

By Senator Geller

29-1175-99

1 A bill to be entitled
2 An act relating to public records; providing an
3 exemption from public records requirements for
4 certain documents in possession of the
5 Department of Insurance and the Department of
6 Legal Affairs; providing for future review and
7 repeal; providing a finding of public
8 necessity; providing an effective date.

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

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12 Section 1. Except as otherwise provided in this
13 section, any documents or compilation of documents or other
14 records of any medium which are provided voluntarily by an
15 insurer to the Department of Insurance or the Department of
16 Legal Affairs, or in conjunction with an investigation or
17 examination of the insurer's conduct by the Department of
18 Insurance or the Department of Legal Affairs, are confidential
19 and exempt from the provisions of section 119.07(1), Florida
20 Statutes, and s. 24(a), Art. I of the State Constitution if
21 such documents were prepared by the insurer at the request of
22 counsel as part of the insurer's program to monitor and
23 enhance compliance with provisions of Florida Statutes or
24 administrative rules for which the Department of Insurance or
25 the Department of Legal Affairs have regulatory or enforcement
26 authority. This exemption does not apply to documents or
27 records if there is a final determination after exhaustion of
28 appeals that the insurer was guilty of a conscious disregard
29 of the illegality of actions taken after preparation of the
30 document, and if there is a determination by a court that
31 illegal conduct described in the document is ongoing in spite

1 of an administrative determination of such illegality and that
2 without public disclosure such ongoing conduct creates danger
3 to the public health, safety, or welfare. This section is
4 repealed July 1, 2004, and must be reviewed by the Legislature
5 before that date in accordance with section 119.15, Florida
6 Statutes.

7 Section 2. The Legislature finds that there is great
8 public necessity that insurers, under the direction and
9 supervision of counsel, establish and implement programs to
10 examine their conduct and operations in order to detect
11 failure to comply with law, monitor company conduct to assure
12 compliance with law, and correct violations that may be
13 discovered; and that insurers are presently deterred from
14 implementing such plans by the fear that documents and other
15 records that are created pursuant to such plans will become
16 public records under circumstances in which disclosure will
17 impair the value of trade secrets, impair the reputation of
18 the insurer, and expose the insurer to public ridicule and
19 litigation, none of which would have occurred but for
20 implementation of the compliance program and preparation of
21 these documents. Moreover, there is public need to enhance the
22 ability of the Department of Insurance to regulate insurer
23 conduct by encouraging insurance companies to conduct
24 compliance audits and to disclose the results and documents
25 pertaining to such audits with the department for the
26 department's use in regulating, investigating, and examining
27 the insurer's affairs. Further, the Legislature finds that
28 present law recognizes the rights of insurers to maintain
29 confidentiality of internal documents by allowing the
30 Department of Insurance, during examinations, to review them
31 in the custody of the insurer without taking them from that

1 custody, and this review does not cause those internal
2 documents to become public records. The Legislature finds that
3 the department will be able to monitor and examine the conduct
4 of insurers better if insurers are free to provide to the
5 department documents prepared as a part of such compliance
6 programs without fear that they will be making public any
7 information that would not otherwise come into the
8 department's possession.

9 Section 3. This act shall take effect July 1, 1999.

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11 SENATE SUMMARY

12 Provides an exemption from public records requirements of
13 documents provided by an insurer voluntarily to the
14 Department of Insurance or the Department of Legal
15 Affairs, or provided in conjunction with an investigation
16 or examination of the insurer's conduct under certain
17 conditions. Provides for future review and repeal.
18 Provides a statement of public necessity.