

1 (1) The following records held by 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 confidential or exempt if otherwise provided by law.

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

20 (d) Proprietary information licensed to the
21 association under contract if the contract requires the
22 association to maintain the confidentiality of such
23 information.

24 (e) Medical records, which include information
25 relating to the medical condition or medical status of an
26 individual.

27 (f) All records relative to an employee's
28 participation in an employee assistance program upon the
29 entrance of the employee into the program, except as otherwise
30 provided in s. 440.102(8).
31

1 (g) Information relating to negotiations for
2 financing, reinsurance, reinsurance commutation agreements,
3 depopulation, or contractual services until the conclusion of
4 the negotiations.

5 (h) Reports provided to or submitted by the
6 association regarding suspected fraud or other criminal
7 activity and producer appeals and related reporting regarding
8 suspected misconduct until such investigation is closed or
9 ceases to be active.

10 (i) Information received from the Department of
11 Revenue regarding payroll information and client lists of
12 employee leasing companies obtained pursuant to ss. 440.381
13 and 468.529.

14 (j) A public record prepared by an attorney retained
15 by the association to protect or represent the interests of
16 the association or prepared at the attorney's express
17 direction, that reflects a mental impression, conclusion,
18 litigation strategy, or legal theory of the attorney or the
19 association. This protection is not waived by the release of
20 such public record to another employee or officer of the same
21 association or any person consulted by the association
22 attorney.

23 (2)(a) The association may release confidential and
24 exempt underwriting files and claims files to:

25 1. A carrier that is considering underwriting a risk
26 insured by the association;

27 2. A producer seeking to place such a risk with such a
28 carrier; or

29 3. Another entity seeking to arrange voluntary market
30 coverage for association risks.

31

1 (b) Prior to the release authorized in paragraph (a),
2 the carrier, producer, or other entity must agree in writing,
3 notarized and under oath, to maintain the confidential and
4 exempt status of such file until that carrier, producer, or
5 other entity agrees to underwrite the risk or provide
6 voluntary market coverage.

7 (3) Records made confidential and exempt by this
8 section may be released, upon written request, to another
9 agency in the performance of that agency's official duties and
10 responsibilities.

11 (4)(a) That portion of a meeting of the association's
12 board of governors, or any subcommittee of the association's
13 board, at which records made confidential and exempt by this
14 section are discussed is exempt from s. 286.011 and s. 24(b),
15 Art. I of the State Constitution.

16 (b) All exempt portions of meetings shall be recorded
17 and transcribed. The board shall record the times of
18 commencement and termination of the meeting, all discussion
19 and proceedings, the names of all persons present at any time,
20 and the names of all persons speaking. An exempt portion of
21 any meeting may not be off the record.

22 (c) Subject to this section and s. 119.021(2), the
23 court reporter's notes concerning any exempt portion of a
24 meeting shall be retained by the association for a minimum of
25 5 years.

26 (d)1. A transcript and minutes of exempt portions of
27 meetings are confidential and exempt from s. 119.07(1) and s.
28 24(a), Art. I of the State Constitution.

29 2. Those portions of the transcript or the minutes
30 pertaining to a confidential and exempt claims file are no
31

1 longer confidential and exempt upon termination of all
2 litigation with regard to that claim.

3 (5) This section is subject to the Open Government
4 Sunset Review Act in accordance with s. 119.15, and shall
5 stand repealed on October 2, 2012, unless reviewed and saved
6 from repeal through reenactment by the Legislature.

7 Section 2. (1) The Legislature finds that it is a
8 public necessity to make certain records of the Florida
9 Workers' Compensation Joint Underwriting Association, Inc.,
10 confidential and exempt from public-records requirements. The
11 association was authorized by the Legislature to provide
12 workers' compensation and employer's liability insurance to
13 applicants who are required by law to maintain workers'
14 compensation and employer's liability insurance, and who are
15 entitled to but are unable to procure such insurance through
16 the voluntary market. The Legislature finds that the exemption
17 from 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 and in s. 627.311(5), Florida Statutes. Claims files contain
22 detailed information concerning the claim, medical
23 information, and other sensitive personal information
24 concerning the claimant, and also contain information
25 detailing the evaluation of the legitimacy of the claim, the
26 extent of incapacity, and a valuation of the award.
27 Information in a claims file which is held by the association
28 includes the medical records and other information related to
29 the medical condition or medical status of a claimant. The
30 Legislature finds that the claimants' medical records and
31 other medical-related information are personal and sensitive.

1 Matters of personal health are traditionally a private and
2 confidential concern. The release of the medical records would
3 violate the privacy of the individual or could cause
4 unwarranted damage to the name or reputation of the
5 individual. The Legislature finds that information relating to
6 the medical, mental, or behavioral condition of an employee of
7 the association is private and that matters of personal health
8 are traditionally a private and confidential concern. The
9 Legislature finds that the association must conduct ongoing
10 negotiations for financing, reinsurance, contractual services,
11 or related matters to perform the duties assigned to the
12 association. If such information were made public prior to the
13 conclusion of the negotiations, the association's bargaining
14 position would be severely damaged, resulting in additional
15 cost to the association and the public. The Legislature also
16 finds that the association will investigate insurance fraud.
17 If reports of suspected fraudulent activity were made public,
18 criminal investigations of insurance fraud would be harmed.
19 The Legislature has recognized a need for the Department of
20 Revenue to provide payroll information and client lists of
21 employee leasing companies to the association in the
22 furtherance of its duties and responsibilities. Such
23 information is business information and traditionally is
24 private. The Legislature finds that the association receives
25 advice of counsel on the entire range of matters on which a
26 similarly situated private business would receive advice of
27 counsel, including matters that do not involve litigation or
28 adversarial administrative proceedings. The association would
29 not be able to carry out its business functions effectively
30 without the free and confidential exchange of attorneys'
31 mental impressions, conclusions, strategies, and theories.

1 Finally, the Legislature finds that the internal-audit
2 process, and therefore accountability to the public, will be
3 damaged if records relating to an incomplete internal audit or
4 investigation are made public.

5 (2) The Legislature further finds that it is a public
6 necessity to exempt certain meetings of the Florida Workers'
7 Compensation Joint Underwriting Association, Inc., from public
8 meetings requirements. Closing access to meetings of the board
9 of directors of the association, or of a subcommittee of the
10 board, wherein confidential and exempt records are discussed
11 is essential to preserving the confidentiality of those
12 records. Further, it enables the association to carry out its
13 statutory duty of providing workers' compensation coverage.
14 Furthermore, the Legislature finds that minutes and
15 transcripts of exempt portions of meetings should be made
16 confidential and exempt from public-records requirements.
17 Release of those records would defeat the purpose of holding a
18 closed meeting.

19 Section 3. This act shall take effect July 1, 2007.
20
21
22
23
24
25
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 628

Creates an exemption for certain records and portions of meetings of the Florida Workers' Compensation Joint Underwriting Association, Inc.(JUA), the insurer of last resort for employers who are unable to secure workers' compensation insurance coverage in the voluntary market.

Makes confidential and exempt underwriting files, claims files until termination of litigation and settlement, audit records, certain proprietary information, medical records, records relative to an employee's participation in an employee assistance program, certain information related to negotiations, reports regarding fraud until the investigation is closed or ceases to be active, payroll and client lists of employee leasing companies obtained from the Department of Revenue, and certain records prepared by an attorney for the association.

Exempts portions of meetings at which such confidential and exempt information is discussed.