

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1188

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Albritton

SUBJECT: Public Records/Records of Insurers/Department of Financial Services

DATE: February 19, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Palecki</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1188 creates section 631.195, F.S., to make confidential and exempt from public inspection and copying requirements certain information held by the Department of Financial Services (DFS) relating to the personal financial and health information of insurance consumers, and underwriting, personnel, payroll, and consumer claim information, which, if not exempted from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, may result in public disclosure of traditionally private financial and health information and thereby create the opportunity for theft and fraud, jeopardizing the financial security of the subject person(s).

This bill also makes confidential and exempt from public inspection and copying requirements certain sensitive business information held by DFS which is protected from public records disclosure requirements if held by the Office of Insurance Regulation (OIR). Disclosure of the exempted information, which includes Own-Risk and Solvency Assessment (ORSA) summary reports, corporate governance annual disclosures, and information received from the NAIC and other governmental entities, would injure the subject insurer or insurance group in the marketplace by providing competitors with confidential business information.

Pursuant to the Open Government Sunset Review Act, this public records exemption is scheduled to repeal October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The DFS will incur some costs associated with redacting exempt and confidential and exempt information in response to public records requests.

This bill takes effect July 1, 2020.

## II. Present Situation:

### Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>14</sup> Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

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<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>15</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>26</sup>

### **Transfer of Records upon Delinquency Proceedings**

Along with the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR) is tasked with enforcing the provisions of the Florida Insurance Code, chs. 624-632, 634-636, 641-642, 648 and 651, F.S.<sup>27</sup> OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each authorized insurer.<sup>28</sup> In the event that the OIR determines

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<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> See Sections 624.307(1) and 624.01, F.S.

<sup>28</sup> Section 624.316(1)(a), F.S.

that one or more grounds<sup>29</sup> for the initiation of delinquency proceedings against an insurer exist, such as insolvency,<sup>30</sup> the Insurers Rehabilitation and Liquidation Act<sup>31</sup> requires the Director of the OIR to notify DFS of that determination, and to provide DFS with all necessary documentation and evidence, thereby enabling DFS to initiate the delinquency proceeding.<sup>32</sup> This documentation and evidence may include confidential and sensitive information. Upon such notice, DFS is tasked with initiating delinquency proceedings pursuant to ch. 631, F.S., which constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.<sup>33</sup>

The nature of DFS's statutory duties regarding delinquency proceedings require DFS to assume custodianship of insurer records. When DFS is appointed as receiver of an insurer during the course of a delinquency proceeding, Florida Statutes expressly vest DFS with the title to all of the property of the insurer, including all of the books and records, wherever located.<sup>34</sup> Similarly, orders to rehabilitate or liquidate a domestic insurer must direct DFS to take possession of the property of the insurer.<sup>35</sup> Orders to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be on the same terms as those prescribed for domestic insurers, but DFS only takes possession of the assets within that branch.<sup>36</sup> Orders to conserve the assets of a foreign or alien insurer likewise must require DFS to take possession of the property of the insurer within this state.<sup>37</sup>

### **Consumer Personal Financial and Health Information**

Insurance companies routinely possess records of policyholders and claimants during the normal course of business which include personal, private financial and medical information.<sup>38</sup> Such information held by solvent insurers is not freely available to any person or entity. If such

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<sup>29</sup> Grounds for rehabilitation generally include, but are not limited to, impairment, insolvency, failure to comply with OIR orders or to submit records for examination, and other violations of law. *See* Section 631.051, F.S. Grounds for liquidation include imminent or actual insolvency, an attempt or actual commencement of voluntary liquidation or dissolution, and a failure to timely complete organization and obtain a certificate of authority. Section 631.061, F.S. DFS may also apply to the circuit court for an order appointing it as ancillary receiver of, and directing it to liquidate the business and assets of, a foreign insurer which has assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer. Section 631.091, F.S. Grounds for conservation of foreign insurers include the same as those for rehabilitation and liquidation, or when the insurer's property has been sequestered in its domiciliary sovereignty or in any other sovereignty. Section 631.071, F.S. Grounds for the conservation of alien insurers are the same, but additionally include an insurer's failures to timely comply with an OIR order to make good an impairment of trusteed funds. Section 631.081, F.S.

<sup>30</sup> "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. Section 631.011(14), F.S. Depending on the context, insolvency also includes and is defined as "impairment of surplus" and "impairment of capital" as defined in s. 631.011(13) and (12), F.S., respectively. *Id.*

<sup>31</sup> Part I of Chapter 631, F.S.

<sup>32</sup> Section 631.031(1), F.S.

<sup>33</sup> Section 631.021(3), F.S.

<sup>34</sup> *See* s. 631.141(1)-(2), F.S.

<sup>35</sup> *See* ss. 631.101 and 631.111, F.S., respectively.

<sup>36</sup> Section 631.121, F.S.

<sup>37</sup> Section 631.131(1), F.S.

<sup>38</sup> Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).

records are made available, it is usually through confidentiality agreements or court orders, and with reference to certain state and federal privileges and confidentiality laws and regulations.<sup>39</sup> The Legislature often enacts public records exemptions to restrict disclosure of private financial and medical information, an example of which is found in s. 624.23, F.S., which makes confidential and exempt the personal financial and health information held by the DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S.

### **ORSA Summary Reports, Corporate Governance Annual Disclosures, and NAIC Information**

Section 624.4212(3)(a)-(b), F.S., provides that, except for information obtained by the OIR that would otherwise be available for public inspection, the following information held by the OIR is confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- *ORSA Reports.* Own-Risk and Solvency Assessments (ORSA) are internal assessments conducted by insurers and insurance groups of the material and relevant risks associated with their business plan and the sufficiency of their capital resources to support those risks.<sup>40</sup> An ORSA Summary Report is a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.<sup>41</sup> Insurers are required to conduct an ORSA at least annually.<sup>42</sup> Unless an insurer or insurance group is exempted from this requirement or compliance is otherwise waived, insurers must submit an ORSA summary report to the OIR once every calendar year.<sup>43</sup>
- *Corporate Governance Annual Disclosures.* Corporate governance annual disclosures are reports filed with the OIR by insurers and insurance groups which describe the corporate governance framework and structure of the insurer or insurance group, the policies and practices for directing senior management and of the most senior governing entity and its significant committees, and the processes by which the board, its committees, and senior management ensure the appropriate amount of oversight to critical risk areas that impact the insurer's business activities.<sup>44</sup> Insurers, or insurer members of an insurance group of which the OIR is the lead state regulator, must submit corporate governance annual disclosure to the OIR annually.<sup>45</sup>

In addition to being confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution, both ORSA summary reports and corporate governance annual disclosures, along with related documents, are considered privileged and confidential. OIR may not produce these documents in response to a subpoena or other discovery directed to the OIR, and any such filings and related documents are not admissible as evidence in any private civil action. Disclosure of these records to the OIR under any provision of the

<sup>39</sup> *Id.*

<sup>40</sup> Section 628.8015(1)(d), F.S.

<sup>41</sup> Section 628.8015(1)(f), F.S.

<sup>42</sup> Section 628.8015(2)(b), F.S.

<sup>43</sup> Section 628.8015(2)(c)1.a.(I), F.S. *See* Section 628.8015(2)(d), F.S., for exemptions, and s. 628.8015(2)(e), F.S., for waiver requirements.

<sup>44</sup> Section 628.8015(1)(a) and (3)(c)4.a.-d., F.S.

<sup>45</sup> Section 628.8015(3)(b)1.a.-c., F.S.

Insurance Code or by the OIR pursuant to an exception of the public records exemption does not constitute a waiver of any applicable claim of privilege. The OIR, and any person in receipt of these documents while acting under the authority of the OIR, are not permitted or required to testify in any civil action concerning the documents.<sup>46</sup>

Section 624.4212(4), F.S., provides that information received from the National Association of Insurance Commissioners (NAIC), a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity, and which is held by the OIR for use in the performance of its duties relating to insurer valuation and solvency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

There are limited circumstances under which the OIR may disclose this confidential and exempt information, including:

- Upon the prior written consent of the subject insurer;
- Pursuant to a court order;
- To the Actuarial Board for Counseling and Discipline, upon a request stating that the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory for preserving the confidentiality of the information;
- To other states, federal and international agencies, the NAIC and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805, F.S., if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has certified in writing its legal authority to maintain such confidentiality; and
- For the purpose of aggregating information on an industrywide basis and disclosing the information to the public, only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.<sup>47</sup>

The Public Records Act is liberally construed in favor of open government, and public records exemptions are construed narrowly and limited to their stated purpose.<sup>48</sup> The above exemptions expressly apply to ORSA summary reports, corporate governance annual disclosures, and information from NAIC or another government entity when held by OIR. Currently, no public records exemption exists for these records when held by DFS.

### III. Effect of Proposed Changes:

**Section 1** creates s. 631.195, F.S. Subsection (1) provides definitions of “consumer” and “personal financial and health information.” “Consumer” is defined to encompass prospective purchasers, purchasers, beneficiaries of, and applicants for any insurance product or service, along with the family members and dependents of such persons. “Personal financial and health information” includes information regarding a consumer’s personal health condition, disease, or injury; any history of a consumer’s personal medical diagnosis or treatment; the existence, identification, nature, or value of a consumer’s assets, liabilities, or net worth; the existence or

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<sup>46</sup> Section 628.8015(4), F.S.

<sup>47</sup> Section 624.4212(5)(a)-(e), F.S.

<sup>48</sup> *Marino v. University of Florida*, 107 So. 3d 1231, 1233 (Fla. 1<sup>st</sup> DCA 2013).

content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; and the existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Subsection (2) designates certain insurer records made or received by DFS while acting as receiver as confidential and exempt from the public records disclosure requirements of from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. These records include personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents, and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity. The exemptions would create parity for policy holders and claimants regardless of the solvency of their insurance provider.<sup>49</sup>

Subsection (3) provides that the exemptions in subsection (2) applies retroactively to those records held by DFS before the date the bill takes effect, along with those records held by DFS on or after that date.

Subsection (4) describes the circumstances under which the records made confidential and exempt by subsection (2) may be released. Disclosure of these records is authorized upon the following circumstances:

- Upon the written request of any state or federal agency, but only if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Receiving agencies are required to maintain the confidential and exempt status of those records.
- When required by a properly authorized civil, criminal, or regulatory investigation, a subpoena, or a summons issued by a federal, state or local authority;
- When released to the NAIC and its affiliates or subsidiaries, but only if the recipient agrees in writing to maintain the confidential and exempt status of the records;
- When released to the guaranty associations and funds of the various states who are receiving, adjudicating, and paying the claims of an insolvent insurer upon delinquency proceedings. Recipients are required to maintain the confidential and exempt status of the records.
- Upon the written request of a designated employee whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts; and
- Upon the written request of a consumer or their legally authorized representative, DFS may release the personal financial and health information of that consumer.

Subsection (5) provides that the section is subject to the Open Government Sunset Review Act, and shall stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature.

**Section 2** provides public necessity statements describing the justifications for the exemptions in Section 1. Subsection (1) lists the information the legislature has found it a public necessity to hold confidential and exempt: personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents,

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<sup>49</sup> Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).



and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity.

Subsection (2)(a) indicates that disclosure of the specified financial, health, underwriting, personnel, payroll, and consumer claim information would create the opportunity for theft and fraud, and thereby jeopardize the financial security of the subject person. Limiting disclosure of such information held by DFS protects the financial interests of the subject persons, and recognizes the expectation of and right to privacy in all matters concerning a person's financial interests. Furthermore, matters of personal health are traditionally private and disclosure may have a negative effect on a person's business and personal relationships, and could result in detrimental financial consequences.

Subsection (2)(b) states that ORSA reports, or substantially similar ORSA reports, and the supporting documents contain highly sensitive and strategic information about an insurer or insurance group which provides the OIR with an effective early warning mechanism for preventing insolvencies, assisting the OIR to protect policy holders and promote a stable insurance market. However, public disclosure of this information would injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and market strategies, management systems, and operational protocols.

Subsection (2)(c) states that corporate governance annual disclosures describe the governance structure and internal practices and procedures used in conducting the business affairs of insurers. Insurers use this information to make strategic operational decisions affecting their competitive position, and to manage their financial condition; regulators utilize this information to promote market integrity. Given the sensitive nature of the information, is a public necessity to make such information confidential and exempt, as release would injure the subject insurers or insurance group in the marketplace by providing competitors with confidential business information.

Subsection (2)(d) states that divulgence of confidential or exempt information received from the NAIC or other governments could impede the exchange of information and communication among regulators, thus jeopardizing the ability of regulators to effectively supervise insurers.

Subsection (3) declares that the harm that may result from the release of any of the described information outweighs any public benefit from disclosure of the information.

**Section 3** provides that the bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:*****Vote Requirement***

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for certain records held by DFS, including financial, health, underwriting, personnel, payroll, and consumer claim information, ORSA summary reports, corporate governance annual disclosures, and confidential information received from NAIC and other governmental entities. Thus, the bill requires a two-thirds vote to be enacted.

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for justifying the exemption.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions for financial, health, underwriting, personnel, payroll, and consumer claim information is to protect insurance consumers and employees from fraud, identity theft, and other harm that may result from public disclosure of their financial interests. The purpose of the exemptions for ORSA reports and corporate governance annual disclosures is to protect insurers and insurance groups from competitive harm in the marketplace resulting from public disclosure of confidential business information. The purpose of exempting information received from NAIC or other governmental entities is to encourage the exchange of information among regulators, thereby protecting their ability to effectively supervise insurers and insurance groups. This bill exempts only traditionally private health and financial information and confidential business information from the public records requirements. These exemptions do not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

**C. Government Sector Impact:**

The DFS will incur minor costs relating to the redaction of exempt records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 631.195 of the Florida Statutes.

**Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on February 19, 2020:**

The CS revises the public necessity statement to remove an extra word for clean-up purposes.

**CS by Governmental Oversight and Accountability on February 3, 2020:**

The CS amends the exemptions to hold personal health and financial information, personnel and payroll files, and other sensitive insurance documents confidential as well as exempt. The CS further combines subsections two and three of the original bill's first section for clarity. Finally, the CS revises the public necessity statement to match the content and structure of the exemption itself.

**B. Amendments:**

None.