

By Senator Baker

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1 A bill to be entitled
2 An act relating to public-records exemptions; amending
3 ss. 637.1009, 637.1012, 637.1019, 637.1022, 637.1046,
4 637.30145, 637.30147, and 637.30295, F.S.; exempting
5 certain information relating to title insurance, title
6 insurers, and title insurance agents from certain
7 public-records disclosure requirements; creating s.
8 637.2052, F.S.; exempting certain proceedings and
9 records from public-meetings and public-records
10 requirements; providing for future review and repeal
11 of the exemptions in this act under the Open
12 Government Sunset Review Act; providing a statement of
13 public necessity; providing a contingent effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (g) is added to subsection (3) of
19 section 637.1009, Florida Statutes, to read:

20 637.1009 Enforcement; cease and desist orders; removal of
21 certain persons; fines; confidential information.-

22 (3) CEASE AND DESIST ORDERS.-

23 (g) Any emergency order entered under this subsection is
24 confidential and exempt from the provisions of s. 119.07(1) and
25 s. 24(a), Art. I of the State Constitution and shall remain
26 confidential until it is made permanent unless the department
27 finds that the confidentiality will result in substantial risk
28 of financial loss to the public. All emergency cease and desist
29 orders that are not made permanent are available for public

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30 inspection 1 year after the date the emergency cease and desist
31 order expires. However, portions of an emergency cease and
32 desist order remain confidential and exempt from the provisions
33 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
34 if disclosure would:

35 1. Jeopardize the integrity of another active
36 investigation;

37 2. Impair the safety and financial soundness of the
38 licensee or affiliated party;

39 3. Reveal personal financial information;

40 4. Reveal the identity of a confidential source;

41 5. Defame or cause unwarranted damage to the good name or
42 reputation of an individual or jeopardize the safety of an
43 individual; or

44 6. Reveal investigative techniques or procedures.

45
46 This paragraph is subject to the Open Government Sunset Review
47 Act in accordance with s. 119.15 and shall stand repealed on
48 October 2, 2015, unless reviewed and saved from repeal through
49 reenactment by the Legislature.

50 Section 2. Subsection (4) is added to section 637.1012,
51 Florida Statutes, to read:

52 637.1012 Records; reproductions; destruction; confidential
53 information.-

54 (4) The records of insurance claim negotiations of any
55 state agency or political subdivision are confidential and
56 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
57 of the State Constitution until termination of all litigation
58 and settlement of all claims arising out of the same incident.

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59 This subsection is subject to the Open Government Sunset Review
60 Act in accordance with s. 119.15 and shall stand repealed on
61 October 2, 2015, unless reviewed and saved from repeal through
62 reenactment by the Legislature.

63 Section 3. Subsection (7) is added to section 637.1019,
64 Florida Statutes, to read:

65 637.1019 Investigation of title insurance agents and
66 others; confidential information.—If the department has reason
67 to believe that any title insurance agent has violated or is
68 violating any provision of this chapter, or upon the written
69 complaint signed by any interested person indicating that any
70 such violation may exist:

71 (7) The complaint and any information obtained pursuant to
72 the investigation by the department or office are confidential
73 and exempt from the provisions of s. 119.07(1) and s. 24(a),
74 Art. I of the State Constitution unless the department or office
75 files a formal administrative complaint, emergency order, or
76 consent order against the licensee. Nothing in this subsection
77 shall be construed to prevent the department or office from
78 disclosing the complaint or such information as it deems
79 necessary to conduct the investigation, to update the
80 complainant as to the status and outcome of the complaint, or to
81 share such information with any law enforcement agency. This
82 subsection is subject to the Open Government Sunset Review Act
83 in accordance with s. 119.15 and shall stand repealed on October
84 2, 2015, unless reviewed and saved from repeal through
85 reenactment by the Legislature.

86 Section 4. Subsection (5) is added to section 637.1022,
87 Florida Statutes, to read:

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88 637.1022 Examination and investigation reports;
89 confidential information.—

90 (5) (a) 1. Until filed, examination reports are confidential
91 and exempt from the provisions of s. 119.07(1) and s. 24(a),
92 Art. I of the State Constitution.

93 2. Investigation reports are confidential and exempt from
94 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
95 Constitution until the investigation is completed or ceases to
96 be active.

97 3. For purposes of this subsection, an investigation is
98 active while it is being conducted by the department with a
99 reasonable, good faith belief that it could lead to the filing
100 of administrative, civil, or criminal proceedings. An
101 investigation does not cease to be active if the department is
102 proceeding with reasonable dispatch and has a good faith belief
103 that action could be initiated by the department or other
104 administrative or law enforcement agency. After an investigation
105 is completed or ceases to be active, portions of the
106 investigation report relating to the investigation remain
107 confidential and exempt from the provisions of s. 119.07(1) and
108 s. 24(a), Art. I of the State Constitution if disclosure would:

109 a. Jeopardize the integrity of another active
110 investigation;

111 b. Impair the safety and financial soundness of the
112 licensee or affiliated party;

113 c. Reveal personal financial information;

114 d. Reveal the identity of a confidential source;

115 e. Defame or cause unwarranted damage to the good name or
116 reputation of an individual or jeopardize the safety of an

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117 individual; or

118 f. Reveal investigative techniques or procedures.

119 (b)1. For purposes of this paragraph, the term "work
120 papers" means the records of the procedures followed, the tests
121 performed, the information obtained, and the conclusions reached
122 in an examination or investigation performed under this section,
123 s. 637.1017, s. 637.1018, s. 637.1019, or s. 637.1021. Work
124 papers include, but are not limited to, planning documentation,
125 work programs, analyses, memoranda, letters of confirmation and
126 representation, abstracts of company documents, and schedules or
127 commentaries prepared or obtained in the course of such
128 examination or investigation.

129 2.a. Work papers held by the department are confidential
130 and exempt from the provisions of s. 119.07(1) and s. 24(a),
131 Art. I of the State Constitution until the examination report is
132 filed or until the investigation is completed or ceases to be
133 active.

134 b. Information received from another governmental entity or
135 the National Association of Insurance Commissioners, which is
136 confidential or exempt when held by that entity, for use by the
137 department in the performance of its examination or
138 investigation duties pursuant to this section, s. 637.1017, s.
139 637.1018, s. 637.1019, or s. 637.1021 is confidential and exempt
140 from s. 119.07(1) and s. 24(a), Art. I of the State
141 Constitution.

142 c. This exemption applies to work papers and such
143 information held by the department before, on, or after the
144 effective date of this exemption.

145 3. Confidential and exempt work papers and information may

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146 be disclosed to:

147 a. Another governmental entity, if disclosure is necessary
148 for the receiving entity to perform its duties and
149 responsibilities; and

150 b. The National Association of Insurance Commissioners.

151 4. After an examination report is filed or an investigation
152 is completed or ceases to be active, portions of work papers may
153 remain confidential and exempt from the provisions of s.
154 119.07(1) and s. 24(a), Art. I of the State Constitution if
155 disclosure would:

156 a. Jeopardize the integrity of another active examination
157 or investigation;

158 b. Impair the safety or financial soundness of the
159 licensee, affiliated party, or insured;

160 c. Reveal personal financial, medical, or health
161 information;

162 d. Reveal the identity of a confidential source;

163 e. Defame or cause unwarranted damage to the good name or
164 reputation of an individual or jeopardize the safety of an
165 individual;

166 f. Reveal examination techniques or procedures; or

167 g. Reveal information that is confidential or exempt under
168 sub-subparagraph 2.b.

169 (c) Lists of insurers or regulated companies are
170 confidential and exempt from the provisions of s. 119.07(1) and
171 s. 24(a), Art. I of the State Constitution if:

172 1. The financial solvency, condition, or soundness of such
173 insurers or regulated companies is being monitored by the
174 department.

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175 2. The list is prepared to internally coordinate regulation
176 by the department of the financial solvency, condition, or
177 soundness of the insurers or regulated companies.

178 3. The department determines that public inspection of such
179 list could impair the financial solvency, condition, or
180 soundness of such insurers or regulated companies.

181 (d) This subsection is subject to the Open Government
182 Sunset Review Act in accordance with s. 119.15 and shall stand
183 repealed on October 2, 2015, unless reviewed and saved from
184 repeal through reenactment by the Legislature.

185 Section 5. Subsection (8) is added to section 637.1046,
186 Florida Statutes, to read:

187 637.1046 Investigation by department or Division of
188 Insurance Fraud; compliance; immunity; ~~confidential information;~~
189 reports to division; division investigator's power of arrest;
190 confidential information.-

191 (8) The department's papers, documents, reports, and
192 evidence relative to the subject of an investigation under this
193 section are confidential and exempt from the provisions of s.
194 119.07(1) and s. 24(a), Art. I of the State Constitution until
195 such investigation is completed or ceases to be active. For
196 purposes of this subsection, an investigation is considered
197 active while the investigation is being conducted by the
198 department with a reasonable, good faith belief that it could
199 lead to the filing of administrative, civil, or criminal
200 proceedings. An investigation does not cease to be active if the
201 department is proceeding with reasonable dispatch and has a good
202 faith belief that action could be initiated by the department or
203 any other administrative or law enforcement agency. After an

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204 investigation is completed or ceases to be active, portions of
205 records relating to the investigation shall remain confidential
206 and exempt from the provisions of s. 119.07(1) and s. 24(a),
207 Art. I of the State Constitution if disclosure would:

208 (a) Jeopardize the integrity of another active
209 investigation;

210 (b) Impair the safety and soundness of an insurer;

211 (c) Reveal personal financial information;

212 (d) Reveal the identity of a confidential source;

213 (e) Defame or cause unwarranted damage to the good name or
214 reputation of an individual or jeopardize the safety of an
215 individual; or

216 (f) Reveal investigative techniques or procedures.

217 Further, such papers, documents, reports, or evidence relative
218 to the subject of an investigation under this section shall not
219 be subject to discovery until the investigation is completed or
220 ceases to be active. Department or division investigators shall
221 not be subject to subpoena in civil actions by any court of this
222 state to testify concerning any matter of which they have
223 knowledge pursuant to a pending insurance fraud investigation by
224 the division. This subsection is subject to the Open Government
225 Sunset Review Act in accordance with s. 119.15 and shall stand
226 repealed on October 2, 2015, unless reviewed and saved from
227 repeal through reenactment by the Legislature.

228 Section 6. Section 637.2052, Florida Statutes, is created
229 to read:

230 637.2052 Confidentiality of proceedings and records.-

231 (1) Orders, notices, correspondence, reports, records, and
232 other information in the possession of the department relating

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233 to the supervision of any insurer are confidential and exempt
234 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
235 State Constitution, except as otherwise provided in this
236 section. Proceedings and hearings relating to the department's
237 supervision of any insurer are exempt from the provisions of s.
238 286.011, except as otherwise provided in this section.

239 (2) The personnel of the department shall have access to
240 proceedings, hearings, notices, correspondence, reports,
241 records, or other information as permitted by the department.

242 (3) The department may open the proceedings or hearings or
243 disclose the contents of the notices, correspondence, reports,
244 records, or other information to a department, agency, or
245 instrumentality of this or another state or the United States if
246 it determines that the disclosure is necessary or proper for the
247 enforcement of the laws of this or another state or the United
248 States.

249 (4) The department may open the proceedings or hearings or
250 make public the notices, correspondence, reports, records, or
251 other information if the department finds that it is in the best
252 interest of the public, the insurer in supervision, or the
253 insurer's insureds.

254 (5) This section does not apply to proceedings, hearings,
255 notices, correspondence, reports, records, or other information
256 obtained upon the appointment of a receiver for the insurer by a
257 court of competent jurisdiction.

258 (6) The exemptions provided by this section shall terminate
259 on the earlier of the following dates:

260 (a) One year after the conclusion of the entire period of
261 supervision, as determined pursuant to s. 637.2051(3); or

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262 (b) The date of the entry of an order of seizure,
263 rehabilitation, or liquidation pursuant to chapter 631.

264 (7) This section is subject to the Open Government Sunset
265 Review Act in accordance with s. 119.15 and shall stand repealed
266 on October 2, 2015, unless reviewed and saved from repeal
267 through reenactment by the Legislature.

268 Section 7. Subsection (3) is added to section 637.30145,
269 Florida Statutes, to read:

270 637.30145 Reasons for termination; confidential
271 information.—

272 (3) Any information, document, record, or statement
273 furnished to the department or office under subsection (1) is
274 confidential and exempt from the provisions of s. 119.07(1) and
275 s. 24(a), Art. I of the State Constitution. This subsection is
276 subject to the Open Government Sunset Review Act in accordance
277 with s. 119.15 and shall stand repealed on October 2, 2015,
278 unless reviewed and saved from repeal through reenactment by the
279 Legislature.

280 Section 8. Section 637.30147, Florida Statutes, is amended
281 to read:

282 637.30147 Procedure for refusal, suspension, or revocation
283 of license; confidential information.—

284 (1) If any licensee is convicted of a violation of this
285 code or a felony, the licenses and appointments of such person
286 shall be immediately revoked by the department. The licensee may
287 subsequently request a hearing pursuant to ss. 120.569 and
288 120.57, and the department shall expedite any such requested
289 hearing. The sole issue at such hearing shall be whether the
290 revocation should be rescinded because such person was not in

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291 fact convicted of a violation of this code or a felony.

292 (2) The papers, documents, reports, and items of evidence
293 of the department relative to a hearing for revocation or
294 suspension of a license or appointment pursuant to the
295 provisions of this chapter and chapter 120 are confidential and
296 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
297 of the State Constitution until after the same have been
298 published at the hearing. However, such papers, documents,
299 reports, or items of evidence are subject to discovery in a
300 hearing for revocation or suspension of a license or
301 appointment. This subsection is subject to the Open Government
302 Sunset Review Act in accordance with s. 119.15 and shall stand
303 repealed on October 2, 2015, unless reviewed and saved from
304 repeal through reenactment by the Legislature.

305 Section 9. Section 637.30295, Florida Statutes, is amended
306 to read:

307 637.30295 Collection of title insurance information;
308 confidential information.—

309 (1) Each title insurance agency licensed to do business in
310 this state and each insurer doing direct, retail or affiliated
311 business in this state shall maintain and submit information,
312 including revenue, loss, and expense data, as the department
313 determines to be necessary to assist in the analysis of title
314 insurance premium rates, title search costs, and the condition
315 of the title insurance industry in this state. This information
316 must be transmitted to the department no later than March 31 of
317 each year following the reporting year. The department shall
318 adopt rules to assist in the collection and analysis of the data
319 from the title insurance industry.

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320 (2) The financial information supplied by each licensee is
321 confidential and exempt from the provisions of s. 119.07(1) and
322 s. 24(a), Art. I of the State Constitution to prevent disclosure
323 of private information of that licensee to the public. However,
324 the total combined responses of all the agencies and reporting
325 entities may be disclosed to the public as long as the specific
326 identities of the licensees are not revealed. This subsection is
327 subject to the Open Government Sunset Review Act in accordance
328 with s. 119.15 and shall stand repealed on October 2, 2015,
329 unless reviewed and saved from repeal through reenactment by the
330 Legislature.

331 Section 10. The Legislature finds that it is a public
332 necessity that proprietary business information relating to the
333 title insurance industry, title insurers, and title insurance
334 agents, including, but not limited to, trade secrets, be made
335 confidential and exempt from s. 24(a), Art. I of the State
336 Constitution and s. 119.07(1), Florida Statutes. The disclosure
337 of information, such as revenue, loss expense data, analyses of
338 gross receipts, the amount of taxes paid, the amount of capital
339 investment, customer identification, the amount of employee
340 wages paid, and the detailed documentation to substantiate such
341 performance information, could injure a business in the
342 marketplace by providing its competitors with detailed insights
343 into the financial status and the strategic plans of the
344 business, thereby diminishing the advantage that the business
345 maintains over competitors that do not possess such information.
346 Without this exemption, title insurance agencies and title
347 insurers, whose records are generally not required to be open to
348 the public, may refrain from providing accurate and unbiased

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349 data and would thus impair the Department of Financial Services
350 in setting fair and adequate title insurance rates. Proprietary
351 business information derives independent economic value, actual
352 or potential, from not being generally known to, and not being
353 readily ascertainable by proper means by, other persons who can
354 derive economic value from its disclosure or use. The Department
355 of Financial Services, or any subsidiary or contractor of the
356 department, in performing its lawful duties and
357 responsibilities, may need to obtain from the proprietary
358 business information. Without an exemption from public-records
359 requirements for proprietary business information held by the
360 department or its designee, such information becomes a public
361 record when received and must be divulged upon request.
362 Divulgence of any proprietary business information under public-
363 records laws would destroy the value of that property to the
364 proprietor causing a financial loss not only to the proprietor
365 but also to the citizens of this state due to loss of reliable
366 financial data necessary for fair and adequate rate regulation.
367 Release of proprietary business information would give business
368 competitors an unfair advantage and weaken the position of the
369 proprietor of the proprietary business information in the
370 marketplace. The harm to businesses in the marketplace and to
371 the effective administration of the ratemaking function caused
372 by the public disclosure of such information far outweighs the
373 public benefits derived from its release. In addition, the
374 confidentiality provided by the amendments to Florida Statutes
375 made by this act shall not preclude the reporting of statistics
376 in the aggregate concerning the collection of data, as well as
377 the names of the title insurance agencies and title insurers

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378 participating in the data collection. Such aggregate reported
379 data should be available to the public and is important to an
380 assessment of the setting of title insurance premiums. Thus, the
381 Legislature declares that it is a public necessity that
382 proprietary business information of title insurers, title
383 insurance agents, and the title insurance industry held by the
384 Department of Financial Services, or any subsidiary, contractor,
385 or agent of the department, be made confidential and exempt from
386 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the
387 State Constitution.

388 Section 11. This act shall take effect July 1, 2010, only
389 if Senate Bill ____ or similar legislation is adopted in the
390 same legislative session or an extension thereof and becomes
391 law.