

By the Committee on Health Policy; and Senator Brodeur

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 624.319, F.S.; providing an exemption from public
4 records requirements for examination and investigation
5 reports and work papers relating to pharmacy benefit
6 managers; providing for future legislative review and
7 repeal of the exemption; reenacting and amending s.
8 626.884, F.S.; expanding a public records exemption
9 for the books and records of administrators held by
10 the Office of Insurance Regulation for purposes of
11 examination, audit, and inspection to incorporate the
12 inclusion of pharmacy benefit managers as
13 administrators under the Florida Insurance Code;
14 providing for future legislative review and repeal of
15 the exemption; providing statements of public
16 necessity; providing a contingent effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 624.319, Florida Statutes, is amended to
21 read:

22 624.319 Examination and investigation reports.—

23 (1) The department or office or its examiner shall make a
24 full and true written report of each examination. The
25 examination report shall contain only information obtained from
26 examination of the records, accounts, files, and documents of or
27 relative to the insurer examined or from testimony of
28 individuals under oath, together with relevant conclusions and
29 recommendations of the examiner based thereon. The department or

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30 office must ~~shall~~ furnish a copy of the examination report to
31 the insurer examined at least ~~not less than~~ 30 days before ~~prior~~
32 ~~to~~ filing the examination report in its office. If such insurer
33 so requests in writing within such 30-day period, the department
34 or office must ~~shall~~ grant a hearing with respect to the
35 examination report and may ~~shall~~ not ~~se~~ file the examination
36 report until after the hearing and after such modifications have
37 been made therein as the department or office deems proper.

38 (2) The examination report so filed is admissible in
39 evidence in any action or proceeding brought by the department
40 or office against the person examined, or against its officers,
41 employees, or agents. In all other proceedings, the
42 admissibility of the examination report is governed by the
43 evidence code. The department or office or its examiners may
44 testify and offer other proper evidence as to information
45 secured or matters discovered during the course of an
46 examination, regardless of whether a written report of the
47 examination has been made, furnished, or filed in the department
48 or office. The production of documents during the course of an
49 examination or investigation does not constitute a waiver of the
50 attorney-client or work-product privilege.

51 (3) (a) 1. Examination reports, until filed, are confidential
52 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
53 Constitution.

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

57 3. For purposes of this subsection, an investigation is
58 active while it is being conducted by the department or office

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59 with a reasonable, good faith belief that it could lead to the
60 filing of administrative, civil, or criminal proceedings. An
61 investigation does not cease to be active if the department or
62 office is proceeding with reasonable dispatch and has a good
63 faith belief that action could be initiated by the department or
64 office or other administrative or law enforcement agency. After
65 an investigation is completed or ceases to be active, portions
66 of the investigation report relating to the investigation remain
67 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
68 of the State Constitution if disclosure would:

- 69 a. Jeopardize the integrity of another active
70 investigation;
- 71 b. Impair the safety and financial soundness of the
72 licensee or affiliated party;
- 73 c. Reveal personal financial information;
- 74 d. Reveal the identity of a confidential source;
- 75 e. Defame or cause unwarranted damage to the good name or
76 reputation of an individual or jeopardize the safety of an
77 individual; or
- 78 f. Reveal investigative techniques or procedures.

79 (b)1. For purposes of this paragraph, "work papers" means
80 the records of the procedures followed, the tests performed, the
81 information obtained and the conclusions reached in an
82 examination or investigation performed under this section or ss.
83 624.316, 624.3161, 624.317, ~~and 624.318~~, and 626.8828. Work
84 papers include planning documentation, work programs, analyses,
85 memoranda, letters of confirmation and representation, abstracts
86 of company documents, and schedules or commentaries prepared or
87 obtained in the course of such examination or investigation.

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88 2.a. Work papers held by the department or office are
89 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
90 of the State Constitution until the examination report is filed
91 or until the investigation is completed or ceases to be active.

92 b. Information received from another governmental entity or
93 the National Association of Insurance Commissioners, which is
94 confidential or exempt when held by that entity, for use by the
95 department or office in the performance of its examination or
96 investigation duties pursuant to this section or ss. 624.316,
97 624.3161, 624.317, ~~and 624.318,~~ and 626.8828 is confidential and
98 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
99 Constitution.

100 c. This exemption applies to work papers and such
101 information held by the department or office before, on, or
102 after the effective date of this exemption.

103 3. Confidential and exempt work papers and information may
104 be disclosed to:

105 a. Another governmental entity, if disclosure is necessary
106 for the receiving entity to perform its duties and
107 responsibilities; and

108 b. The National Association of Insurance Commissioners.

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

113 a. Jeopardize the integrity of another active examination
114 or investigation;

115 b. Impair the safety or financial soundness of the
116 licensee, affiliated party, or insured;

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- 117 c. Reveal personal financial, medical, or health
118 information;
- 119 d. Reveal the identity of a confidential source;
- 120 e. Defame or cause unwarranted damage to the good name or
121 reputation of an individual or jeopardize the safety of an
122 individual;
- 123 f. Reveal examination techniques or procedures; or
- 124 g. Reveal information that is confidential or exempt under
125 sub-subparagraph 2.b.
- 126 (c) Lists of insurers or regulated companies are
127 confidential and exempt from s. 119.07(1) if:
- 128 1. The financial solvency, condition, or soundness of such
129 insurers or regulated companies is being monitored by the
130 office;
- 131 2. The list is prepared to internally coordinate regulation
132 by the office of the financial solvency, condition, or soundness
133 of the insurers or regulated companies; and
- 134 3. The office determines that public inspection of such
135 list could impair the financial solvency, condition, or
136 soundness of such insurers or regulated companies.
- 137 (4) After the examination report has been filed pursuant to
138 subsection (1), the department or office may publish the results
139 of any such examination in one or more newspapers published in
140 this state whenever it deems it to be in the public interest.
- 141 (5) After the examination report of an insurer has been
142 filed pursuant to subsection (1), an affidavit must ~~shall~~ be
143 filed with the office, within ~~not more than~~ 30 days after the
144 report has been filed, on a form furnished by the office and
145 signed by the officer of the company in charge of the insurer's

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146 business in this state, stating that she or he has read the
147 report and that the recommendations made in the report will be
148 considered within a reasonable time.

149 (6) This section is subject to the Open Government Sunset
150 Review Act in accordance with s. 119.15 and shall stand repealed
151 on October 2, 2028, unless reviewed and save from repeal through
152 reenactment by the Legislature.

153 Section 2. Section 626.884, Florida Statutes, is reenacted
154 and amended to read:

155 626.884 Maintenance of records by administrator; access;
156 confidentiality.-

157 (1) Every administrator shall maintain in such
158 administrator's principal administrative office for the duration
159 of the written agreement and for 5 years thereafter adequate
160 books and records of all transactions among such administrator,
161 insurers, and insured persons. Such books and records shall be
162 maintained in accordance with prudent standards of insurance
163 recordkeeping.

164 (2) The office shall have access to books and records
165 maintained by the administrator for the purpose of examination,
166 audit, and inspection. Information contained in such books and
167 records is confidential and exempt from ~~the provisions of s.~~
168 119.07(1) and s. 24(a), Art. I of the State Constitution if the
169 disclosure of such information would reveal a trade secret as
170 defined in s. 688.002. However, the office may use such
171 information in any proceeding instituted against the
172 administrator.

173 (3) The insurer shall retain the right of continuing access
174 to books and records maintained by the administrator sufficient

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175 to permit the insurer to fulfill all of its contractual
176 obligations to insured persons, subject to any restrictions in
177 the written agreement pertaining to the proprietary rights of
178 the parties in such books and records.

179 (4) This section is subject to the Open Government Sunset
180 Review Act in accordance with s. 119.15 and shall stand repealed
181 on October 2, 2028, unless reviewed and saved from repeal
182 through reenactment by the Legislature.

183 Section 3. (1) The Legislature finds that it is a public
184 necessity that the information contained in examination and
185 investigation reports and work papers relating to examinations
186 and investigations of pharmacy benefit managers, who are now
187 considered administrators, as defined in s. 626.88, Florida
188 Statutes, for purposes of regulation under the Florida Insurance
189 Code, be made confidential and exempt from s. 119.07(1), Florida
190 Statutes, and s. 24(a), Article I of the State Constitution in
191 accordance with s. 624.319, Florida Statutes. Administrators who
192 are pharmacy benefit managers are subject to additional records
193 production, examination, and investigation provisions, and those
194 applicable work papers and examinations and investigation
195 reports are to be made confidential and exempt from s.
196 119.07(1), Florida Statutes, and s. 24(a), Article I of the
197 State Constitution in accordance with s. 624.319, Florida
198 Statutes. As a new class of administrators, pharmacy benefit
199 managers need to be subject to the exemptions that currently
200 exist for administrators, unless otherwise provided in statute,
201 in order to protect their confidential information and business
202 and professional good name or reputation in a like manner.
203 Additionally, the Department of Financial Services and the

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204 Office of Insurance Regulation, both of which are responsible
205 for examinations and investigations of administrators under the
206 Florida Insurance Code, need to ensure that disclosure of such
207 information would not jeopardize the integrity of another active
208 investigation, reveal the identity of a confidential source,
209 reveal investigative techniques or procedures, or reveal
210 information that is received from another governmental entity or
211 the National Association of Insurance Commissioners which is
212 confidential or exempt when held by that entity. For these
213 reasons, the Legislature finds that it is a public necessity
214 that such information be made confidential and exempt from
215 public records requirements.

216 (2) The Legislature finds that it is a public necessity
217 that the trade secret information contained in the books and
218 records of pharmacy benefit managers, who are now considered
219 administrators, as defined in s. 626.88, Florida Statutes, for
220 purposes of regulation under the Florida Insurance Code, which
221 are held by the Office of Insurance Regulation in relation to
222 examinations, audits, or inspections of pharmacy benefit
223 managers be made confidential and exempt from s. 119.07(1),
224 Florida Statutes, and s. 24(a), Article I of the State
225 Constitution. The Legislature recognizes that the release of
226 trade secret information could destroy the value of a business's
227 proprietary information and cause financial loss to the business
228 by giving its competitors an unfair advantage and weakening its
229 position in the marketplace. As a new class of administrators,
230 pharmacy benefit managers need to be subject to the exemptions
231 that currently exist for administrators, unless otherwise
232 provided in statute, in order to protect their trade secret

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233 information. For these reasons, the Legislature finds that it is
234 a public necessity to make such trade secret information
235 contained in the books and records of pharmacy benefit managers
236 confidential and exempt from public records requirements.

237 Section 4. This act shall take effect on the same date that
238 SB 1550 or similar legislation takes effect, if such legislation
239 is adopted in the same legislative session or an extension
240 thereof and becomes a law.