

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 867 Pub. Rec./Title Insurance, Insurers, and Agents/DFS
SPONSOR(S): Insurance, Business, Insurance & Financial Affairs Policy Committee, Ambler
TIED BILLS: HB 853 IDEN./SIM. BILLS: SB 1838

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee, 12 Y, 0 N, As CS, Reilly, Cooper.

SUMMARY ANALYSIS

The bill creates public records exemptions under ch. 637, F.S., the Florida Title Insurance Act. This chapter would be created by enactment into law of CS/ HB 853 or similar legislation introduced during the 2010 Legislative Session.

The bill incorporates various existing public records exemptions in the Florida Insurance Code into ch. 637, F.S., thus making the exemptions expressly applicable to title insurance. Generally, these exemptions protect from disclosure:

- Emergency cease and desist orders.
Records of insurance claims negotiations of a state agency or political subdivision.
Complaints and any information obtained by the Department of Financial Services (DFS) in an investigation.
Examination reports (until filed) and work papers (until an examination report is filed or the investigation is completed).
Papers, documents, reports and evidence relating to the subject of a DFS investigation.
Orders, notices, correspondence, reports, records, and other information in the possession of the DFS relating to the administrative supervision of a title insurer.
Documents relating to the termination of appointments of title insurance agents.
Papers, documents, reports, and items of evidence of the DFS relative to a hearing for revocation or suspension of a license or appointment.

Additionally, the bill creates an exemption to protect from disclosure financial information that title insurers, title insurance agencies, and other entities are required to report to the DFS under ch. 637, F.S.

The bill provides for repeal of the exemptions on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution. The bill does not appear to have a fiscal impact on state or local governments.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

The bill is effective October 1, 2010, if CS/HB 853 or similar legislation introduced during the 2010 Legislative Session is enacted into law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Effect of the Bill

This bill incorporates various existing public records exemptions in the Florida Insurance Code (specifically, chs. 626 and 627, F.S.) into ch. 637, F.S., the Florida Title Insurance Act.; thus making the

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

exemptions expressly applicable to title insurance. Chapter 637, F.S., would be created by enactment into law of CS/HB 853 or similar legislation introduced during the 2010 Legislative Session. In addition to existing exemptions, the bill creates an exemption to protect from disclosure financial data that the Department of Financial Services (DFS) is authorized to collect from title insurers, title agencies, and other regulated entities under ch. 637, F.S. However, the DFS may disclose such information in the aggregate.

This staff analysis provides an overview of the exemptions provided for in the bill, beginning with the new exemption for financial information reported to the DFS by title insurers, title agencies, and other reporting entities.

Financial Information

If ch. 637, F.S., were enacted into law, title insurers, title insurance agencies and affiliated businesses would be required to annually submit data to the DFS that are necessary to analyze premium rates, title search costs, and the condition of Florida's title insurance industry. The bill protects from disclosure private financial information submitted by such persons or entities to the DFS. The DFS, however, may make available the total combined responses of all agencies and reporting entities as long as the specific identities of such licensees are not revealed.

The bill sets forth Legislative findings of public necessity that proprietary business information relating to the title insurance industry, title insurers, and title insurance agents, including trade secrets under ch. 637, F.S., be made confidential and exempt from public records disclosure. It further states that the disclosure of financial information, such as revenue, loss expense data, analyses of gross receipts, the amount of taxes paid, the amount of capital investment, and other proprietary information could injure a business by providing competitors with detailed insights into the financial status and strategic plans of the business. It also states that without this exemption, title insurance agencies and title insurers may refrain from providing accurate and unbiased data to the DFS; thus, impairing the DFS in setting fair and adequate title insurance rates. Further, the Legislature finds that the harm to businesses in the marketplace and to the effective ratemaking function caused by public disclosure of such information far outweighs the public benefits derived from its release. However, the exemption does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection.

Emergency Cease and Desist Orders

Emergency cease and desist orders issued by the DFS are confidential until made permanent, unless confidentiality would create a substantial risk of financial loss to the public. While these orders are available for public inspection 1 year after they expire, portions may remain confidential for various reasons, including when disclosure would jeopardize the integrity of another active investigation; impair the safety and financial soundness of the licensee or affiliated party; or reveal personal financial information or the identity of a confidential source.

Records of Insurance Claim Negotiations

Records of insurance claim negotiations of any state agency or political subdivision are exempt from disclosure until all litigation arising out of the incident is terminated and all claims are settled.

Complaints and Investigative Information

Complaints and information obtained by the DFS or the Office of Insurance Regulation (OIR) are exempt from disclosure, unless a formal administrative complaint, emergency order, or consent order is filed. The DFS or OIR, however, may disclose such information as it deems necessary to conduct the investigation, update the complainant as to the status of the complaint, or share the information with law enforcement.

Reports, Work Papers, and Information Received from Other Entities

Examination reports by the DFS are exempt from public disclosure until filed, and investigative reports remain confidential until the investigation is completed or is no longer active. DFS work papers also are exempt from public disclosure. However, investigative reports and DFS work papers may remain exempt from disclosure for the same reasons that an emergency cease and desist order may remain confidential (see the section of the staff analysis entitled "Emergency Cease and Desist Orders").

Solvency Information

DFS lists of insurers or regulated companies are confidential and exempt from disclosure if the financial solvency of such entities is being monitored; the list is prepared to internally coordinate regulation by the DFS of their financial solvency; or public inspection of the list could impair the financial solvency of these entities.

Fraud Investigations

Papers, documents, reports, and evidence of the DFS relating to the investigation of fraudulent insurance acts are confidential and exempt from public records disclosure until the investigation is completed or ceases to be active. Such information may remain exempt from disclosure under specified circumstances.

Administrative Supervision

Orders, notices, correspondence, reports, records, and other information in the possession of the DFS relating to administrative supervision of any title insurer are confidential and exempt from public records disclosure, except as otherwise provided.

The DFS may open proceedings or hearings or disclose the contents of other information to government agencies in any state when necessary or proper to enforce the law. It may also take such action when it would be in the best interest of the public, the title insurer in supervision, or its policyholders.

These exemptions terminate 1 year after the conclusion of the entire period of supervision, or the date of entry of an order of seizure, rehabilitation, or liquidation, whichever is earlier.

Termination of Agent Appointments

Information provided by a title insurer to the DFS or the OIR relating to the termination of an agent's appointment is generally confidential and exempt from disclosure.

Hearings pertaining to Mandatory Revocation of Licenses and Appointments

Information and documents pertaining to a hearing for revocation or suspension of a license are confidential and exempt from public records disclosure until after the information has been published at the hearing.

B. SECTION DIRECTORY:

Section 1. Amends s. 637.1009, F.S., relating to cease and desist orders.

Section 2. Amends s. 637.1012, F.S., relating to records; reproductions; destruction.

Section 3. Amends s. 637.1019, F.S., relating to investigation of title insurance agents and others.

Section 4. Amends s. 637.1022, F.S., relating to examination and investigation reports.

Section 5. Amends s. 637.1046, F.S., relating to investigations by the Department of Financial Services or the Division of Insurance Fraud.

Section 6. Creates s. 637.2052, F.S., relating to confidentiality of proceedings and records.

- Section 7.** Amends s. 637.30145, F.S., relating to termination of an agent's appointments.
Section 8. Amends s. 637.30147, F.S., relating to suspension or revocation of licenses.
Section 9. Amends s. 637.30295, F.S., relating to the collection of title insurance information.
Section 10. Sets forth legislative findings that the newly created public records exemption for proprietary financial data is a public necessity.
Section 11. Provides an effective date of October 1, 2010, if CS/HB 853 or similar legislation introduced during the 2010 Legislative Session is enacted into law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides a public necessity statement for the newly created public records exemption for financial information, but not for current exemptions in the Insurance Code that are incorporated into ch. 637, F.S. The latter exemptions will thus be provided for in the Insurance Code and in ch. 637, F.S. (as to title insurance). As such, one may take the position that public necessity statements are required for

all exemptions in the bill. On the other hand, it may be argued that accompanying public necessity statements are not needed as these are not new exemptions, but simply incorporate existing exemptions in the Insurance Code into a new chapter of law.

Additionally, several exemptions in the bill make reference to the department or office. It is unclear whether references to the Office of Insurance Regulation were intentionally retained from existing statutory language.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee adopted one amendment, which changed the effective date of the bill to October 1, 2010.

The bill was then reported favorably as a committee substitute.