

By the Committee on Banking and Insurance; and Senator Klein

311-1864-01

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.--

17 (1) The following records, in whatever form, of an
18 insurer subject to delinquency proceedings pursuant to this
19 chapter, made or received by the Department of Insurance,
20 acting as receiver pursuant to this chapter, or by a guaranty
21 association established pursuant to this chapter, are exempt
22 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
23 the State Constitution:

24 (a) Underwriting files of a type customarily
25 maintained by an insurer transacting lines of insurance
26 similar to those lines transacted by the insurer subject to
27 delinquency proceedings.

28 (b) Records of the receiver, or a guaranty
29 association, of, or with respect to, the insurer that would be
30 privileged against discovery in the hands of the insurer under
31 Rule 1.280(b), Florida Rules of Civil Procedure, or other

1 applicable rule or law, but for the appointment of the
2 receiver.

3 (c) All medical records.

4 (d) Nonmanagerial personnel and payroll records of the
5 insurer.

6 (e) Claims information that identifies an insured or a
7 claimant.

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10 shall stand repealed on October 2, 2006, unless reviewed and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

12 Section 2. The Legislature finds that it is a public
13 necessity to protect certain records of an insurer subject to
14 delinquency proceedings from public disclosure, which
15 justifies exempting such records from the constitutional and
16 statutory provisions of this state favoring public disclosure.
17 These records include customary underwriting files, claims
18 files, and medical files of the insurer which contain
19 sensitive personal information regarding insured persons and
20 claimants. The records contain attorney work product and
21 information privileged under other applicable law. Disclosure
22 of information not otherwise available pursuant to the
23 applicable rules of civil procedure or privileged under other
24 applicable law puts the receiver and guaranty associations at
25 a disadvantage in legal proceedings that are intended to
26 maximize the value of the estate of a delinquent insurer and
27 thereby afford insured persons and creditors of the insurer
28 greater recoveries through delinquency proceedings. The
29 Legislature finds that making otherwise undiscoverable records
30 available to the public would prejudice claimants with legal
31 entitlement to proceeds of the receivership estate by

1 undermining the legitimate receivership function of maximizing
2 the value of the estate for the benefit of such claimants.
3 Personnel and payroll records of nonmanagerial personnel of
4 the insurer contain sensitive personal information that should
5 be exempt from public disclosure.

6 Section 3. This act shall take effect October 1, 2001,
7 if SB 1816, or similar legislation is adopted in the same
8 legislative session or an extension thereof and becomes law.

9
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 SB 1458

13 Narrows the public records exemption by specifying that the
14 following records of an insurer subject to delinquency
proceedings are confidential:

- 15 * underwriting files;
- 16 * records of the receiver, or a guaranty association
17 that would not be discoverable, but for the
receivership;
- 18 * all medical records;
- 19 * nonmanagerial personnel and payroll records of the
20 insolvent insurer; and
- 21 * claims information that identifies an insured or a
claimant.

22 Clarifies the statement of public necessity in that the
23 specified records include sensitive personal information
regarding insured persons and claimants, attorney work product
24 or information privileged under other applicable law.

25 Provides for an effective date of October 1, 2001, if SB 1816
(companion bill) is adopted and becomes law.