

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 991 Pub. Rec./Cellular Telephone Numbers and Secure Login Credentials Held by the Department of Financial Services

**SPONSOR(S):** LaMarca

**TIED BILLS:** CS/HB 989 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Herrera	Lloyd
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Rando	Toliver
3) Commerce Committee			

### SUMMARY ANALYSIS

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner. DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters.

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials, held by the DFS, associated with a person's application for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state government. See Fiscal Comments.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

#### **Public Records**

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law an exemption<sup>2</sup> from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>3</sup>

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>4</sup> Furthermore, the Open Government Sunset Review (OGSR) Act<sup>5</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>6</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>7</sup>

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>8</sup>

#### **Organization of the Department of Financial Services**

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,<sup>9</sup> and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance were merged to form DFS. DFS consists of 13 divisions and several specialized offices.<sup>10</sup> DFS is composed of the following divisions and independent office:

- Accounting and Auditing;

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> See s. 119.01, F.S.

<sup>5</sup> S. 119.15, F.S.

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

<sup>7</sup> *Id.*

<sup>8</sup> S. 119.15(3), F.S.

<sup>9</sup> Art. IV, s. 4, Fla. Const.

<sup>10</sup> S. 20.121, F.S.

- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;<sup>11</sup>
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

### **Division of Insurance Agent and Agency Services**

DFS has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.<sup>12</sup> DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Consumer Services. The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,<sup>13</sup> administration of workers' compensation health care delivery system,<sup>14</sup> data collection,<sup>15</sup> and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.<sup>16</sup> DFS also administers the rehabilitation and liquidation of insolvent insurers.

No person may be, act as, or advertise, or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.<sup>17</sup> There are several types of insurance representatives. These include:

- General lines agents;
- Life insurance agents;
- Health insurance agents;
- Title insurance agents;
- Personal lines agents; and
- Unaffiliated insurance agents.<sup>18</sup>

### **General Lines Agent**

A general lines agent<sup>19</sup> is one who sells the following lines of insurance: property;<sup>20</sup> casualty,<sup>21</sup> including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance

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<sup>11</sup> This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.

<sup>12</sup> See, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4103#:~:text=The%20office%20protects%20the%20public,entrants%20to%20the%20Florida%20market> (last visited Jan. 25, 2024).

<sup>13</sup> S. 440.107(3), F.S.

<sup>14</sup> S. 440.13, F.S.

<sup>15</sup> Ss. 440.185 and 440.593, F.S.

<sup>16</sup> S. 440.191, F.S.

<sup>17</sup> S. 626.112, F.S.

<sup>18</sup> S. 626.015, F.S.

<sup>19</sup> S. 626.015(7), F.S.

<sup>20</sup> S. 624.604, F.S.

<sup>21</sup> S. 624.605, F.S.

fund,<sup>22</sup> or a workers' compensation self-insurance fund;<sup>23</sup> surety;<sup>24</sup> health;<sup>25</sup> and, marine.<sup>26</sup> The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.<sup>27</sup>

### Title Agents and Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>28</sup>

### Public Adjusters

A public adjuster, excluding duly licensed attorneys, is any individual who, for compensation or any other valuable consideration, directly or indirectly prepares, completes, or submits an insurance claim for an insured or third-party claimant.<sup>29</sup> Additionally, it includes those who, for compensation, act on behalf of or assist an insured or third-party claimant in negotiating or settling a covered insurance claim.<sup>30</sup> The term also encompasses individuals advertising as adjusters for such claims, as well as those who, for compensation, solicit, investigate, or adjust these claims on behalf of the public adjuster, an insured, or a third-party claimant.<sup>31</sup>

### **Effect of the Bill**

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials<sup>32</sup> held by the DFS pertaining to applications for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The bill provides such telephone numbers and secure login credentials are exempt<sup>33</sup> from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

The exemption is subject to the OGSR Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

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<sup>22</sup> As defined in s. 624.462, F.S.

<sup>23</sup> Pursuant to s. 624.4621, F.S.

<sup>24</sup> S. 626.606, F.S.

<sup>25</sup> S. 624.603, F.S.

<sup>26</sup> S. 624.607, F.S.

<sup>27</sup> S. 626.829, F.S.

<sup>28</sup> S. 627.786, F.S.

<sup>29</sup> S. 626.854(1), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> The bill defines the term "secure login credential" to mean information held by the DFS for purposes of authenticating a user's logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible via the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

<sup>33</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).

The bill is effective upon the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof becomes law.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Contains unnumbered section of law.

**Section 4.** Provides that the bill is effective on the same date as HB 989 or similar bill takes effect.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on the DFS, as staff responsible for complying with public record requests may require training related to the newly-created public record exemption. However, any additional costs will likely be absorbed within existing resources.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states that the Legislature finds, in part, that without the public record exemption, the effective and efficient administration of the electronic filing system would be hindered.

### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for cellular telephone numbers and secure login credentials held by the DFS associated with insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The purpose of the exemption is to protect sensitive personal information linked to individuals in these roles, that the DFS receives for the purpose of electronic filing or record review. As such, the bill appears to be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**