

By the Committees on Governmental Oversight and Accountability;
and Children, Families, and Elder Affairs; and Senator Garcia

585-04608-11

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1 A bill to be entitled

2 An act relating to public records; amending s.
3 408.910, F.S.; providing definitions; providing
4 exemptions from public-records requirements for
5 personal identifying information of an enrollee or
6 participant in the Florida Health Choices Program,
7 client and customer lists of buyers' representatives
8 which are held by Florida Health Choices, Inc., and
9 proprietary confidential business information of
10 vendors which is held by Florida Health Choices, Inc.;
11 providing for disclosure of such confidential and
12 exempt information to certain persons and entities
13 upon written request; providing that the guardian of a
14 participant in the program is not prohibited from
15 obtaining certain information; providing a criminal
16 penalty; providing for future legislative review and
17 repeal of the exemptions; providing findings of public
18 necessity; providing an effective date.

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20 Be It Enacted by the Legislature of the State of Florida:

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

24 408.910 Florida Health Choices Program.—

25 (14) EXEMPTIONS.—

26 (a) As used in this subsection, the term:

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

29 2. "Enrollee" means an employer who is eligible to enroll

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30 in the program pursuant to paragraph (4) (a).

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

33 4. "Proprietary confidential business information" means
34 information, regardless of its form or characteristics, which
35 relates to business plans, internal auditing controls, reports
36 of internal auditors, reports of external auditors of privately
37 held companies, potentially patentable material, or trade
38 secrets as defined in s. 688.002, and such information:

39 a. Is owned or controlled by a vendor requesting
40 confidentiality under this subsection;

41 b. Is intended to be and is treated by the vendor as
42 private in that the disclosure of the information would cause
43 harm to the business operations of the vendor; and

44 c. Has not been disclosed unless disclosed pursuant to a
45 statutory provision, an order of a court or administrative body,
46 or a private agreement that provides that the information may be
47 released to the public.

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

50 (b)1. Personal identifying information of an enrollee or
51 participant who has applied for or participates in the Florida
52 Health Choices Program is confidential and exempt from s.
53 119.07(1) and s. 24(a), Art. I of the State Constitution.

54 2. Client and customer lists of a buyer's representative
55 which are held by the corporation are confidential and exempt
56 from s. 119.07(1) and s. 24(a), Art. I of the State
57 Constitution.

58 3. Proprietary confidential business information of a

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59 vendor which is held by the corporation is confidential and
60 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
61 Constitution.

62 (c) The public-record exemptions in paragraph (b) apply to
63 information held by the corporation before, on, or after October
64 1, 2011.

65 (d)1. Upon request, information made confidential and
66 exempt pursuant to this subsection shall be disclosed to:

67 a. Another governmental entity in the performance of its
68 official duties and responsibilities.

69 b. Any person who has the written consent of the program's
70 applicant.

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

73 2. Paragraph (b) does not prohibit a participant's legal
74 guardian from obtaining confirmation of coverage, dates of
75 coverage, the name of the participant's health plan, and the
76 amount of premium being paid.

77 (e) A person who knowingly and willfully violates this
78 subsection commits a misdemeanor of the second degree,
79 punishable as provided in s. 775.082 or s. 775.083.

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

84 Section 2. (1) The Legislature finds that it is a public
85 necessity that any information identifying an enrollee or
86 participant in the Florida Health Choices Program, including
87 such information received during the application process, be

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88 held confidential and exempt from public-records requirements.
89 The harm caused by releasing such personal and sensitive
90 information outweighs any public benefit from releasing it. If
91 such information is not held confidential, the administration of
92 the program could be significantly impaired because businesses
93 and individuals would be less inclined to apply, participate, or
94 enroll in the Florida Health Choices Program. This lack of
95 participation would significantly decrease the number of the
96 program's participants or enrollees. Therefore, it is a public
97 necessity that any information identifying a participant or
98 enrollee in the Florida Health Choices Program, including such
99 information received during the application process, be held
100 confidential and exempt from public-records requirements.

101 (2) The Legislature finds that it is a public necessity
102 that proprietary confidential business information of a vendor
103 and the customer and client lists of a buyer's representative be
104 made confidential and exempt from public-records requirements.
105 The disclosure of a vendor's proprietary confidential business
106 information or a customer and client list of a buyer's
107 representative could cause injury in the marketplace by
108 providing competitors with detailed insights into confidential
109 business information, strategies, methodologies, plans, or
110 client lists which would diminish the advantage that the vendor
111 or the buyer's representative maintains over those that do not
112 possess such information. Without these exemptions, private-
113 sector vendors or buyer's representatives, whose business
114 records generally are not required to be open to the public,
115 might refrain from participating in the Florida Health Choices
116 Program and not offer affordable, quality health insurance,

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117 health services, and benefits' products through the program. The
118 harm to the vendors or the buyer's representatives in the
119 marketplace and harm to the effective administration of the
120 Florida Health Choices Program caused by the public disclosure
121 of such information far outweighs the public benefits derived
122 from the release of the information. Therefore, it is a public
123 necessity that proprietary confidential business information of
124 the vendors and customer and client lists of the buyer's
125 representatives be held confidential and exempt from public-
126 records requirements.

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