

House Bill No. 7169

An act relating to public records and public meetings exemptions; creating s. 627.3121, F.S.; providing an exemption from public records requirements for certain records of the Florida Workers' Compensation Joint Underwriting Association, Inc.; authorizing the release of confidential and exempt records under certain circumstances; providing an exemption from public meetings requirements for portions of a meeting of the association's board of governors or a subcommittee thereof during which confidential and exempt records are discussed; requiring that exempt portions of meetings be recorded, transcribed, and maintained for a specified period; providing an exemption from public records requirements for minutes and transcripts of exempt portions of meetings; providing for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 627.3121, Florida Statutes, is created 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. (1) The Legislature finds that it is a public necessity to make certain records of the Florida Workers' Compensation Joint Underwriting Association, Inc., confidential and exempt from public records requirements. The association was authorized by the Legislature to provide workers' compensation and employer's liability insurance to applicants who are required by law to maintain workers' compensation and employer's liability insurance, and who are entitled to but are unable to procure such insurance through the voluntary market. The Legislature finds that the exemption from public records requirements for open claims files of the association is necessary for the effective and efficient administration of an entity created to provide workers' compensation and employer's liability insurance as described in s. 627.311(5), Florida Statutes. Claims files contain detailed information concerning the claim, medical information, and other sensitive personal information concerning the claimant, and also contain information detailing the evaluation of the legitimacy of the claim, the extent of incapacity, and a valuation of the award. Information in a claims file that is held by the association includes the medical records and other information related to the medical condition or medical status of a claimant. The Legislature finds that the claimants' medical records and other medical-related information are personal and sensitive. Matters of personal health are traditionally a private and confidential concern. The release of the medical records would violate the privacy of an individual or could cause unwarranted damage to the name or reputation of that individual. The Legislature finds that information relating to the medical, mental, or behavioral condition of an employee of the association is private and that matters of personal health are traditionally a private and confidential concern. The Legislature finds that the association must conduct ongoing negotiations for financing, reinsurance, contractual services, or related matters to perform the duties assigned to the association. If such information were made public prior to the conclusion of the negotiations, the association's bargaining position would be severely damaged, resulting in additional cost to the association and the public. The Legislature also finds that, because the association will investigate insurance fraud, criminal investigations of insurance fraud would be harmed if reports of suspected fraudulent activity were made public. The Legislature has also recognized a need for the Department of Revenue to

provide payroll information and client lists of employee leasing companies to the association in the furtherance of its duties and responsibilities. Such information is proprietary business information and traditionally is private. The Legislature finds that the internal audit process, and therefore accountability to the public, will be damaged if records relating to an incomplete internal audit or investigation are made public. The Legislature finds that although the association is an agency within the meaning of the public records and open meetings laws, the association essentially operates as a private business. Its core function is to engage in the business of providing workers' compensation insurance coverage, as distinguished from an agency whose core functions are governmental in nature. The association does not exercise the authority or perform the functions of a department or political subdivision, and lacks the power to enforce laws. The Legislature further finds that the general exemptions in chapters 119 and 286 relating to records created by attorneys and communications with attorneys are designed to address the needs of agencies providing governmental functions and are generally limited to matters relating to litigation and adversarial administrative matters. As distinguished from agencies providing governmental functions, the association receives the advice of counsel on the entire range of matters on which a similarly situated private business would receive advice of counsel, including matters that do not involve litigation or adversarial administrative matters. These include, but are not limited to, legal advice relating to business negotiations with private entities which provide the association with reinsurance, policy issuance, policy administration, underwriting, and payroll audit services, with insurance agents who may act as producers of insurance business to the association, and with other entities which provide services to private market insurers. Accordingly, the Legislature finds that the association would not be able to carry out its core business functions effectively without the free and confidential exchange of attorneys' mental impressions, conclusions, litigation strategies, and legal theories, both as to business matters and as to litigation and adversarial administrative matters.

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

Section 3. This act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.