

**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

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 This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.~~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

585-01850B-26

20267026pb

subject of the information.

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

288.075 Confidentiality of records.—

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

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

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

Section 4. Subsection (4) of section 334.049, Florida Statutes, is amended to read:

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

~~(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).~~

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

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

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

585-01850B-26

20267026pb

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

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

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

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

585-01850B-26

20267026pb

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  
Constitution.~~

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

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

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

1. Is owned or controlled by the covered entity.

2. Is intended to be private and is treated by the covered

585-01850B-26

20267026pb

entity as private because disclosure would harm the covered entity 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 business of the covered entity who is the subject of the information.

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

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

(6) PUBLIC RECORDS EXEMPTION.—

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

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

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

501.722, Florida Statutes, is amended to read:

501.722 Public records exemption.—

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

(e) Includes—

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

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

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

520.9965 Confidentiality of information relating to investigations and examinations.—

(1)

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

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

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

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

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

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



585-01850B-26

20267026pb

548.062, Florida Statutes, is amended to read:

548.062 Public records exemption.—

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

(e) Concerns any of the following:

1. The number of ticket sales for a match;
2. The amount of gross receipts after a match;
3. ~~A trade secret, as defined in s. 688.002;~~
4. Business plans;

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

5.6. Reports of external auditors.

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

559.5558 Public records exemption; investigations and examinations.—

(2)

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

585-01850B-26

20267026pb

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 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.—

585-01850B-26

20267026pb

(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 guidelines and standards for projection of hurricane losses possible, given the current state of actuarial science. It is the further intent of the Legislature that such standards and guidelines must be used by the State Board of Administration in developing reimbursement premium rates for the Florida Hurricane Catastrophe Fund, and, subject to paragraph (3)(d), must be used by insurers in rate filings under s. 627.062 unless the way in which such standards and guidelines were applied by the insurer 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

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 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.

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

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

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

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

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

585-01850B-26

20267026pb

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 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.~~



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.