

CHAPTER 2012-224

House Bill No. 7105

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

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

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

627.3121 Public records and public meetings exemptions.—

(1) The following records held by the Florida Workers' Compensation Joint Underwriting Association, Inc., 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 be provided access to his or her own underwriting files.

(b) Claims files until termination of all litigation and the settlement of all claims arising out of the same accident, except that portions of the claims files may remain confidential or exempt if otherwise provided by law.

(c) Records obtained or generated by an 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) Proprietary information licensed to the association under contract if the contract requires the association to maintain the confidentiality of such information.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) All exempt portions of meetings shall be recorded and transcribed. The board 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. An exempt portion of any meeting may not be off the record.

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

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

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

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

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

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.