. The Legislature finds that if
4 reports of suspected fraudulent activity were made public,
5 criminal investigations of insurance fraud would be harmed.
6 The Legislature finds that payroll and client lists of
7 businesses are traditionally private matters.

8 (2) The Legislature further finds that closing access
9 to meetings of the board of directors of the association, or
10 of a subcommittee of the board, wherein matters made exempt
11 and confidential under s. 627.3121, Florida Statutes, are
12 discussed is essential to preserving the confidentiality of
13 such matters and enabling the association to carry out its
14 statutory duty of providing workers' compensation coverage.
15 The members of the board of governors act in a trustee
16 capacity and must take care that the assets of the association
17 are managed wisely. Their efforts to meet as a collegial body
18 in an open and frank setting that includes staff are thwarted
19 by the current requirement that such meetings be open.
20 Furthermore, discussion of confidential matters in an open and
21 public setting might reveal private, sensitive medical
22 information that is otherwise confidential.

23 Section 3. This act shall take effect upon becoming a
24 law if SB 2118 or similar legislation is enacted during the
25 2006 Regular Session, or an extension thereof, and becomes
26 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1976
4 1. The committee substitute makes confidential and exempts
5 the certain records and portions of meetings held by the
6 Florida Workers' Compensation Joint Underwriting
7 Association, Inc. (JUA), the insurer of last resort for
8 employees who are unable to secure workers' compensation
9 insurance coverage in the voluntary market.
10 2. The bill provides statements of public necessity and
11 provides for future review and repeal of the exemptions.
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