

By the Committee on Regulated Industries and Senator Burt

315-1751-01

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A bill to be entitled
An act relating to public-records exemptions;
creating s. 569.215; providing that proprietary
confidential business information used to
negotiate or verify annual tobacco settlement
payments are exempt from public records
requirements; providing a statement of public
necessity; providing an effective date.

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

Section 1. Section 569.215, Florida Statutes, is
created to read:

569.215 Confidential records relating to tobacco
settlement agreement.--

(1) Proprietary confidential business information
received by the Governor, the Attorney General, or outside
counsel representing the State of Florida in negotiations for
settlement payments pursuant to the settlement agreement, as
amended, in the case of The State of Florida et al. v.
American Tobacco Company et al., Case #95-1466AH, in the
Circuit Court of the Fifteenth Judicial Circuit, in and for
Palm Beach County, or received by the Comptroller or the
Auditor General for the purposes of accomplishing their
respective responsibilities for settlement payments under s.
569.21(2) is confidential and exempt from the provisions of s.
119.07(1) and s. 24(a) of Art. I of the State Constitution.
Any state or federal agency that is authorized to have access
to such documents by any provision of law shall be granted
such access in furtherance of such agency's statutory duties,
notwithstanding the provisions of this section. Proprietary

1 confidential business information received under this section
2 shall not retain its confidential and exempt status if that
3 information is made public, including publicizing such
4 information in a Securities and Exchange Commission filing, an
5 annual financial statement, or other document or means. This
6 exemption is subject to the Open Government Sunset Review Act
7 of 1995 in accordance with s. 119.15, and shall stand repealed
8 on October 2, 2006, unless reviewed and saved from repeal
9 through reenactment by the Legislature.

10 (2) As used in this section, the term "proprietary
11 confidential business information" means information,
12 regardless of form or characteristics, which is owned or
13 controlled by a tobacco company that is a signatory to the
14 settlement agreement, as amended, in the case of The State of
15 Florida et al. v. American Tobacco Company et al., Case
16 #95-1466AH, in the Circuit Court of the Fifteenth Judicial
17 Circuit, in and for Palm Beach County, is intended to be and
18 is treated by a tobacco company as private in that the
19 disclosure of the information would cause harm to the
20 company's business operations, and has not been disclosed
21 unless disclosed pursuant to a statutory provision, an order
22 of a court or administrative body, or private agreement that
23 provides that the information will not be released to the
24 public. The term includes, but is not limited to:

25 (a) Trade secrets.

26 (b) Information in a Form 10-K that is confidential
27 pursuant to an order of the Division of Corporation Finance of
28 the Securities and Exchange Commission.

29 (c) Internal auditing control policies and procedures
30 and reports of internal auditors.

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1 (d) Financial operating and marketing information
2 prepared in the ordinary course of business, the disclosure of
3 which could impair the competitive business of the provider of
4 information.

5 (e) Financial statements, which consist of balance
6 sheets, statements of income and cash flows, and notes related
7 thereto, of any subsidiary that is part of a consolidated
8 group and engaged in the production or sale of tobacco
9 products.

10 (f) Report letters from independent auditors relating
11 to domestic operating company income.

12 (g) Analyses of specific items of revenue and expense
13 included in operating profit and extraordinary items. As used
14 in this paragraph, the term "extraordinary items" consists of
15 one-time tobacco litigation settlement costs and restructuring
16 charges.

17 (h) Working papers, schedules, analyses, and
18 reconciliations prepared by company personnel for the purpose
19 of clarifying the disclosures of domestic tobacco revenues and
20 operating profit contained in financial statements or other
21 information related to the sale or production of tobacco
22 products.

23 Section 2. The Legislature finds that it is a public
24 necessity that proprietary confidential business information
25 of tobacco companies that are signatories to the settlement
26 agreement, as amended, in the case of The State of Florida et
27 al. v. American Tobacco Company et al., Case #95-1466AH, in
28 the Circuit Court of the Fifteenth Judicial Circuit, in and
29 for Palm Beach County, be made exempt and confidential when
30 held by the State of Florida for the purpose of negotiating
31 and verifying the calculation of annual tobacco settlement

1 payments. In order for the state to determine that the annual
2 payments that it receives from tobacco companies are accurate
3 and verifiable, it is necessary for the state to obtain
4 proprietary confidential business information of the tobacco
5 companies that are signatories to the agreement. Disclosure of
6 the proprietary confidential business information of these
7 tobacco companies would harm them in the market place by
8 placing them at a competitive disadvantage with companies that
9 do not provide such information to the State of Florida and
10 would adversely affect their business interests. If the
11 participating tobacco companies are harmed in the market
12 place, their annual sales of tobacco products will be reduced,
13 which will diminish the annual amounts that they pay to the
14 State of Florida, and will thereby harm the financial
15 interests of the state and the people of Florida. The public
16 and private harm in disclosing this information significantly
17 outweighs any public benefit derived from disclosure, and the
18 public's ability to scrutinize and monitor governmental action
19 is not diminished by nondisclosure of this information.
20 Therefore, the Legislature finds that it is a public necessity
21 that this proprietary confidential business information be
22 made confidential and exempt from the requirements of s.
23 119.07(1) and s. 24(a) of Art. I of the State Constitution.

24 Section 3. This act shall take effect upon becoming a
25 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1562

Committee Substitute for SB 1562 states with specificity the information exempt from public records consistent with Art. 1, Section 24(a) of the Florida Constitution. The information is proprietary confidential business information submitted to specified state agencies for purposes of negotiating and verifying settlement payments submitted pursuant to s. 569.21, F.S. The committee substitute defines the term proprietary confidential information. The committee substitute provides a legislative finding and effective date.