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CS/HB 1409

2020 Legislature

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 2 An act relating to public records; creating s.
 3 631.195, F.S.; defining the terms "consumer" and
 4 "personal financial and health information"; exempting
 5 from public records requirements certain records made
 6 or received by the Department of Financial Services
 7 acting as receiver pursuant to specified provisions;
 8 providing that such records comprise consumer personal
 9 financial and health information, certain underwriting
 10 files, insurer personnel and payroll records, consumer
 11 claim files, certain reports and documents held by the
 12 department relating to insurer own-risk, solvency
 13 assessments, corporate governance annual disclosures,
 14 and certain information received from the National
 15 Association of Insurance Commissioners or governments;
 16 providing retroactive applicability; providing that
 17 exempted records may be released under specified
 18 circumstances; providing for future legislative review
 19 and repeal of the exemptions; providing statements of
 20 public necessity; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

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 24 Section 1. Section 631.195, Florida Statutes, is created
 25 to read:

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26 | 631.195 Records of insurers; public records exemptions.-

27 | (1) As used in this section, the term:

28 | (a) "Consumer" means a prospective purchaser of, a
 29 | purchaser of, a beneficiary of, or an applicant for any
 30 | insurance product or service. The term also includes a family
 31 | member or dependent of such person.

32 | (b) "Personal financial and health information" means:

33 | 1. A consumer's personal health condition, disease, or
 34 | injury;

35 | 2. A history of a consumer's personal medical diagnosis or
 36 | treatment;

37 | 3. The existence, nature, source, or amount of a
 38 | consumer's personal income or expenses;

39 | 4. Records of, or relating to, a consumer's personal
 40 | financial transactions of any kind;

41 | 5. The existence, identification, nature, or value of a
 42 | consumer's assets, liabilities, or net worth;

43 | 6. The existence or content of, or any individual coverage
 44 | or status under a consumer's beneficial interest in, any
 45 | insurance policy or annuity contract; or

46 | 7. The existence, identification, nature, or value of a
 47 | consumer's interest in any insurance policy, annuity contract,
 48 | or trust.

49 | (2) The following records, in whatever form, of an insurer
 50 | which are made or received by the department, acting as receiver

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51 pursuant to this chapter, are confidential and exempt from s.
 52 119.07(1) and s. 24(a), Art. I of the State Constitution:

53 (a) All personal financial and health information of a
 54 consumer.

55 (b) Underwriting files of a type customarily maintained by
 56 an insurer transacting lines of insurance similar to those lines
 57 transacted by the insurer.

58 (c) Personnel and payroll records of the insurer.

59 (d) Consumer claim files.

60 (e) An own-risk and solvency assessment (ORSA) summary
 61 report, a substantially similar ORSA summary report, and
 62 supporting documents submitted to the office pursuant to s.
 63 628.8015.

64 (f) A corporate governance annual disclosure and
 65 supporting documents submitted to the office pursuant to s.
 66 628.8015.

67 (g) Information received from the National Association of
 68 Insurance Commissioners, a governmental entity in this or
 69 another state, the Federal Government, or a government of
 70 another nation which is confidential or exempt if held by that
 71 entity and which is held by the department for use in the
 72 performance of its duties relating to insurer solvency.

73 (3) The exemptions in subsection (2) apply to records held
 74 by the department before, on, and after July 1, 2020.

75 (4) Records or portions of records made confidential and

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76 exempt by this section may be released under any of the
 77 following circumstances:

78 (a) To any state or federal agency, upon written request,
 79 if disclosure is necessary for the receiving entity to perform
 80 its duties and responsibilities. The receiving agency shall
 81 maintain the confidential and exempt status of such record or
 82 portion of such record.

83 (b) To comply with a properly authorized civil, criminal,
 84 or regulatory investigation or a subpoena or summons by a
 85 federal, state, or local authority.

86 (c) To the National Association of Insurance Commissioners
 87 and its affiliates and subsidiaries, if the recipient agrees in
 88 writing to maintain the confidential and exempt status of the
 89 records.

90 (d) To the guaranty associations and funds of the various
 91 states which are receiving, adjudicating, and paying claims of
 92 the insolvent insurer subject to delinquency proceedings
 93 pursuant to this chapter. The receiving guaranty association
 94 shall maintain the confidential and exempt status of such record
 95 or portion of such record.

96 (e) Upon written request, to persons identified as
 97 designated employees as described in s. 626.989(4)(d), whose
 98 responsibilities include the investigation and disposition of
 99 claims relating to suspected fraudulent insurance acts.

100 (f) In the case of personal financial and health

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101 information of a consumer, upon written request of the consumer
 102 or the consumer's legally authorized representative.

103 (5) This section is subject to the Open Government Sunset
 104 Review Act in accordance with s. 119.15 and shall stand repealed
 105 on October 2, 2025, unless reviewed and saved from repeal
 106 through reenactment by the Legislature.

107 Section 2. (1) The Legislature finds it is a public
 108 necessity to make confidential and exempt from s. 119.07(1),
 109 Florida Statutes, and s. 24(a), Article I of the State
 110 Constitution:

111 (a) All personal financial and health information of a
 112 consumer;

113 (b) Underwriting files of a type customarily maintained by
 114 an insurer transacting lines of insurance similar to those lines
 115 transacted by the insurer;

116 (c) Personnel and payroll records of an insurer;

117 (d) Consumer claim files;

118 (e) An own-risk and solvency assessment (ORSA) summary
 119 report, a substantially similar ORSA summary report, and
 120 supporting documents submitted to the Office of Insurance
 121 Regulation pursuant to s. 628.8015, Florida Statutes;

122 (f) A corporate governance annual disclosure and
 123 supporting documents submitted to the office pursuant to s.
 124 628.8015, Florida Statutes; and

125 (g) Information received from the National Association of

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126 Insurance Commissioners, a governmental entity in this or
127 another state, the Federal Government, or a government of
128 another nation which is confidential or exempt if held by that
129 entity and which is held by the Department of Financial Services
130 for use in the performance of its duties relating to insurer
131 solvency.

132 (2) (a) Disclosure of financial, health, underwriting,
133 personnel, payroll, or consumer claim information would create
134 the opportunity for theft or fraud, thereby jeopardizing the
135 financial security of a person. Limiting disclosure of such
136 information held by the department is also necessary in order to
137 protect the financial interests of the persons to whom that
138 information pertains. Such information could be used for
139 fraudulent or other illegal purposes, including identity theft,
140 and could result in substantial financial harm. Furthermore,
141 every person has an expectation of and a right to privacy in all
142 matters concerning his or her financial interests. Additionally,
143 matters of personal health are traditionally private and
144 confidential concerns between the patient and his or her health
145 care provider. The private and confidential nature of personal
146 health matters pervades both the public and private health care
147 sectors. Public disclosure of health information could have a
148 negative effect upon a person's business and personal
149 relationships and could also have detrimental financial
150 consequences.

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151 (b) In conducting an ORSA, an insurer or insurance group
152 identifies and evaluates the material and relevant risks to the
153 insurer or insurance group and the adequacy of capital resources
154 to support these risks. The ORSA summary report, substantially
155 similar ORSA report, and supporting documents contain highly
156 sensitive and strategic financial information about an insurer
157 or insurer group. Having a comprehensive and unbiased assessment
158 provides the office with an effective early warning mechanism
159 for preventing insolvencies and protecting policyholders and
160 promotes a stable insurance market. Divulging the ORSA summary
161 report, substantially similar ORSA summary report, and
162 supporting documents will injure the insurer or insurance group
163 by providing competitors with detailed insight into their
164 financial position, risk management strategies, business plans,
165 pricing and marketing strategies, management systems, and
166 operational protocols.

167 (c) The corporate governance annual disclosure describes
168 an insurer's governance structure and the internal practices and
169 procedures used in conducting the business affairs of the
170 company, making strategic operational decisions affecting its
171 competitive position, and managing its financial condition.
172 Release of the corporate governance annual disclosure and
173 supporting documents will injure the insurer or insurance group
174 in the marketplace by providing competitors with the insurer's
175 or the insurance group's confidential business information.

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176 Broad disclosure will give state regulators a thorough
177 understanding of the corporate governance structure and internal
178 policies and practices used by insurers and promote market
179 integrity. Effective governance mechanisms will enable insurers
180 to take any necessary corrective actions and achieve strategic
181 goals while allowing the office to perform its regulatory duties
182 effectively and efficiently.

183 (d) Divulgence of confidential or exempt information
184 received from the National Association of Insurance
185 Commissioners or governments could impede the exchange of
186 information and communication among regulators across multiple
187 agencies and jurisdictions and jeopardize the ability of
188 regulators to effectively supervise insurers and groups
189 operating in multiple jurisdictions and engaged in significant
190 cross-border activities.

191 (3) The Legislature finds that the harm that may result
192 from the release of such information outweighs any public
193 benefit that may be derived from the disclosure of the
194 information.

195 Section 3. This act shall take effect July 1, 2020.