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A bill to be entitled

An act relating to public records and meetings; 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 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

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30 applicant shall be provided access to his or her own underwriting
31 files.

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

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

43 (d) Proprietary information licensed to the association
44 under contract if the contract requires the association to
45 maintain the confidentiality of such information.

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

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

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

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

58 (j) Information received from the Department of Revenue

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59 regarding payroll information and client lists of employee
60 leasing companies obtained pursuant to ss. 440.381 and 468.529.

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

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

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

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

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

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

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

84 (b) All exempt portions of meetings shall be recorded and
85 transcribed. The board shall record the times of commencement and
86 termination of the meeting, all discussion and proceedings, the
87 names of all persons present at any time, and the names of all

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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

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117 described in s. 627.311(5), Florida Statutes. Claims files
118 contain detailed information concerning the claim, medical
119 information, and other sensitive personal information concerning
120 the claimant, and also contain information detailing the
121 evaluation of the legitimacy of the claim, the extent of
122 incapacity, and a valuation of the award. Information in a claims
123 file that is held by the association includes the medical records
124 and other information related to the medical condition or medical
125 status of a claimant. The Legislature finds that the claimants'
126 medical records and other medical-related information are
127 personal and sensitive. Matters of personal health are
128 traditionally a private and confidential concern. The release of
129 the medical records would violate the privacy of an individual or
130 could cause unwarranted damage to the name or reputation of that
131 individual. The Legislature finds that information relating to
132 the medical, mental, or behavioral condition of an employee of
133 the association is private and that matters of personal health
134 are traditionally a private and confidential concern. The
135 Legislature finds that the association must conduct ongoing
136 negotiations for financing, reinsurance, contractual services, or
137 related matters to perform the duties assigned to the
138 association. If such information were made public prior to the
139 conclusion of the negotiations, the association's bargaining
140 position would be severely damaged, resulting in additional cost
141 to the association and the public. The Legislature also finds
142 that the association will investigate insurance fraud. If reports
143 of suspected fraudulent activity were made public, criminal
144 investigations of insurance fraud would be harmed. The
145 Legislature has recognized a need for the Department of Revenue

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146 to provide payroll information and client lists of employee
147 leasing companies to the association in the furtherance of its
148 duties and responsibilities. Such information is proprietary
149 business information and traditionally is private. Finally, the
150 Legislature finds that the internal-audit process, and therefore
151 accountability to the public, will be damaged if records relating
152 to an incomplete internal audit or investigation are made public.

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

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