

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 2158

INTRODUCER: Senator Haridopolos

SUBJECT: Public Records Exemption - FIGA

DATE: March 25, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodham	Burgess	BI	<b>Fav/1 amendment</b>
2.			JU	
3.			GO	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input checked="" type="checkbox"/> | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Senate bill 2158 creates a public records exemption for certain documents obtained during the processing of claims by the Florida Insurance Guaranty Association. The bill specifies which records are confidential and exempt, and allows necessary access to those records by other state agencies subject to their confidential and exempt status. The bill states the Legislature's finding that making these records confidential and exempt is a public necessity.

This bill creates following sections of the Florida Statutes: s. 631.582, F.S.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

**II. Present Situation:**

**Public Records; Exemptions**

Section 24(a), Art. I of the State Constitution states:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state,

or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this constitution.

Section 24(c), Art. I of the State Constitution permits the Legislature to create exemptions from the public records law. Any exemption must be no broader than necessary to accomplish its purpose, and any bill creating an exemption must contain a statement of public necessity justifying the exemption. A bill creating an exemption may contain multiple exemptions. However, it may not contain other substantive provisions.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the prior legislative review and repeal of any public records exemptions any or public meetings exemptions created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.15(3), F.S., requires that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption that exemption is repealed on October 2 of the 5th year, unless the Legislature renews the exemption.

### **The Florida Insurance Guaranty Association (FIGA)<sup>1</sup>**

The Florida Insurance Guaranty Association (association) is a non-profit corporation created in 1970 by the Florida Legislature<sup>2</sup> in order to service insurance claims, whether for or against the policyholder, of insurers that have become insolvent and ordered liquidated.

The association covers only amounts of between \$101 and \$300,000 per claim, except with respect to policies covering condominium associations. In such instances the obligation is up to \$100,000 multiplied by the number of condominium units. The association also pays unearned premium claims.

FIGA pays such claims for property and casualty insurance, excluding worker's compensation. The association is funded by assessments levied on authorized property and casualty insurers. The maximum assessment is 2 percent of each affected insurer's net direct written premiums on property and casualty policies in the state for the prior year.

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<sup>1</sup> Part II Chapter 631, F.S. is devoted in its entirety to FIGA.

<sup>2</sup> See s. 631.55(1), F.S. See also <http://www.figafacts.com/about.asp>. Last visited March 22, 2009.

### **III. Effect of Proposed Changes:**

#### **Section 1**

Creates s. 631.582, F.S., and specifies that the following records held by the Florida Insurance Guaranty Association are confidential and exempt from the provisions within s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution:

- Claims files of the association until the termination of all litigation and 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.
- Medical records that are part of a claims file and other information related to the medical condition or medical status of a claimant.
- Records pertaining to matters reasonably encompassed by privilege in attorney-client communication.

The bill allows the release of such records to another agency in the performance of that agency's official duties and responsibilities. The governmental agency receiving such record must maintain the confidentiality and exempt status of the claim file it receives.

The bill provides for future review and repeal of the exemptions on October 1, 2014.

#### **Section 2**

States the Legislature's finding that the specified files and records are confidential and exempt, pursuant to public necessity, and for the effective administration of a government program.

#### **Section 3**

Makes an effective date of July 1, 2009.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

This bill creates a public records exemption. See discussion in analysis.

#### **C. Trust Funds Restrictions:**

None.

#### **D. Other Constitutional Issues:**

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This exemption from public records protects the privacy of individuals whose claims are being processed by FIGA by exempting the claimant's medical information or information relating to the medical condition or status of a claimant.

**C. Government Sector Impact:**

The bill benefits the Florida Insurance Guaranty Association because the release of the information covered by the exemption compromises and complicates the litigation of claims with which the association is involved. Furthermore FIGA's relationship with its legal representatives is now protected under a public records exemption.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:****Barcode 302402 by Banking and Insurance on March 25 2009:**

Passed during committee meeting of March 25, 2009. Amendment inserted the language "and final closing" to line 26 of the bill. This amendment thereby extends the application of the public records exemption created for FIGA claims in this bill until final closing has been made on those claims.