

1                                   A bill to be entitled  
2           An act relating to public-records exemptions;  
3           creating s. 569.215; providing that proprietary  
4           confidential business information used to  
5           negotiate or verify annual tobacco settlement  
6           payments are exempt from public records  
7           requirements; providing a statement of public  
8           necessity; providing an effective date.  
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10 Be It Enacted by the Legislature of the State of Florida:

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

14           569.215 Confidential records relating to tobacco  
15 settlement agreement.--

16           (1) Proprietary confidential business information  
17 received by the Governor, the Attorney General, or outside  
18 counsel representing the State of Florida in negotiations for  
19 settlement payments pursuant to the settlement agreement, as  
20 amended, in the case of The State of Florida et al. v.  
21 American Tobacco Company et al., Case #95-1466AH, in the  
22 Circuit Court of the Fifteenth Judicial Circuit, in and for  
23 Palm Beach County, or received by the Comptroller or the  
24 Auditor General for any purpose relating to verifying  
25 settlement payments made pursuant to the settlement agreement  
26 is confidential and exempt from the provisions of s. 119.07(1)  
27 and s. 24(a) of Art. I of the State Constitution. Any state or  
28 federal agency that is authorized to have access to such  
29 documents by any provision of law shall be granted such access  
30 in furtherance of such agency's statutory duties,  
31 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7 of 1995 in accordance with s. 119.15, and shall stand repealed  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 section  
23 119.07(1), Florida Statutes, and s. 24(a) of Art. I of the  
24 State Constitution.

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

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