

## CHAPTER 97-293

### Committee Substitute for Senate Bill No. 904

An act relating to public records and public meetings exemptions; affording confidentiality to risk-based capital information; providing confidentiality and a public meetings and records exemption for certain information relating to risk-based capital; providing for termination of the exemption; providing for legislative review and future repeal; providing a public necessity statement; amending s. 112.324, F.S.; providing an exemption from public records requirements for a local Commission on Ethics and Public Trust; providing an effective date.

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

#### Section 1. Confidentiality of risk-based capital information.—

(1) The initial risk-based capital report made, furnished, or filed with the Department of Insurance, any risk-based capital plan, revised risk-based capital plan, adjusted risk-based capital report, and working papers and reports of examination or analysis of an insurer performed pursuant to a plan or corrective order, or regulatory action level, subsequently filed at the request of the department, with respect to any domestic insurer or foreign insurer, and transcripts of hearings conducted pursuant to this section, are confidential and exempt from section 119.07(1), Florida Statutes, and section 24(a), Art. I of the State Constitution.

(2) Proceedings and hearings conducted pursuant to section 1 of SB 620, section 1 of HB 1943, or section 1 of SB 898 relating to the department's actions regarding any insurer's risk-based capital plan, revised risk-based capital plan, risk-based capital report or adjusted risk-based capital report, are exempt from the provisions of section 286.011, Florida Statutes, and section 24(b), Art. I of the State Constitution, except as otherwise provided in this section. All portions of such hearings or proceedings shall be recorded by a court reporter. The Department of Insurance shall open such proceedings or hearings or provide a copy of the transcript of such hearings or proceedings, or disclose the contents of notices, correspondence, reports, records, or other information to a department, agency, or instrumentality of this or another state or of the United States if the department determines the disclosure is necessary or proper for the enforcement of the laws of the United States or of this or another state.

(3) This section does not apply to proceedings, hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

(4) The exemptions provided by this section shall terminate:

(a) One year following the conclusion of any risk-based capital plan or revised risk-based capital plan; or

(b) On the date of entry of an order of seizure, rehabilitation, or liquidation pursuant to chapter 631, Florida Statutes.

(5) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with section 119.15, Florida Statutes, and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that the public records and meetings exemptions provided for in section 1 of this act are a public necessity because unrestricted public access to information, proceedings, and hearings relating to an insurer's risk-based capital plan and risk-based capital adjusted report, and documents and examination reports related thereto, might damage the insurer if made available to its competitors and could substantially affect the solvency of an insurer. Damage to an insurer's solvency could have a substantial negative effect on the public as well as on other insurers. Furthermore, public access to such information would not serve a public interest in that such information can be misleading as to an insurer's ranking because risk-based data does not reflect all of the factors involved in the assessment of an insurer's financial strength. The Legislature also finds that risk-based capital reports and plans reveal an insurer's investment decisions and that such decisions are a trade secret that give the insurer a competitive advantage in the private market. Public access to such information could affect an insurer's ability to do business in Florida and the insurer's solvency. Therefore, it is a public necessity to maintain the confidentiality of this information and these proceedings and hearings within the regulatory body responsible for the oversight of insurer solvency. Finally, the Legislature finds that the public has access through other means to information regarding the financial strength of an insurance company and its ranking with regard to other insurance companies.

Section 3. Subsection (1) of section 112.324, Florida Statutes, 1996 Supplement, is amended to read:

112.324 Procedures on complaints of violations.—

(1) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, the commission shall investigate any alleged violation of this part or any other alleged breach of the public trust within the jurisdiction of the commission as provided in s. 8(f), Art. II of the State Constitution in accordance with procedures set forth herein. Within 5 days after receipt of a complaint by the commission, a copy shall be transmitted to the alleged violator. All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein, or as provided by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1), shall be confidential and exempt from the provisions of s. 119.07(1), and s. 24(a), Art. I of the State Constitution, either until the alleged violator requests in writing that such investigation and records be made public records or the preliminary investigation is completed, notwithstanding any provision of chapter 120 or s. 286.011 and s. 24(b), Art. I of the State Constitution ~~chapter 286~~. In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of

filing such a complaint be disclosed on the day of any such election or within the 5 days immediately preceding the date of the election. This subsection is repealed October 2, 2002, and must be reviewed by the Legislature before that date in accordance with s. 119.15, the Open Government Sunset Review Act of 1995.

Section 4. The Legislature finds it a public necessity that information concerning individuals under investigation for alleged violations of the ethics standards be kept confidential and exempt from the public records law. The release of such information could potentially be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals. In addition, the Legislature finds it a public necessity that records be protected and meetings be closed to the public so that administration of the Commission on Ethics and Public Trust is not otherwise significantly impaired. The exemption of this information would minimize the possibility of unnecessary scrutiny by the public or media of individuals under investigation and their families, and will create a secure environment in which the Commission on Ethics and Public Trust may conduct its business.

Section 5. This act shall take effect July 1, 1997.

Became a law without the Governor's approval June 1, 1997.

Filed in Office Secretary of State May 30, 1997.