

CHAPTER 2020-142

Committee Substitute for House Bill No. 1409

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

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

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

631.195 Records of insurers; public records exemptions.—

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

(a) “Consumer” means a prospective purchaser of, a purchaser of, a beneficiary of, or an applicant for any insurance product or service. The term also includes a family member or dependent of such person.

(b) “Personal financial and health information” means:

1. A consumer’s personal health condition, disease, or injury;
2. A history of a consumer’s personal medical diagnosis or treatment;
3. The existence, nature, source, or amount of a consumer’s personal income or expenses;
4. Records of, or relating to, a consumer’s personal financial transactions of any kind;
5. The existence, identification, nature, or value of a consumer’s assets, liabilities, or net worth;
6. The existence or content of, or any individual coverage or status under a consumer’s beneficial interest in, any insurance policy or annuity contract; or

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

(2) The following records, in whatever form, of an insurer which are made or received by the department, acting as receiver pursuant to this chapter, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

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

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

(c) Personnel and payroll records of the insurer.

(d) Consumer claim files.

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

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

(g) Information received from the National Association of Insurance Commissioners, 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 department for use in the performance of its duties relating to insurer solvency.

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

(4) Records or portions of records made confidential and exempt by this section may be released under any of the following circumstances:

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

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

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

(d) To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer

subject to delinquency proceedings pursuant to this chapter. The receiving guaranty association shall maintain the confidential and exempt status of such record or portion of such record.

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

(f) In the case of personal financial and health information of a consumer, upon written request of the consumer or the consumer’s legally authorized representative.

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

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

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

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

(c) Personnel and payroll records of an insurer;

(d) Consumer claim files;

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

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

(g) Information received from the National Association of Insurance Commissioners, 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 Department of Financial Services for use in the performance of its duties relating to insurer solvency.

(2)(a) Disclosure of financial, health, underwriting, personnel, payroll, or consumer claim information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of a person. Limiting disclosure of such information held by the department is also necessary in order to protect

the financial interests of the persons to whom that information pertains. Such information could be used for fraudulent or other illegal purposes, including identity theft, and could result in substantial financial harm. Furthermore, every person has an expectation of and a right to privacy in all matters concerning his or her financial interests. Additionally, matters of personal health are traditionally private and confidential concerns between the patient and his or her health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Public disclosure of health information could have a negative effect upon a person's business and personal relationships and could also have detrimental financial consequences.

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

(c) The corporate governance annual disclosure describes an insurer's governance structure and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the corporate governance annual disclosure and supporting documents will injure the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information. Broad disclosure will give state regulators a thorough understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

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

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

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

Approved by the Governor June 29, 2020.

Filed in Office Secretary of State June 29, 2020.