

By Representative Gannon

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 631.195, F.S.; providing an exemption from
 4 public records requirements for certain records
 5 that come into the Department of Insurance's
 6 possession pursuant to insurer receivership
 7 proceedings; providing for future review and
 8 repeal; providing a finding of public
 9 necessity; providing a contingent effective
 10 date.

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

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 14 Section 1. Section 631.195, Florida Statutes, is
 15 created to read:

16 631.195 Records of insurers in receivership.--
 17 (1) The following records shall be confidential and
 18 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
 19 I of the State Constitution:

20 (a) Records in whatever form generated or maintained
 21 by an entity subjected to receivership proceedings, including,
 22 but not limited to, correspondence, underwriting files, claims
 23 files, financial records, personnel records, payroll records,
 24 manuals, promotional material, tax returns, internal audit
 25 records, computer files, audio and sound recordings, customer
 26 lists, contracts, bank records, memoranda, checks, or other
 27 records that come into the custody of the department pursuant
 28 to the provisions of this chapter. However, such records shall
 29 not be confidential and exempt if they would have been subject
 30 to public scrutiny in the hands of the entity itself absent
 31 the receivership proceedings.

1 (b) Claim file records relating to any entity
2 undergoing receivership proceedings, whether or not the claim
3 is currently in litigation, and all correspondence, memoranda,
4 research, reports, notes, draft pleadings, legal bills,
5 electronic mail, or other documents generated or collected in
6 connection with current or prior litigation by or against the
7 receivership estate or its predecessor in interest, except for
8 items filed with courts or public bodies other than the
9 department in its receivership capacity; however, such records
10 shall not be exempt and confidential after the receivership is
11 terminated and all appellate or posttrial litigation, in any
12 forum, involving the receivership has concluded. However, the
13 department may furnish any such confidential record to a law
14 enforcement agency with or without subpoena, and materials so
15 furnished shall retain their confidential character and shall
16 be inadmissible in any civil proceedings involving the
17 department in its receivership capacity unless the department
18 expressly agrees to their admission.

19 (2) Documents generated by the department in its
20 administration of the estate not included in paragraph (1)(b)
21 shall be public records according to the laws of this state
22 unless covered by another exemption.

23 (3) This section is subject to the Open Government
24 Sunset Review Act of 1995 in accordance with s. 119.15, and
25 shall stand repealed on October 2, 2006, unless reviewed and
26 saved from repeal through reenactment by the Legislature.

27 Section 2. The Legislature finds that there is a
28 public necessity that certain records of insurers that come
29 into the department's possession when it becomes a receiver
30 pursuant to the provisions of chapter 631, Florida Statutes,
31 be withheld from public inspection or disclosure. An insurer,

1 prior to the institution of delinquency proceedings, is a
2 private entity entrusted with highly confidential information
3 of its policyholders and claimants. This confidentiality,
4 which was fully expected by persons who furnished the
5 information to the insurer or consented to its collection by
6 the insurer, should not be forfeited by the insured when,
7 through no fault of the insured, the insurer becomes insolvent
8 and is placed in receivership. Such a result would violate
9 the right to privacy which Florida has explicitly recognized.
10 Further, there is no logical reason that clearly private
11 information in the possession of a private business should
12 become public record merely because the entity holding same
13 has become insolvent. The receiver may also be able to obtain
14 recoveries by selling off proprietary assets which would
15 become valueless if made public.

16 Section 3. This act shall take effect October 1, 2001,
17 if HB or similar legislation is adopted in the same
18 legislative session or an extension thereof and becomes law.

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21 HOUSE SUMMARY

22 Provides an exemption from public records requirements
23 for records that come into the possession of the
24 Department of Insurance during insurer receivership
25 proceedings. Provides for future review and repeal.
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