

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01850B-26

20267026pb

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

585-01850B-26

20267026pb

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

32 ~~(5) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject~~
33 ~~to the Open Government Sunset Review Act in accordance with s.~~
34 ~~119.15 and shall stand repealed on October 2, 2026, unless~~
35 ~~reviewed and saved from repeal through reenactment by the~~
36 ~~Legislature.~~

37 Section 2. Paragraph (d) of subsection (8) of section
38 287.137, Florida Statutes, is amended to read:

39 287.137 Antitrust violations; denial or revocation of the
40 right to transact business with public entities; denial of
41 economic benefits.—

42 (8)

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

45 1. Is owned or controlled by the business;

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

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

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

55 5. Includes:

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

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

585-01850B-26

20267026pb

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 (e) ~~“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. Subsection (4) of section 334.049, Florida
69 Statutes, is amended to read:

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

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

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

79 408.185 Information submitted for review of antitrust
80 issues; confidentiality.—The following information held by the
81 Office of the Attorney General, which is submitted by a member
82 of the health care community pursuant to a request for an
83 antitrust no-action letter shall be confidential and exempt from
84 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
85 Constitution for 1 year after the date of submission.

86 (1) ~~Documents that reveal trade secrets as defined in s.~~
87 ~~688.002.~~

585-01850B-26

20267026pb

88 Section 6. Section 409.91196, Florida Statutes, is amended
89 to read:

90 409.91196 Supplemental rebate agreements; public records
91 and public meetings exemption.—

92 (1) The rebate amount, percent of rebate, manufacturer's
93 pricing, and supplemental rebate information, ~~and other trade~~
94 ~~secrets as defined in s. 688.002 that the agency has identified~~
95 ~~for use in negotiations~~, held by the Agency for Health Care
96 Administration under s. 409.912(5)(a)7. are confidential and
97 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
98 Constitution.

99 (2) That portion of a meeting of the Medicaid
100 Pharmaceutical and Therapeutics Committee at which the rebate
101 amount, percent of rebate, manufacturer's pricing, or
102 supplemental rebate information, or other trade secrets as
103 defined in s. 688.002 that the agency has identified for use in
104 negotiations, are discussed is exempt from s. 286.011 and s.
105 24(b), Art. I of the State Constitution. A record shall be made
106 of each exempt portion of a meeting. Such record must include
107 the times of commencement and termination, all discussions and
108 proceedings, the names of all persons present at any time, and
109 the names of all persons speaking. No exempt portion of a
110 meeting may be held off the record.

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

113 440.108 Investigatory records relating to workers'
114 compensation employer compliance; confidentiality.—

115 (2) After an investigation is completed or ceases to be
116 active, information in records relating to the investigation

585-01850B-26

20267026pb

117 remains confidential and exempt from the provisions of s.
118 119.07(1) and s. 24(a), Art. I of the State Constitution if
119 disclosure of that information would:

120 (a) Jeopardize the integrity of another active
121 investigation;

122 (b) ~~Reveal a trade secret, as defined in s. 688.002;~~
123 ~~(c)~~ Reveal business or personal financial information;
124 ~~(c)(d)~~ Reveal personal identifying information regarding
125 the identity of a confidential source;
126 ~~(d)(e)~~ Defame or cause unwarranted damage to the good name
127 or reputation of an individual or jeopardize the safety of an
128 individual; or
129 ~~(e)(f)~~ Reveal investigative techniques or procedures.

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

132 497.172 Public records exemptions; public meetings
133 exemptions.—

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

138 Section 9. Paragraph (d) of subsection (11) of section
139 501.171, Florida Statutes, is amended to read:

140 501.171 Security of confidential personal information.—

141 (11) PUBLIC RECORDS EXEMPTION.—

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

144 1. Is owned or controlled by the covered entity.
145 2. Is intended to be private and is treated by the covered

585-01850B-26

20267026pb

146 entity as private because disclosure would harm the covered
147 entity or its business operations.

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

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

154 5. Includes—

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

156 b. competitive interests, the disclosure of which would
157 impair the competitive business of the covered entity who is the
158 subject of the information.

159 Section 10. Paragraph (d) of subsection (6) of section
160 501.1735, Florida Statutes, is amended to read:

161 501.1735 Protection of children in online spaces; public
162 records exemption.—

163 (6) PUBLIC RECORDS EXEMPTION.—

164 (d) For purposes of this section, the term "proprietary
165 information" means information that:

166 1. Is owned or controlled by the online platform.

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

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

173 4. Is not publicly available or otherwise readily
174 ascertainable through proper means from another source in the

585-01850B-26

20267026pb

175 same configuration as received by the department.

176 5. Includes:-

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

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

181 Section 11. Paragraph (d) of subsection (10) of section
182 501.2041, Florida Statutes, is amended to read:

183 501.2041 Unlawful acts and practices by social media
184 platforms.-

185 (10)

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

188 1. Is owned or controlled by the business;

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

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

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

198 5. Includes:-

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

200 b. competitive interests, the disclosure of which would
201 impair the competitive advantage of the business that is the
202 subject of the information.

203 Section 12. Paragraph (e) of subsection (4) of section

585-01850B-26

20267026pb

204 501.722, Florida Statutes, is amended to read:

205 501.722 Public records exemption.—

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

208 (e) Includes:

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

210 2. competitive interests, the disclosure of which would
211 impair the competitive advantage of the controller, processor,
212 or third party who is the subject of the information.

213 Section 13. Paragraph (b) of subsection (1) of section
214 520.9965, Florida Statutes, is amended to read:

215 520.9965 Confidentiality of information relating to
216 investigations and examinations.—

217 (1)

218 (b) Except as necessary for the office to enforce the
219 provisions of this chapter, a consumer complaint and other
220 information relative to an investigation or examination shall
221 remain confidential and exempt from s. 119.07(1) after the
222 investigation or examination is completed or ceases to be active
223 to the extent disclosure would:

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

226 2. Reveal the name, address, telephone number, social
227 security number, or any other identifying number or information
228 of any complainant, customer, or account holder.

229 3. Disclose the identity of a confidential source.

230 4. Disclose investigative techniques or procedures.

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

232 Section 14. Paragraph (e) of subsection (1) of section

585-01850B-26

20267026pb

233 548.062, Florida Statutes, is amended to read:

234 548.062 Public records exemption.—

235 (1) As used in this section, the term "proprietary
236 confidential business information" means information that:

237 (e) Concerns any of the following:

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

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

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

241 4. Business plans;

242 4.5. Internal auditing controls and reports of internal
243 auditors; or

244 5.6. Reports of external auditors.

245 Section 15. Paragraph (b) of subsection (2) of section
246 559.5558, Florida Statutes, is amended to read:

247 559.5558 Public records exemption; investigations and
248 examinations.—

249 (2)

250 (b) Information made confidential and exempt pursuant to
251 this section is no longer confidential and exempt once the
252 investigation or examination is completed or ceases to be active
253 unless disclosure of the information would:

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

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

585-01850B-26

20267026pb

262 exempt.

263 3. Reveal the identity of a confidential source.

264 4. Reveal investigative or examination techniques or
265 procedures.266 ~~5. Reveal trade secrets, as defined in s. 688.002.~~267 Section 16. Paragraph (a) of subsection (2) of section
268 569.215, Florida Statutes, is amended to read:269 569.215 Confidential records relating to tobacco settlement
270 agreement.—271 (2) As used in this section, the term "proprietary
272 confidential business information" means information, regardless
273 of form or characteristics, which is owned or controlled by a
274 tobacco company that is a signatory to the settlement agreement,
275 as amended, in the case of *State of Florida v. American Tobacco*
276 *Company*, No. 95-1466AH, in the Circuit Court of the Fifteenth
277 Judicial Circuit, in and for Palm Beach County, is intended to
278 be and is treated by a tobacco company as private in that the
279 disclosure of the information would cause harm to the company's
280 business operations, and has not been disclosed unless disclosed
281 pursuant to a statutory provision, an order of a court or
282 administrative body, or private agreement that provides that the
283 information will not be released to the public. The term
284 includes, but is not limited to:285 ~~(a) Trade secrets as defined in s. 688.002.~~286 Section 17. Section 627.0628, Florida Statutes, is amended
287 to read:288 627.0628 Florida Commission on Hurricane Loss Projection
289 ~~Methodology; public records exemption; public meetings~~
290 exemption.—

585-01850B-26

20267026pb

291 (1) LEGISLATIVE FINDINGS AND INTENT.—

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

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

308 (c) It is the intent of the Legislature to create the
309 Florida Commission on Hurricane Loss Projection Methodology as a
310 panel of experts to provide the most actuarially sophisticated
311 guidelines and standards for projection of hurricane losses
312 possible, given the current state of actuarial science. It is
313 the further intent of the Legislature that such standards and
314 guidelines must be used by the State Board of Administration in
315 developing reimbursement premium rates for the Florida Hurricane
316 Catastrophe Fund, and, subject to paragraph (3) (d), must be used
317 by insurers in rate filings under s. 627.062 unless the way in
318 which such standards and guidelines were applied by the insurer
319 was erroneous, as shown by a preponderance of the evidence.

585-01850B-26

20267026pb

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

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

(2) COMMISSION CREATED.—

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

585-01850B-26

20267026pb

349 Insurance Corporation or the executive director's designee. The
350 executive director's designee must be a full-time employee of
351 the corporation and have actuarial science experience.

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

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

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

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

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

367 b. An expert in insurance finance who is a full-time member
368 of the faculty of the State University System and who has a
369 background in actuarial science.

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

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

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

585-01850B-26

20267026pb

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

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

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

397 (e) Members of the commission shall serve without
398 compensation, but shall be reimbursed for per diem and travel
399 expenses pursuant to s. 112.061.

400 (f) The State Board of Administration shall, as a cost of
401 administration of the Florida Hurricane Catastrophe Fund,
402 provide for travel, expenses, and staff support for the
403 commission.

404 (g) There shall be no liability on the part of, and no
405 cause of action of any nature shall arise against, any member of
406 the commission, any member of the State Board of Administration,

585-01850B-26

20267026pb

407 or any employee of the State Board of Administration for any
408 action taken in the performance of their duties under this
409 section. In addition, the commission may, in writing, waive any
410 potential cause of action for negligence of a consultant,
411 contractor, or contract employee engaged to assist the
412 commission.

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

414 (a) The commission shall consider any actuarial methods,
415 principles, standards, models, or output ranges that have the
416 potential for improving the accuracy of or reliability of the
417 hurricane loss projections used in residential property
418 insurance rate filings and flood loss projections used in rate
419 filings for personal lines residential flood insurance coverage.
420 The commission shall, from time to time, adopt findings as to
421 the accuracy or reliability of particular methods, principles,
422 standards, models, or output ranges.

423 (b) The commission shall consider any actuarial methods,
424 principles, standards, or models that have the potential for
425 improving the accuracy of or reliability of projecting probable
426 maximum loss levels. The commission shall adopt findings as to
427 the accuracy or reliability of particular methods, principles,
428 standards, or models related to probable maximum loss
429 calculations.

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

435 (d) With respect to a rate filing under s. 627.062, an

585-01850B-26

20267026pb

436 insurer shall employ and may not modify or adjust actuarial
437 methods, principles, standards, models, or output ranges found
438 by the commission to be accurate or reliable in determining
439 hurricane loss factors and probable maximum loss levels for use
440 in a rate filing under s. 627.062. An insurer may employ a model
441 in a rate filing until 120 days after the expiration of the
442 commission's acceptance of that model and may not modify or
443 adjust models found by the commission to be accurate or reliable
444 in determining probable maximum loss levels. This paragraph does
445 not prohibit an insurer from using a straight average of model
446 results or output ranges for the purposes of a rate filing for
447 personal lines residential flood insurance coverage under s.
448 627.062.

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

452 (f) The commission shall revise previously adopted
453 actuarial methods, principles, standards, models, or output
454 ranges every odd-numbered year for hurricane loss projections.
455 The commission shall revise previously adopted actuarial
456 methods, principles, standards, models, or output ranges no less
457 than every 4 years for flood loss projections.

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

585-01850B-26

20267026pb

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

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

478 Section 18. Paragraph (a) of subsection (2) and subsection
479 (4) of section 1004.4472, Florida Statutes, are amended to read:

480 1004.4472 Florida Institute for Human and Machine
481 Cognition, Inc.; public records exemption; public meetings
482 exemption.—

483 (2) The following information held by the corporation or
484 its subsidiary is confidential and exempt from s. 119.07(1) and
485 s. 24(a), Art. I of the State Constitution:

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

493 (4) That portion of a meeting of the corporation or a

585-01850B-26

20267026pb

494 subsidiary at which information is presented or discussed which
495 is confidential and exempt pursuant to subsection (2) or s.
496 119.0715 is exempt from s. 286.011 and s. 24(b), Art. I of the
497 State Constitution.

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