

By Senator Klein

28-1260-01

1 A bill to be entitled
2 An act relating to public records; creating s.
3 631.195, F.S.; exempting certain records that
4 come into the possession of the Department of
5 Insurance pursuant to insurer receivership
6 proceedings from inspection or disclosure as
7 public records in order to protect the privacy
8 interests of insureds; providing for future
9 review and repeal; providing a finding of
10 public necessity; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 631.195, Florida Statutes, is
15 created to read:

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

20 (1) 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 are
29 not confidential and exempt if they would have been subject to
30 public scrutiny in the hands of the entity itself absent the
31 receivership proceedings.

1 (2) 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 document 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 are not exempt and confidential after the receivership is
11 terminated and all appellate or post-trial litigation, in any
12 forum, involving the receivership has concluded. The
13 department may furnish any such confidential record to a law
14 enforcement agency with or without subpoena, and any material
15 so furnished retains its confidential character and is
16 inadmissible in any civil proceedings involving the department
17 in its receivership capacity unless the department expressly
18 agrees to its admission.

19 (3) Documents generated by the department in its
20 administration of the estate which are not covered by
21 subsection (2) are "public records" according to the laws of
22 this state unless covered by another exemption.

23 (4) 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 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 which come
29 into the possession of the Department of Insurance when it
30 becomes a receiver under chapter 631, Florida Statutes, be
31 withheld from public inspection or disclosure because an

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

16 Section 3. This act shall take effect July 1, 2001.

17
18 *****

19 SENATE SUMMARY

20 Provides exemptions from the public-records requirements
21 for specified reports and information in the possession
22 of the Department of Insurance relating to insurers in
23 receivership. Provides for future review and repeal.
24 Provides a finding of public necessity.
25
26
27
28
29
30
31