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LEGISLATIVE ACTION

Senate

House

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05/03/2011 04:07 PM

Senator Garcia moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (14) is added to section 408.910,
Florida Statutes, to read:

408.910 Florida Health Choices Program.—

(14) EXEMPTION FROM PUBLIC-RECORDS REQUIREMENTS.—

(a) Definitions.—For purposes of this subsection, the term:

1. "Buyer's representative" means a participating insurance
agent as described in paragraph (4) (g).

2. "Enrollee" means an employer who is eligible to enroll
in the program pursuant to paragraph (4) (a).



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14 3. "Participant" means an individual who is eligible to
15 participate in the program pursuant to paragraph (4) (b).

16 4. "Proprietary confidential business information" means
17 information, regardless of form or characteristics, that is
18 owned or controlled by a vendor requesting confidentiality under
19 this section; that is intended to be and is treated by the
20 vendor as private in that the disclosure of the information
21 would cause harm to the business operations of the vendor; that
22 has not been disclosed unless disclosed pursuant to a statutory
23 provision, an order of a court or administrative body, or a
24 private agreement providing that the information may be released
25 to the public; and that is information concerning:

26 a. Business plans.

27 b. Internal auditing controls and reports of internal
28 auditors.

29 c. Reports of external auditors for privately held
30 companies.

31 d. Client and customer lists.

32 e. Potentially patentable material.

33 f. A trade secret as defined in s. 688.002.

34 5. "Vendor" means a participating insurer or other provider
35 of services as described in paragraph (4) (d).

36 (b) Public-record exemptions.—

37 1. Personal identifying information of an enrollee or
38 participant who has applied for or participates in the Florida
39 Health Choices Program is confidential and exempt from s.
40 119.07(1) and s. 24(a), Art. I of the State Constitution.

41 2. Client and customer lists of a buyer's representative
42 held by the corporation are confidential and exempt from s.



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43 119.07(1) and s. 24(a), Art. I of the State Constitution.

44 3. Proprietary confidential business information held by
45 the corporation is confidential and exempt from s. 119.07(1) and
46 s. 24(a), Art. I of the State Constitution.

47 (c) Retroactive application.—The public-record exemptions
48 provided for in paragraph (b) apply to information held by the
49 corporation before, on, or after the effective date of this
50 exemption.

51 (d) Authorized release.—

52 1. Upon request, information made confidential and exempt
53 pursuant to this subsection shall be disclosed to:

54 a. Another governmental entity in the performance of its
55 official duties and responsibilities.

56 b. Any person who has the written consent of the program
57 applicant.

58 c. The Florida Kidcare program for the purpose of
59 administering the program authorized in ss. 409.810-409.821.

60 2. Paragraph (b) does not prohibit a participant's legal
61 guardian from obtaining confirmation of coverage, dates of
62 coverage, the name of the participant's health plan, and the
63 amount of premium being paid.

64 (e) Penalty.—A person who knowingly and willfully violates
65 this subsection commits a misdemeanor of the second degree,
66 punishable as provided in s. 775.082 or s. 775.083.

67 (f) Review and repeal.—This subsection is subject to the
68 Open Government Sunset Review Act in accordance with s. 119.15,
69 and shall stand repealed on October 2, 2016, unless reviewed and
70 saved from repeal through reenactment by the Legislature.

71 Section 2. (1) The Legislature finds that it is a public



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72 necessity that any information identifying an enrollee or
73 participant in the Florida Health Choices Program, including
74 information received during the program application process, be
75 held confidential and exempt from public-records requirements.
76 The harm caused by releasing such personal and sensitive
77 information outweighs any public benefit from releasing that
78 information. If such information is not held confidential, the
79 administration of the program could be significantly impaired
80 because businesses and individuals would be less inclined to
81 apply, participate, or enroll in the program, thereby
82 significantly decreasing the number of program participants or
83 enrollees. Therefore, it is a public necessity that any
84 information identifying a participant or enrollee in the Florida
85 Health Choices Program, including such information received
86 during the program application process, be held confidential and
87 exempt from public-records requirements.

88 (2) The Legislature finds that it is a public necessity
89 that proprietary confidential business information of a vendor
90 and the customer and client lists of a buyer's representative be
91 made confidential and exempt from public-records requirements.
92 The disclosure of a vendor's proprietary confidential business
93 information or a customer and client list of a program buyer's
94 representative could cause injury in the marketplace by
95 providing competitors with detailed insights into confidential
96 business information, strategies, methodologies, plans, or
97 client lists, thereby diminishing the advantage that the program
98 vendor or program buyer's representative maintains over those
99 that do not possess such information. Without these exemptions,
100 private-sector vendors or buyer's representatives whose business



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101 records generally are not required to be open to the public
102 might refrain from participating in Florida Health Choices
103 Program and not offer affordable, quality health insurance,
104 health services, and benefits products through the program. The
105 harm to program vendors or program buyer's representatives in
106 the marketplace and harm to the effective administration of the
107 Florida Health Choices Program caused by the public disclosure
108 of such information far outweigh the public benefits derived
109 from the release of the information. Therefore, it is a public
110 necessity that proprietary confidential business information of
111 program vendors and client lists of program buyer's
112 representatives be held confidential and exempt from public-
113 records requirements.

114 Section 3. This act shall take effect October 1, 2011.

116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete everything before the enacting clause
119 and insert:

120 A bill to be entitled

121 An act relating to public records; amending s.
122 408.910, F.S.; providing definitions; creating an
123 exemption from public-records requirements for
124 personal identifying information of an enrollee or
125 participant in the Florida Health Choices Program;
126 creating an exemption from public-records requirements
127 for proprietary confidential business information of a
128 vendor; creating an exemption from public-records
129 requirements for client and customer lists of a



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130 program buyer's representative; providing exceptions;
131 authorizing an enrollee's legal guardian to obtain
132 confirmation of certain information about the
133 enrollee's health plan; providing for retroactive
134 application; providing a penalty for unlawful
135 disclosure of confidential and exempt information;
136 providing for future legislative review and repeal of
137 the exemption under the Open Government Sunset Review
138 Act; providing a statement of public necessity;
139 providing an effective date.