

1                   A bill to be entitled  
 2           An act relating to public records exemptions; amending ss.  
 3           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 public  
 7           records disclosure requirements; creating s. 637.2052,  
 8           F.S.; exempting certain proceedings and records from  
 9           public meetings and records requirements; providing for  
 10          future review and repeal of the exemptions in this act  
 11          under the Open Government Sunset Review Act; providing a  
 12          statement of public necessity; providing a contingent  
 13          effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Paragraph (g) is added to subsection (3) of  
 18           section 637.1009, Florida Statutes, to read:

19           637.1009 Enforcement; cease and desist orders; removal of  
 20           certain persons; fines; confidential information.—

21           (3) CEASE AND DESIST ORDERS.—

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

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

- 34 1. Jeopardize the integrity of another active
- 35 investigation;
- 36 2. Impair the safety and financial soundness of the
- 37 licensee or affiliated party;
- 38 3. Reveal personal financial information;
- 39 4. Reveal the identity of a confidential source;
- 40 5. Defame or cause unwarranted damage to the good name or
- 41 reputation of an individual or jeopardize the safety of an
- 42 individual; or
- 43 6. Reveal investigative techniques or procedures.

44  
 45 This paragraph is subject to the Open Government Sunset Review  
 46 Act in accordance with s. 119.15 and shall stand repealed on  
 47 October 2, 2015, unless reviewed and saved from repeal through  
 48 reenactment by the Legislature.

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

51 637.1012 Records; reproductions; destruction; confidential  
 52 information.—

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

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57 and settlement of all claims arising out of the same incident.  
58 This subsection is subject to the Open Government Sunset Review  
59 Act in accordance with s. 119.15 and shall stand repealed on  
60 October 2, 2015, unless reviewed and saved from repeal through  
61 reenactment by the Legislature.

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

64 637.1019 Investigation of title insurance agents and  
65 others; confidential information.—If the department has reason  
66 to believe that any title insurance agent has violated or is  
67 violating any provision of this chapter, or upon the written  
68 complaint signed by any interested person indicating that any  
69 such violation may exist:

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

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

87 637.1022 Examination and investigation reports;  
 88 confidential information.—

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

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

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

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

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

112 c. Reveal personal financial information;

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113 d. Reveal the identity of a confidential source;

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

117 f. Reveal investigative techniques or procedures.

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

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

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

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

144 3. Confidential and exempt work papers and information may  
145 be disclosed to:

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

149 b. The National Association of Insurance Commissioners.

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

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

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

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

161 d. Reveal the identity of a confidential source;

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

165 f. Reveal examination techniques or procedures; or

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

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

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

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

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

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

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

186        637.1046 Investigation by department or Division of  
187 Insurance Fraud; compliance; immunity; ~~confidential information;~~  
188 reports to division; division investigator's power of arrest;  
189 confidential information.—

190        (8) The department's papers, documents, reports, and  
191 evidence relative to the subject of an investigation under this  
192 section are confidential and exempt from the provisions of s.  
193 119.07(1) and s. 24(a), Art. I of the State Constitution until  
194 such investigation is completed or ceases to be active. For  
195 purposes of this subsection, an investigation is considered

196 active while the investigation is being conducted by the  
 197 department with a reasonable, good faith belief that it could  
 198 lead to the filing of administrative, civil, or criminal  
 199 proceedings. An investigation does not cease to be active if the  
 200 department is proceeding with reasonable dispatch and has a good  
 201 faith belief that action could be initiated by the department or  
 202 any other administrative or law enforcement agency. After an  
 203 investigation is completed or ceases to be active, portions of  
 204 records relating to the investigation shall remain confidential  
 205 and exempt from the provisions of s. 119.07(1) and s. 24(a),  
 206 Art. I of the State Constitution if disclosure would:

- 207 (a) Jeopardize the integrity of another active  
 208 investigation;
- 209 (b) Impair the safety and soundness of an insurer;
- 210 (c) Reveal personal financial information;
- 211 (d) Reveal the identity of a confidential source;
- 212 (e) Defame or cause unwarranted damage to the good name or  
 213 reputation of an individual or jeopardize the safety of an  
 214 individual; or
- 215 (f) Reveal investigative techniques or procedures.

216 Further, such papers, documents, reports, or evidence relative  
 217 to the subject of an investigation under this section shall not  
 218 be subject to discovery until the investigation is completed or  
 219 ceases to be active. Department or division investigators shall  
 220 not be subject to subpoena in civil actions by any court of this  
 221 state to testify concerning any matter of which they have  
 222 knowledge pursuant to a pending insurance fraud investigation by  
 223 the division. This subsection is subject to the Open Government



224 Sunset Review Act in accordance with s. 119.15 and shall stand  
 225 repealed on October 2, 2015, unless reviewed and saved from  
 226 repeal through reenactment by the Legislature.

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

229 637.2052 Confidentiality of proceedings and records.—

230 (1) Orders, notices, correspondence, reports, records, and  
 231 other information in the possession of the department relating  
 232 to the supervision of any insurer are confidential and exempt  
 233 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
 234 State Constitution, except as otherwise provided in this  
 235 section. Proceedings and hearings relating to the department's  
 236 supervision of any insurer are exempt from the provisions of s.  
 237 286.011, except as otherwise provided in this section.

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

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

248 (4) The department may open the proceedings or hearings or  
 249 make public the notices, correspondence, reports, records, or  
 250 other information if the department finds that it is in the best

251 interest of the public, the insurer in supervision, or the  
 252 insurer's insureds.

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

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

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

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

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

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

269 637.30145 Reasons for termination; confidential  
 270 information.-

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

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

281 637.30147 Procedure for refusal, suspension, or revocation  
 282 of license; confidential information.-

283 (1) If any licensee is convicted of a violation of this  
 284 code or a felony, the licenses and appointments of such  
 285 person shall be immediately revoked by the department. The  
 286 licensee may subsequently request a hearing pursuant to ss.  
 287 120.569 and 120.57, and the department shall expedite any such  
 288 requested hearing. The sole issue at such hearing shall be  
 289 whether the revocation should be rescinded because such person  
 290 was not in fact convicted of a violation of this code or a  
 291 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 provisions  
 295 of this chapter and chapter 120 are confidential and exempt from  
 296 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 297 Constitution until after the same have been published at the  
 298 hearing. However, such papers, documents, reports, or items  
 299 of evidence are subject to discovery in a hearing for  
 300 revocation or suspension of a license or appointment. This  
 301 subsection is subject to the Open Government Sunset Review Act  
 302 in accordance with s. 119.15 and shall stand repealed on October  
 303 2, 2015, unless reviewed and saved from repeal through  
 304 reenactment by the Legislature.

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

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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.

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  
325 reporting entities may be disclosed to the public as long as the  
326 specific identities of the licensees are not revealed. This  
327 subsection is subject to the Open Government Sunset Review Act  
328 in accordance with s. 119.15 and shall stand repealed on October  
329 2, 2015, unless reviewed and saved from repeal through  
330 reenactment by the 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

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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  
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

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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  
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 House Bill 853 or similar legislation is adopted in the same  
390 legislative session or an extension thereof and becomes law.