

# FLORIDA HOUSE OF REPRESENTATIVES

## FINAL BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [HB 7011](#) [PCB GOS 25-06](#)

**TITLE:** OGSR/Records of Insurers/Department of Financial Services

**SPONSOR(S):** Government Operations Subcommittee, Gentry

**COMPANION BILL:** [CS/SB 7010](#) (Sharief)

**LINKED BILLS:** None

**RELATED BILLS:** None

**FINAL HOUSE FLOOR ACTION:** 114 Y's

0 N's

**GOVERNOR'S ACTION:**

Pending

### SUMMARY

#### Effect of the Bill:

The bill narrows the public record exemption for certain information made or received by the Department of Financial Services (DFS) while acting as a receiver of insolvent insurers to include only consumer information, certain personnel information, and information received from the National Association of Insurance Commissioners or a government entity. The bill also removes the scheduled repeal date, created pursuant to the Open Government Sunset Review Act, for the public record exemption.

#### Fiscal or Economic Impact:

None.

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

### ANALYSIS

#### **EFFECT OF THE BILL:**

HB 7011 passed as [CS/SB 7010](#). (Please note that bill section parentheticals do not contain hyperlinks to bill sections for Senate bills.)

The bill narrows the [public record exemption](#) for certain information made or received by the Department of Financial Services (DFS) while acting as a receiver of insolvent insurers to include only the following records:

- All personal financial and health information of a consumer.
- Personnel and payroll records of the insurer (except for the names, benefits, and compensation of executive officers).
- Consumer claim files.
- 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 that is confidential or exempt if held by that entity and that is held by DFS for use in the performance of its duties related to insurer insolvency. (Section 1)

The following categories of information made or received by DFS while acting as a receiver of insolvent insurers that are currently protected from disclosure would now, on a prospective basis, be open to the public:

- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.
- [Own-risk and solvency assessment](#) summary reports.
- [Corporate governance annual disclosures](#).
- The names, benefits, and compensation of executive officers. (Section 1)

The bill removes the scheduled repeal date of the exemption, created pursuant to the [Open Government Sunset Review Act](#). The public record exemption will repeal on October 2, 2025, if the bill does not become law. (Section 1)

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2025. (Section 2)

**STORAGE NAME:** h7011z.GOS

**DATE:** 5/7/2025

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### Open Government Sunset Review (OGSR) Act

The OGSR Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet 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.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

#### Regulation of Insurance in Florida: Solvency Regulation

The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR), administratively housed within the Department of Financial Services (DFS), oversees insurers and other risk-bearing entities. OIR's regulatory oversight includes responsibilities related to licensing, rates, policy forms, market conduct, claims, solvency, and premium financing. Solvency regulation aims to protect policyholders by ensuring that insurers can meet their financial obligations, particularly the payment of claims. Solvency regulations encompass initial and ongoing requirements that an insurer must meet for it to have the authority to operate in this state. Moreover, solvency regulations allow OIR to monitor an insurer's financial health through examinations and audits. If an insurer is found to be financially unsound or insolvent, current law provides procedures for the rehabilitation or liquidation of those insurers.<sup>5</sup>

#### National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is a U.S. standard-setting and regulatory support organization governed by state insurance regulators. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.<sup>6</sup> As a member of the NAIC, OIR is required to participate in the organization's Financial Regulation Standards and Accreditation Program.<sup>7</sup> The NAIC accreditation certifies that a state insurance department meets legal, regulatory, and organizational oversight standards to ensure sound financial solvency regulation of insurers.

The NAIC has adopted insurance model acts that give state insurance regulators like OIR solvency regulatory tools, such as the own-risk and solvency assessment (ORSA) and the corporate governance annual disclosure (CGAD).<sup>8</sup>

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<sup>1</sup> S. [119.15, F.S.](#)

<sup>2</sup> S. [119.15\(3\), F.S.](#)

<sup>3</sup> S. [119.15\(6\)\(b\), F.S.](#)

<sup>4</sup> [Art. I, s. 24\(c\), FLA. CONST.](#)

<sup>5</sup> See ch. [631, F.S.](#)

<sup>6</sup> See NAIC, [About the NAIC](#) (last visited Feb. 5, 2025).

<sup>7</sup> See NAIC, [Financial Regulation Standards and Accreditation Program](#) (last visited Feb. 5, 2025).

<sup>8</sup> See [s. 628.8015, F.S.](#)

## Own-risk and Solvency Assessment

An ORSA<sup>9</sup> is an internal evaluation conducted by an insurer or insurance group to assess the material and relevant risks associated with its business plan and determine whether its capital resources are sufficient to support those risks. NAIC developed the ORSA Model Act, which requires insurers to submit an ORSA report to the regulatory entity of their state. To ensure uniform adoption, the NAIC made compliance with the ORSA Model Act an accreditation requirement for member states by 2018. In 2016, the Legislature adopted major components of the ORSA Model Act.<sup>10</sup> Pursuant to this legislation, insurers are required to conduct an ORSA at least annually or whenever there are significant changes to their risk profile.<sup>11</sup> They must also maintain a risk management framework to identify, assess, monitor, manage, and report on material risks. Additionally, insurers must file an annual ORSA summary report with OIR, which must include a brief description of material changes and updates from the prior year's report. The report must be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process and prepared in accordance with the NAIC ORSA Guidance Manual. Insurers are also required to maintain supporting documentation and make it available for examination by OIR.<sup>12</sup>

## Corporate Governance Annual Disclosure

The NAIC also created the Corporate Governance Model Act to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through the CGAD.<sup>13</sup> In 2016, the Legislature mandated that insurers submit CGADs to OIR by June 1 of each year.<sup>14</sup> The CGAD must describe the:

- Corporate governance framework and structure of the insurer or insurance group.
- Policies and practices of the most senior governing entity and significant committees.
- Policies and practices for directing senior management.
- Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer's business activities.<sup>15</sup>

The chief executive officer or corporate secretary of the insurer or insurance group must sign the CGAD attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.<sup>16</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. If such 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.

## Transfer of Records upon Delinquency Proceedings

OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each authorized insurer.<sup>17</sup> In the event that OIR determines that one or more grounds for the initiation of delinquency proceedings against an insurer exist, such as insolvency,<sup>18</sup> the Insurers Rehabilitation and Liquidation Act<sup>19</sup> requires the Director of OIR to notify DFS of that determination and to provide DFS with all necessary documentation and

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<sup>9</sup> S. [628.8015\(1\)\(d\), F.S.](#)

<sup>10</sup> Ch. [2016-206, L.O.F.](#)

<sup>11</sup> S. [628.8015\(2\), F.S.](#)

<sup>12</sup> *Id.*

<sup>13</sup> Section [628.8015\(1\)\(a\), F.S.](#), defines CGAD to mean a report filed by an insurer or insurance group in accordance with [s. 628.8015, F.S.](#)

<sup>14</sup> Ch. [2016-206, L.O.F.](#)

<sup>15</sup> S. [628.8015\(3\)\(c\)4., F.S.](#)

<sup>16</sup> S. [628.8015\(3\)\(b\)2., F.S.](#)

<sup>17</sup> S. [624.316\(1\)\(a\), F.S.](#)

<sup>18</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. Depending on the context, insolvency also includes and is defined as "impairment of capital" and "impairment of surplus" as defined in s. [631.011\(12\) and \(13\), F.S.](#) S. [631.011\(14\), F.S.](#)

<sup>19</sup> Ch. [631, part I, F.S.](#)

evidence, thereby enabling DFS to initiate the delinquency proceeding.<sup>20</sup> This documentation and evidence may include confidential and sensitive information. In addition, when DFS is appointed as receiver of an insurer during the course of a delinquency proceeding, current law expressly vests DFS with the title to all property of the insurer, including all books and records.<sup>21</sup>

### Public Record Exemptions for Solvent Insurers

Current law provides the following information held by OIR relating to solvent insurers is confidential and exempt<sup>22</sup> from public record requirements:

- Proprietary business information contained in certain documents such as the actuarial opinion summary, principle-based valuation report, enterprise risk report, and insurance holding company registration.
- ORSA summary reports, or a substantially similar ORSA report, and supporting documents.
- CGADs and supporting documents.
- Information received from NAIC, a governmental entity in this or another state, the federal government, or a government of another nation which is confidential and exempt if held by that entity.<sup>23</sup>

In addition, personal financial and health information<sup>24</sup> held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or Florida's Workers' Compensation Law is confidential and exempt from public record requirements.<sup>25</sup>

### Public Record Exemption under Review

In 2020, the Legislature created a public record exemption for certain information relating to insolvent insurers that is similar to the public record exemption for solvent insurers.<sup>26</sup> Specifically, the following information made or received by DFS while acting as receiver is confidential and exempt from public record requirements:

- All personal financial and health information of a consumer.
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.
- Personnel and payroll records of the insurer.
- Consumer claim files.
- ORSA summary reports, substantially similar ORSA summary reports, and supporting documents.
- CGADs and supporting documents.
- Information received from NAIC, a governmental entity in this or another state, the federal government, or a government of another nation which is confidential and exempt if held by that entity.<sup>27</sup>

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<sup>20</sup> S. [631.031\(1\), F.S.](#)

<sup>21</sup> S. [631.141\(1\) and \(2\), F.S.](#)

<sup>22</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 Rivera 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).

<sup>23</sup> S. [624.4212\(2\)-\(4\), F.S.](#) OIR may disclose the foregoing confidential and exempt information if the applicable insurer gives prior written consent; pursuant to a court order; to the Actuarial Board for Counseling and Discipline under specified conditions; to other states, federal and international agencies, the Office of Insurance Consumer Advocate, NAIC and its affiliated subsidiaries, and state, federal, and international law enforcement authorities; or in the aggregate if the identities of the insurers, or persons or affiliated persons, are not revealed. S. [624.4212\(5\), F.S.](#)

<sup>24</sup> S. [624.23\(1\)\(b\), F.S.](#)

<sup>25</sup> S. [624.23\(2\), F.S.](#) The foregoing confidential and exempt information may be disclosed to another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; NAIC; the consumer. S. [624.23\(3\), F.S.](#)

<sup>26</sup> Ch. [2020-142, L.O.F.](#)

<sup>27</sup> S. [631.195\(2\), F.S.](#)

The confidential and exempt information may be released:

- To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.
- To comply with a civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.
- To NAIC and its affiliates and subsidiaries, if the recipient agrees in writing to maintain its confidential and exempt status.
- 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.
- To certain employees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts upon written request.
- In the case of personal financial and health information, upon written request of the consumer or the consumer's legally authorized representative.<sup>28</sup>

In 2020, the public necessity statement<sup>29</sup> for the public record exemption provided, in part, that:

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. . .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. . .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.<sup>30</sup>

Pursuant to the OGSR Act, the exemption will repeal on October 2, 2025, unless reenacted by the Legislature.<sup>31</sup>

During the 2024 interim, House and Senate committee staff met jointly with staff from DFS to discuss the public record exemption under review. DFS staff indicated that they had not had any difficulty interpreting or applying the exemption and were unaware of any litigation concerning the exemption. DFS staff noted the continued necessity for the exemption and recommended the exemption be reenacted as is.

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<sup>28</sup> S. [631.195\(4\), F.S.](#)

<sup>29</sup> [Art. I, s. 24\(c\), FLA. CONST.](#), requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>30</sup> Ch. [2020-142, L.O.F.](#)

<sup>31</sup> S. [631.195\(5\), F.S.](#)