

By the Committees on Governmental Oversight and Productivity;
Banking and Insurance; and Senator Klein

302-1804-02

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A bill to be entitled
An act relating to public records; providing an
exemption from public records requirements for
records of insurers subject to delinquency
proceedings; providing for future review and
repeal; providing a finding of public
necessity; providing a contingent effective
date.

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 held by the Department of Insurance, acting as
receiver pursuant to chapter 631, or held by a guaranty
association established pursuant to chapter 631, are exempt
from the provisions of section 119.07(1), Florida Statutes,
and Section 24(a), Article I of the State Constitution:

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

(e) Information in claims files which identifies an
insured or a claimant.

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

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7 Florida Statutes, and shall stand repealed on October 2, 2007,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

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

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

20 Section 3. This act shall take effect October 1, 2002,
21 if Committee Substitute for Senate Bill 432 or similar
22 legislation is adopted in the same legislative session or an
23 extension thereof and becomes law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 430

Narrows the exemption created. Information in underwriting files that is made exempt is limited to information that identifies an insured or a claimant. Also, limits exemption in nonmanagerial personnel and payroll records to personal identifying information contained in those records.

Adds a statement of retroactive application.

Revises statement of public necessity to reflect modifications made to exemption.