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HB 7105

2012 Legislature

1  
2 An act relating to a review under the Open Government  
3 Sunset Review Act; amending s. 627.3121, F.S., which  
4 provides an exemption from public records requirements  
5 for certain records held by the Florida Workers'  
6 Compensation Joint Underwriting Association, Inc., and  
7 an exemption from public meetings requirements for  
8 certain meetings of the association's board of  
9 governors, or a subcommittee of the association's  
10 board; clarifying that the public record exemption  
11 applies to medical information relating to the medical  
12 condition or medical status of an individual; removing  
13 the scheduled repeal of the exemption; providing an  
14 effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. Section 627.3121, Florida Statutes, is amended  
19 to read:

20 627.3121 Public records and public meetings exemptions.—

21 (1) The following records held by the Florida Workers'  
22 Compensation Joint Underwriting Association, Inc., are  
23 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
24 of the State Constitution:

25 (a) Underwriting files, except that a policyholder or an  
26 applicant shall be provided access to his or her own  
27 underwriting files.

28 (b) Claims files until termination of all litigation and

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29 | the settlement of all claims arising out of the same accident,  
30 | except that portions of the claims files may remain confidential  
31 | or exempt if otherwise provided by law.

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

40 |       (d) Proprietary information licensed to the association  
41 | under contract if the contract requires the association to  
42 | maintain the confidentiality of such information.

43 |       (e) Medical ~~records, which include~~ information relating to  
44 | the medical condition or medical status of an individual.

45 |       (f) All records relative to an employee's participation in  
46 | an employee assistance program upon the entrance of the employee  
47 | into the program, except as otherwise provided in s. 440.102(8).

48 |       (g) Information relating to negotiations for financing,  
49 | reinsurance, reinsurance commutation agreements, depopulation,  
50 | or contractual services until the conclusion of the  
51 | negotiations.

52 |       (h) Reports provided to or submitted by the association  
53 | regarding suspected fraud or other criminal activity and  
54 | producer appeals and related reporting regarding suspected  
55 | misconduct until such investigation is closed or ceases to be  
56 | active.

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57 (i) Information received from the Department of Revenue  
58 regarding payroll information and client lists of employee  
59 leasing companies obtained pursuant to ss. 440.381 and 468.529.

60 (j) A public record prepared by an attorney retained by  
61 the association to protect or represent the interests of the  
62 association, or prepared at the attorney's express direction,  
63 that reflects a mental impression, conclusion, litigation  
64 strategy, or legal theory of the attorney or the association.  
65 This protection is not waived by the release of such public  
66 record to another employee or officer of the same association or  
67 any person consulted by the association attorney.

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

70 1. A carrier that is considering underwriting a risk  
71 insured by the association;

72 2. A producer seeking to place such a risk with such a  
73 carrier; or

74 3. Another entity seeking to arrange voluntary market  
75 coverage for association risks.

76 (b) Prior to the release authorized in paragraph (a), the  
77 carrier, producer, or other entity must agree in writing,  
78 notarized and under oath, to maintain the confidential and  
79 exempt status of such file until that carrier, producer, or  
80 other entity agrees to underwrite the risk or provide voluntary  
81 market coverage.

82 (3) Records made confidential and exempt by this section  
83 may be released, upon written request, to another agency in the  
84 performance of that agency's official duties and

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85 responsibilities.

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

91 (b) All exempt portions of meetings shall be recorded and  
92 transcribed. The board shall record the times of commencement  
93 and termination of the meeting, all discussion and proceedings,  
94 the names of all persons present at any time, and the names of  
95 all persons speaking. An exempt portion of any meeting may not  
96 be off the record.

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

100 (d)1. A transcript and minutes of exempt portions of  
101 meetings are confidential and exempt from s. 119.07(1) and s.  
102 24(a), Art. I of the State Constitution.

103 2. Those portions of the transcript or the minutes  
104 pertaining to a confidential and exempt claims file are no  
105 longer confidential and exempt upon termination of all  
106 litigation with regard to that claim.

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

111 Section 2. This act shall take effect October 1, 2012.