

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 42-A

SPONSOR: Banking and Insurance Committee and Senator Miller

SUBJECT: Public Records Exemption for Credit Scoring Methodologies and Related Data

DATE: May 15, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 42-A creates a public records exemption for credit scoring methodologies and related information that are trade secrets and that are filed with the Office of Insurance Regulation (office) pursuant to a rate filing by an insurance company. The bill provides that it is a public necessity for credit scoring methodologies and related data to be confidential and exempt because such information contains proprietary information that has economic value and could harm the business of the insurer. The bill provides for future review and repeal.

The related substantive credit scoring bill, SB 40-A, regulates and limits the use of credit reports and credit scores by insurers for underwriting and rating purposes relating to personal lines motor vehicle and homeowner's insurance.

This bill substantially creates section 626.9742, Florida Statutes.

II. Present Situation:

Access to Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.¹ The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.² In November 1992, the public approved a constitutional

¹Section 1, ch. 5942, 1909; RGS 424; CGL 490

² Chapter 67-125, L.O.F.

amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

(a) Every person has the right to inspect or copy any public records 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The State Constitution, the Public Records Law,³ and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Section 119.07(1)(a), F.S., requires:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . .

The Public Records Law states that, unless specifically exempted, all agency⁴ records are to be available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

The Legislature is expressly authorized to create exemptions to public records requirements. Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁵ Section 119.011(1), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associations, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸

Use of Credit Reports or Credit Scores

Many insurers use “consumer reports”⁹ or credit reports, as they are commonly known, as a tool for underwriting or rating automobile and homeowner’s insurance. Insurers believe that the use of credit reports, combined with traditional underwriting tools, can improve the insurers’ ability to predict future losses and claims. The insurance industry believes that there is a direct relationship between credit reports, i.e., financial stability, and risk. Other financial services industries, such as credit card issuers and financial institutions, use consumer credit information in an attempt to ascertain a person’s ability to repay a loan.

Although some insurers may evaluate an actual credit report, many companies that use credit information are using a credit score. A credit score is an evaluation of a person’s credit at one point in time. Credit scores are calculated from formulas that are based on specific factors in a person’s credit history or report. Factors used to calculate a person’s credit score generally include such things as bankruptcy, payment history, late payments, number of open accounts, length of credit history, home ownership, type of credit in use, and debt to credit ratio. The methods and formulas used for credit scores are frequently considered a trade secrets or proprietary information. Some insurers develop their own scoring model and formula; others use independent credit scoring companies, such as Fair Issac or ChoicePoint.

See the Senate Staff Analysis to SB 42-A for more information on this issue.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.9742, F.S., to provide for a public records exemption for credit scoring methodologies and related information that are trade secrets as defined in s. 688.002, F.S., and that are filed with the Office of Insurance Regulation pursuant to a rate filing or other required filing. Section 688.002, F.S., defines a “trade secret” to be information, including a formula, device or method that derives independent economic value from not being generally known to other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 2. Provides that s. 627.9742, F.S., is subject to the Open Government Sunset Review Act of 1995, and shall be repealed on October 2, 2008, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Provides a statement of public necessity for credit scoring methodologies and related data to be confidential and exempt because such information contains proprietary

⁸ Art. I, s. 24(c) of the State Constitution.

⁹ The federal Fair Credit Reporting Act uses the term, “consumer report,” rather than the term, “credit report.”

information that has economic value and could harm the business of the insurer. It further states that the release of such confidential and exempt information would likely result in an insurer not providing the Office of Insurance Regulation with adequate information on which to base a determination as to whether a filing meets the requirements of law, and could result in increased administrative and legal disputes with regard to the filing.

Section 4. Provides that the act will take effect January 1, 2004, if SB 40-A, or similar legislation, is adopted in the same legislative session, or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill provides a public records exemption for the filing of credit scoring methodologies and related information with the Office of Insurance Regulation, pursuant to the provisions of a separate bill, SB 40-A. This public records exemption is provided in a separate bill, as required by Article I, s. 24 of the State Constitution. See Present Situation, for additional information.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will protect the trade secrets of insurers in order to facilitate the filing of pertinent credit scoring data with the Office of Insurance Regulation. Exempting such information will protect insurers from having to reveal proprietary information to competitors.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A separate bill, SB 40-A, regulates and limits the use by insurer of credit reports and credit scoring for underwriting and rating purposes. Neither bill will take effect unless the other bill becomes law.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
