

By the Committee on Governmental Oversight and Accountability

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A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.0715, F.S., which
provides an exemption from public records requirements
for a trade secret held by an agency; deleting the
scheduled repeal of the exemption; amending ss.
287.137, 288.075, 334.049, 408.185, 409.91196,
440.108, 497.172, 501.171, 501.1735, 501.2041,
501.722, 520.9965, 548.062, 559.5558, 569.215,
627.0628, and 1004.4472, F.S.; conforming provisions
to changes made by the act; providing an effective
date.

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

Section 1. Section 119.0715, Florida Statutes, is amended
to read:

119.0715 Trade secrets held by an agency.—

(1) DEFINITION.—“Trade secret” has the same meaning as in
s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an
agency is confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution.

(3) AGENCY ACCESS.—An agency may disclose a trade secret to
an officer or employee of another agency or governmental entity
whose use of the trade secret is within the scope of his or her
lawful duties and responsibilities.

(4) LIABILITY.—An agency employee who, while acting in good
faith and in the performance of his or her duties, releases a

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record containing a trade secret pursuant to this chapter is not liable, civilly or criminally, for such release.

~~(5) OPEN GOVERNMENT SUNSET REVIEW. This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Paragraph (d) of subsection (8) of section 287.137, Florida Statutes, is amended to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(8)

(d) For purposes of this subsection, the term "proprietary business information" means information that:

1. Is owned or controlled by the business;

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations;

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the Attorney General; and

5. Includes÷

~~a. Trade secrets as defined in s. 688.002.~~

~~b.~~ competitive interests, the disclosure of which would impair the competitive advantage of the business that is the

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59 subject of the information.

60 Section 3. Paragraph (c) of subsection (1) and subsection
61 (3) of section 288.075, Florida Statutes, are amended to read:

62 288.075 Confidentiality of records.—

63 (1) DEFINITIONS.—As used in this section, the term:

64 ~~(c) "Trade secret" has the same meaning as in s. 688.002.~~

65 ~~(3) TRADE SECRETS. Trade secrets held by an economic~~
66 ~~development agency are confidential and exempt from s. 119.07(1)~~
67 ~~and s. 24(a), Art. I of the State Constitution.~~

68 Section 4. Section 334.049, Florida Statutes, is amended to
69 read:

70 334.049 Patents, copyrights, trademarks; notice to
71 Department of State; ~~confidentiality of trade secrets.~~—

72 (1) Notwithstanding any ~~other provision of~~ law to the
73 contrary, the Department of Transportation is authorized, in its
74 own name, to:

75 (a) Perform all things necessary to secure letters of
76 patent, copyrights, and trademarks on any legitimately acquired
77 work products, and to enforce its rights therein.

78 (b) License, lease, assign, or otherwise give written
79 consent to any person, firm, or corporation for the manufacture
80 or use of any product protected by patent, copyright, or
81 trademark, whether on a royalty basis or for such other
82 consideration as the department may deem proper.

83 (c) Take any action necessary, including legal action, to
84 enforce its rights under any agreement and to protect its
85 property rights from improper or unlawful use or infringement.

86 (d) Enforce the collection of any payments or other
87 obligations due the department for the manufacture or use of any

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product by any other party.

(e) Sell any product, except where otherwise provided by public records laws, which the department may create or cause to be created, whether or not the product is protected by a department patent, copyright, or trademark, and to execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties herein conferred upon the department.

(2) The department shall notify the Department of State in writing whenever property rights by patent, copyright, or trademark are secured or exploited by the department.

(3) Any proceeds from the sale of products or the right to manufacture or use a product must ~~shall~~ be deposited in the State Transportation Trust Fund and may be appropriated to finance activities of the department. The department's legislative budget request should give special consideration to using such funds for research and development projects.

~~(4) Any information obtained by the department as a result of research and development projects and revealing a method of process, production, or manufacture which is a trade secret as defined in s. 688.002, is confidential and exempt from the provisions of s. 119.07(1).~~

~~(5)~~ As used in this section the term "product" includes any and all inventions, methodologies, techniques, and creations that may be properly protected by patent, copyright, or trademark.

Section 5. Subsection (1) of section 408.185, Florida Statutes, is amended to read:

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117 408.185 Information submitted for review of antitrust
118 issues; confidentiality.—The following information held by the
119 Office of the Attorney General, which is submitted by a member
120 of the health care community pursuant to a request for an
121 antitrust no-action letter shall be confidential and exempt from
122 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
123 Constitution for 1 year after the date of submission.

124 ~~(1) Documents that reveal trade secrets as defined in s.~~
125 ~~688.002.~~

126 Section 6. Section 409.91196, Florida Statutes, is amended
127 to read:

128 409.91196 Supplemental rebate agreements; public records
129 and public meetings exemption.—

130 (1) The rebate amount, percent of rebate, manufacturer's
131 pricing, and supplemental rebate information, ~~and other trade~~
132 ~~secrets as defined in s. 688.002 that the agency has identified~~
133 ~~for use in negotiations~~, held by the Agency for Health Care
134 Administration under s. 409.912(5)(a)7. are confidential and
135 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
136 Constitution.

137 (2) That portion of a meeting of the Medicaid
138 Pharmaceutical and Therapeutics Committee at which the rebate
139 amount, percent of rebate, manufacturer's pricing, or
140 supplemental rebate information, or other trade secrets as
141 defined in s. 688.002 that the agency has identified for use in
142 negotiations, are discussed is exempt from s. 286.011 and s.
143 24(b), Art. I of the State Constitution. A record shall be made
144 of each exempt portion of a meeting. Such record must include
145 the times of commencement and termination, all discussions and

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proceedings, the names of all persons present at any time, and the names of all persons speaking. No exempt portion of a meeting may be held off the record.

Section 7. Subsection (2) of section 440.108, Florida Statutes, is amended to read:

440.108 Investigatory records relating to workers' compensation employer compliance; confidentiality.—

(2) After an investigation is completed or ceases to be active, information in records relating to the investigation remains confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure of that information would:

(a) Jeopardize the integrity of another active investigation;

(b) ~~Reveal a trade secret, as defined in s. 688.002;~~

~~(c)~~ Reveal business or personal financial information;

(c)~~(d)~~ Reveal personal identifying information regarding the identity of a confidential source;

(d)~~(e)~~ Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(e)~~(f)~~ Reveal investigative techniques or procedures.

Section 8. Subsection (4) of section 497.172, Florida Statutes, is amended to read:

497.172 Public records exemptions; public meetings exemptions.—

~~(4) TRADE SECRETS. Trade secrets, as defined in s. 688.002, held by the department or board, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State~~

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175 ~~Constitution.~~

176 Section 9. Paragraph (d) of subsection (11) of section
177 501.171, Florida Statutes, is amended to read:

178 501.171 Security of confidential personal information.—

179 (11) PUBLIC RECORDS EXEMPTION.—

180 (d) For purposes of this subsection, the term “proprietary
181 information” means information that:

182 1. Is owned or controlled by the covered entity.

183 2. Is intended to be private and is treated by the covered
184 entity as private because disclosure would harm the covered
185 entity or its business operations.

186 3. Has not been disclosed except as required by law or a
187 private agreement that provides that the information will not be
188 released to the public.

189 4. Is not publicly available or otherwise readily
190 ascertainable through proper means from another source in the
191 same configuration as received by the department.

192 5. Includes:

193 ~~a. Trade secrets as defined in s. 688.002.~~

194 ~~b.~~ competitive interests, the disclosure of which would
195 impair the competitive business of the covered entity who is the
196 subject of the information.

197 Section 10. Paragraph (d) of subsection (6) of section
198 501.1735, Florida Statutes, is amended to read:

199 501.1735 Protection of children in online spaces; public
200 records exemption.—

201 (6) PUBLIC RECORDS EXEMPTION.—

202 (d) For purposes of this section, the term “proprietary
203 information” means information that:

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1. Is owned or controlled by the online platform.

2. Is intended to be private and is treated by the online platform as private because disclosure would harm the online platform or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

~~a. Trade secrets as defined in s. 688.002.~~

~~b.~~ competitive interests, the disclosure of which would impair the competitive advantage of the online platform who is the subject of the information.

Section 11. Paragraph (d) of subsection (10) of section 501.2041, Florida Statutes, is amended to read:

501.2041 Unlawful acts and practices by social media platforms.—

(10)

(d) For purposes of this subsection, the term "proprietary business information" means information that:

1. Is owned or controlled by the business;

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations;

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;

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233 4. Is not publicly available or otherwise readily
234 ascertainable through proper means from another source in the
235 same configuration as received by the department; and

236 5. Includes÷

237 ~~a. Trade secrets as defined in s. 688.002.~~

238 ~~b.~~ competitive interests, the disclosure of which would
239 impair the competitive advantage of the business that is the
240 subject of the information.

241 Section 12. Paragraph (e) of subsection (4) of section
242 501.722, Florida Statutes, is amended to read:

243 501.722 Public records exemption.—

244 (4) For purposes of this section, the term "proprietary
245 information" means information that:

246 (e) Includes÷

247 ~~1. Trade secrets as defined in s. 688.002.~~

248 ~~2.~~ competitive interests, the disclosure of which would
249 impair the competitive advantage of the controller, processor,
250 or third party who is the subject of the information.

251 Section 13. Paragraph (b) of subsection (1) of section
252 520.9965, Florida Statutes, is amended to read:

253 520.9965 Confidentiality of information relating to
254 investigations and examinations.—

255 (1)

256 (b) Except as necessary for the office to enforce the
257 provisions of this chapter, a consumer complaint and other
258 information relative to an investigation or examination shall
259 remain confidential and exempt from s. 119.07(1) after the
260 investigation or examination is completed or ceases to be active
261 to the extent disclosure would:

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262 1. Jeopardize the integrity of another active investigation
263 or examination.

264 2. Reveal the name, address, telephone number, social
265 security number, or any other identifying number or information
266 of any complainant, customer, or account holder.

267 3. Disclose the identity of a confidential source.

268 4. Disclose investigative techniques or procedures.

269 ~~5. Reveal a trade secret as defined in s. 688.002.~~

270 Section 14. Paragraph (e) of subsection (1) of section
271 548.062, Florida Statutes, is amended to read:

272 548.062 Public records exemption.—

273 (1) As used in this section, the term “proprietary
274 confidential business information” means information that:

275 (e) Concerns any of the following:

276 1. The number of ticket sales for a match;

277 2. The amount of gross receipts after a match;

278 ~~3. A trade secret, as defined in s. 688.002;~~

279 ~~4.~~ Business plans;

280 ~~4.5.~~ Internal auditing controls and reports of internal
281 auditors; or

282 ~~5.6.~~ Reports of external auditors.

283 Section 15. Paragraph (b) of subsection (2) of section
284 559.5558, Florida Statutes, is amended to read:

285 559.5558 Public records exemption; investigations and
286 examinations.—

287 (2)

288 (b) Information made confidential and exempt pursuant to
289 this section is no longer confidential and exempt once the
290 investigation or examination is completed or ceases to be active

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unless disclosure of the information would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. A complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active. However, a complainant's personal financial and health information remains confidential and exempt.

3. Reveal the identity of a confidential source.

4. Reveal investigative or examination techniques or procedures.

~~5. Reveal trade secrets, as defined in s. 688.002.~~

Section 16. Paragraph (a) of subsection (2) of section 569.215, Florida Statutes, is amended to read:

569.215 Confidential records relating to tobacco settlement agreement.—

(2) As used in this section, the term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by a tobacco company that is a signatory to the settlement agreement, as amended, in the case of *State of Florida v. American Tobacco Company*, No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, is intended to be and is treated by a tobacco company as private in that the disclosure of the information would cause harm to the company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or

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administrative body, or private agreement that provides that the information will not be released to the public. The term includes, but is not limited to:

~~(a) Trade secrets as defined in s. 688.002.~~

Section 17. Section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; ~~public records exemption~~; public meetings exemption.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) Reliable projections of hurricane losses are necessary in order to assure that rates for residential property insurance meet the statutory requirement that rates be neither excessive nor inadequate. The ability to accurately project hurricane losses has been enhanced greatly in recent years through the use of computer modeling. It is the public policy of this state to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage.

(b) The Legislature recognizes the need for expert evaluation of computer models and other recently developed or improved actuarial methodologies for projecting hurricane losses, in order to resolve conflicts among actuarial professionals, and in order to provide both immediate and continuing improvement in the sophistication of actuarial methods used to set rates charged to consumers.

(c) It is the intent of the Legislature to create the Florida Commission on Hurricane Loss Projection Methodology as a panel of experts to provide the most actuarially sophisticated

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349 guidelines and standards for projection of hurricane losses
350 possible, given the current state of actuarial science. It is
351 the further intent of the Legislature that such standards and
352 guidelines must be used by the State Board of Administration in
353 developing reimbursement premium rates for the Florida Hurricane
354 Catastrophe Fund, and, subject to paragraph (3)(d), must be used
355 by insurers in rate filings under s. 627.062 unless the way in
356 which such standards and guidelines were applied by the insurer
357 was erroneous, as shown by a preponderance of the evidence.

358 (d) It is the intent of the Legislature that such standards
359 and guidelines be employed as soon as possible, and that they be
360 subject to continuing review thereafter.

361 (e) The Legislature finds that the authority to take final
362 agency action with respect to insurance ratemaking is vested in
363 the Office of Insurance Regulation and the Financial Services
364 Commission, and that the processes, standards, and guidelines of
365 the Florida Commission on Hurricane Loss Projection Methodology
366 do not constitute final agency action or statements of general
367 applicability that implement, interpret, or prescribe law or
368 policy; accordingly, chapter 120 does not apply to the
369 processes, standards, and guidelines of the Florida Commission
370 on Hurricane Loss Projection Methodology.

371 (2) COMMISSION CREATED.—

372 (a) There is created the Florida Commission on Hurricane
373 Loss Projection Methodology, which is assigned to the State
374 Board of Administration. For the purposes of this section, the
375 term "commission" means the Florida Commission on Hurricane Loss
376 Projection Methodology. The commission shall be administratively
377 housed within the State Board of Administration, but it shall

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independently exercise the powers and duties specified in this section.

(b) The commission shall be composed ~~consist~~ of the following 12 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation or the executive director's designee. The executive director's designee must be a full-time employee of the corporation and have actuarial science experience.

4. The Director of the Division of Emergency Management or the director's designee. The director's designee must be a full-time employee of the division.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a

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background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

8. A licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques. This appointment shall be made by the Governor.

(c) Members designated under subparagraphs (b)1.-5. shall serve on the commission as long as they maintain the respective offices designated in subparagraphs (b)1.-5. The member appointed by the director of the office under subparagraph (b)6. shall serve on the commission until the end of the term of office of the director who appointed him or her, unless removed earlier by the director for cause. Members appointed by the Chief Financial Officer under subparagraph (b)7. shall serve on the commission until the end of the term of office of the Chief Financial Officer who appointed them, unless earlier removed by the Chief Financial Officer for cause. Vacancies on the commission shall be filled in the same manner as the original appointment.

(d) The State Board of Administration shall annually appoint one of the members of the commission to serve as chair.

(e) Members of the commission shall serve without

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436 compensation, but shall be reimbursed for per diem and travel
437 expenses pursuant to s. 112.061.

438 (f) The State Board of Administration shall, as a cost of
439 administration of the Florida Hurricane Catastrophe Fund,
440 provide for travel, expenses, and staff support for the
441 commission.

442 (g) There shall be no liability on the part of, and no
443 cause of action of any nature shall arise against, any member of
444 the commission, any member of the State Board of Administration,
445 or any employee of the State Board of Administration for any
446 action taken in the performance of their duties under this
447 section. In addition, the commission may, in writing, waive any
448 potential cause of action for negligence of a consultant,
449 contractor, or contract employee engaged to assist the
450 commission.

451 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

452 (a) The commission shall consider any actuarial methods,
453 principles, standards, models, or output ranges that have the
454 potential for improving the accuracy of or reliability of the
455 hurricane loss projections used in residential property
456 insurance rate filings and flood loss projections used in rate
457 filings for personal lines residential flood insurance coverage.
458 The commission shall, from time to time, adopt findings as to
459 the accuracy or reliability of particular methods, principles,
460 standards, models, or output ranges.

461 (b) The commission shall consider any actuarial methods,
462 principles, standards, or models that have the potential for
463 improving the accuracy of or reliability of projecting probable
464 maximum loss levels. The commission shall adopt findings as to

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the accuracy or reliability of particular methods, principles, standards, or models related to probable maximum loss calculations.

(c) In establishing reimbursement premiums for the Florida Hurricane Catastrophe Fund, the State Board of Administration must, to the extent feasible, employ actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable.

(d) With respect to a rate filing under s. 627.062, an insurer shall employ and may not modify or adjust actuarial methods, principles, standards, models, or output ranges found by the commission to be accurate or reliable in determining hurricane loss factors and probable maximum loss levels for use in a rate filing under s. 627.062. An insurer may employ a model in a rate filing until 120 days after the expiration of the commission's acceptance of that model and may not modify or adjust models found by the commission to be accurate or reliable in determining probable maximum loss levels. This paragraph does not prohibit an insurer from using a straight average of model results or output ranges for the purposes of a rate filing for personal lines residential flood insurance coverage under s. 627.062.

(e) The commission shall adopt actuarial methods, principles, standards, models, or output ranges for personal lines residential flood loss no later than July 1, 2017.

(f) The commission shall revise previously adopted actuarial methods, principles, standards, models, or output ranges every odd-numbered year for hurricane loss projections. The commission shall revise previously adopted actuarial

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methods, principles, standards, models, or output ranges no less than every 4 years for flood loss projections.

~~(g)1. A trade secret, as defined in s. 688.002, which is used in designing and constructing a hurricane or flood loss model and which is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

~~2.a.~~ That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret as defined in s. 688.002, which is used in designing and constructing a hurricane or flood loss model and which is provided pursuant to this section by a private company to the commission, office, or consumer advocate appointed pursuant to s. 627.0613, ~~made confidential and exempt by this paragraph~~ is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

~~2.b.~~ The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 18. Paragraph (a) of subsection (2) and subsection (4) of section 1004.4472, Florida Statutes, are amended to read:
1004.4472 Florida Institute for Human and Machine Cognition, Inc.; public records exemption; public meetings exemption.—

(2) The following information held by the corporation or its subsidiary is confidential and exempt from s. 119.07(1) and

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s. 24(a), Art. I of the State Constitution:

(a) Material relating to methods of manufacture or production, potential trade secrets, patentable material, ~~actual trade secrets as defined in s. 688.002~~ or proprietary information received, generated, ascertained, or discovered during the course of research conducted by or through the corporation or a subsidiary, and business transactions resulting from such research.

(4) That portion of a meeting of the corporation or a subsidiary at which information is presented or discussed which is confidential and exempt pursuant to subsection (2) or s. 119.0715 is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

Section 19. This act shall take effect upon becoming a law.