

By the Council for Competitive Commerce and Committee on Insurance and Representatives Gannon and Kallinger

1 A bill to be entitled
2 An act relating to public records; providing an
3 exemption from public records requirements for
4 records of insurers subject to delinquency
5 proceedings; providing for retroactive
6 application; providing for future review and
7 repeal; providing a finding of public
8 necessity; providing a contingent effective
9 date.

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

Section 1. (1) The following information and records of an insurer subject to delinquency proceedings pursuant to chapter 631, Florida Statutes, held by the Department of Insurance acting as receiver pursuant to chapter 631, Florida Statutes, or by a guaranty association established pursuant to chapter 631, Florida Statutes, are exempt from the provisions of s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution:

(a) Information in customary underwriting files that identifies an insured or claimant.

(b) Records that if held by the insurer would be privileged or protected against discovery under Rule 1.280(b), Florida Rules of Civil Procedure, or other applicable rule or law.

(c) All medical records.

(d) Personal identifying information contained in nonmanagerial personnel records and nonmanagerial payroll records.

1 (e) Information in claims files that identifies an
2 insured or a claimant.

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4 This exemption applies to such information and records held by
5 the Department of Insurance acting as receiver, or by a
6 guaranty association, before, on, or after the effective date
7 of this exemption.

8 (2) This section is subject to the Open Government
9 Sunset Review Act of 1995 in accordance with s. 119.15,
10 Florida Statutes, and shall stand repealed on October 2, 2007,
11 unless reviewed and saved from repeal through reenactment by
12 the Legislature.

13 Section 2. The Legislature finds that it is a public
14 necessity that certain records of an insurer subject to
15 delinquency proceedings held by the Department of Insurance as
16 receiver, or by a guaranty association, be made exempt from
17 public disclosure. Medical records and identifying information
18 contained in underwriting files, nonmanagerial personnel
19 records, nonmanagerial payroll records, and claims files
20 contain sensitive personal information that is not available
21 to the public when held by the insurer. Access to such
22 records and information could cause harm or embarrassment to
23 an individual. Disclosure of such records and information
24 allows access to private information about a person, which
25 could be used to perpetrate fraud upon that person. Access to
26 such records and information constitutes an unwarranted
27 invasion into the life and personal privacy of a person.
28 Thus, the harm from disclosing such records and information
29 outweighs any public benefit that can be derived from public
30 access. Furthermore, the Legislature finds that this
31 exemption is a public necessity because matters of personal

1 health are traditionally private and confidential concerns
2 between a patient and the patient's health care provider. The
3 private and confidential nature of personal health matters
4 pervades both the public and private health care sectors.
5 Other records contain attorney work product and information
6 that would be privileged or protected under other applicable
7 law. Disclosure of information not otherwise available
8 pursuant to the applicable rules of civil procedure or
9 privileged or protected under other applicable law puts the
10 receiver and guaranty associations at a disadvantage in legal
11 proceedings which are intended to maximize the value of the
12 estate of a delinquent insurer and thereby afford insured
13 persons and creditors of the insurer greater recoveries
14 through delinquency proceedings. The Legislature finds that
15 making otherwise undiscoverable records available to the
16 public would prejudice claimants with legal entitlement to
17 proceeds of the receivership estate by undermining the
18 legitimate receivership function of maximizing the value of
19 the estate for the benefit of such claimants. Personnel and
20 payroll records of nonmanagerial personnel of the insurer
21 contain sensitive personal information that should be exempt
22 from public disclosure.

23 Section 3. This act shall take effect October 1, 2002,
24 if HB 193 or similar legislation is adopted in the same
25 legislative session or an extension thereof and becomes law.

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