

Committee Substitute for Senate Bill No. 2158

An act relating to public records; creating s. 631.582, F.S.; providing an exemption from public-records requirements for specified claims files, medical records that are part of a claims file, information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications of the Florida Insurance Guaranty Association; providing for limited duration of the exemption for claims files; providing for release of records under specified conditions; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 631.582, Florida Statutes, is created to read:

631.582 Public-records exemption.—

(1) The following records of the Florida Insurance Guaranty Association are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Claims files, until termination of all litigation, settlement, and final closing of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law.

(b) Medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant.

(c) Records pertaining to matters reasonably encompassed in privileged attorney-client communications.

(2) Records or portions of records made confidential and exempt by this section may be released, upon written request, to any state agency in the performance of that agency's official duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of such record.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. It is the finding of the Legislature that it is a public necessity that specified claims files, medical records that are part of a claims file, information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications of the Florida Insurance Guaranty Association be held confidential and exempt from public-records requirements. The Legislature finds that the Florida Insurance Guaranty Association was created to stand in the place of private property and casualty

insurers if any such insurers become insolvent. The Legislature finds that the exemption from public-records requirements for open claims files of the association is necessary for the effective and efficient administration of a government program created to insure policyholders with claims against insolvent insurers. Claims files are created by the insurer or the association after a claim against one of the insolvent insurers is made. Claims files contain detailed information about the claim, personal information about the policyholder or claimant, information detailing the evaluation of the legitimacy of the claim, and a valuation of the award, if any, that should be made. Personal information in a claims file may include information as to a policyholder's personal finances, the value and nature of the policyholder's assets, the architectural plans of a residential or commercial structure, medical records and other information related to the medical condition or medical status of a claimant, and other information of a sensitive nature. The Legislature finds that policyholders of a private market insurer have an expectation that sensitive personal information pertaining to them will be kept confidential and that this privacy should not be abrogated due to the fact that the insurer is later rendered insolvent. Additionally, medical records of a claimant or personal identifying information concerning a claimant would violate the privacy of the individual and could cause unwarranted damage to his or her name and reputation. When a claim is contested, the work product of legal counsel may also be included in the file in the form of direction to claims professionals. Allowing the claimant or the claimant's attorneys access to the files, which could be used for purposes of negotiation, claim evaluation, and settlement considerations, would weaken the legal position of the association and could result in higher awards and settlements paid out by the association, which would ultimately be passed on to Floridians through increased assessments on their insurance policies.

Section 3. This act shall take effect July 1, 2009.

Approved by the Governor June 16, 2009.

Filed in Office Secretary of State June 16, 2009.