

Committee Substitute for Senate Bill No. 1562

An act relating to public-records exemptions; creating s. 569.215; providing that proprietary confidential business information used to negotiate or verify annual tobacco settlement payments are exempt from public records requirements; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 569.215, Florida Statutes, is created to read:

569.215 Confidential records relating to tobacco settlement agreement.—

(1) Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the settlement agreement, as amended, in the case of The State of Florida et al. v. American Tobacco Company et al., Case #95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Comptroller or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a) of Art. I of the State Constitution. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in furtherance of such agency's statutory duties, notwithstanding the provisions of this section. Proprietary confidential business information received under this section shall not retain its confidential and exempt status if that information is made public, including publicizing such information in a Securities and Exchange Commission filing, an annual financial statement, or other document or means. This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

(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 The State of Florida et al. v. American Tobacco Company et al., Case #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.

(b) Information in a Form 10-K that is confidential pursuant to an order of the Division of Corporation Finance of the Securities and Exchange Commission.

(c) Internal auditing control policies and procedures and reports of internal auditors.

(d) Financial operating and marketing information prepared in the ordinary course of business, the disclosure of which could impair the competitive business of the provider of information.

(e) Financial statements, which consist of balance sheets, statements of income and cash flows, and notes related thereto, of any subsidiary that is part of a consolidated group and engaged in the production or sale of tobacco products.

(f) Report letters from independent auditors relating to domestic operating company income.

(g) Analyses of specific items of revenue and expense included in operating profit and extraordinary items. As used in this paragraph, the term "extraordinary items" consists of one-time tobacco litigation settlement costs and restructuring charges.

(h) Working papers, schedules, analyses, and reconciliations prepared by company personnel for the purpose of clarifying the disclosures of domestic tobacco revenues and operating profit contained in financial statements or other information related to the sale or production of tobacco products.

Section 2. The Legislature finds that it is a public necessity that proprietary confidential business information of tobacco companies that are signatories to the settlement agreement, as amended, in the case of The State of Florida et al. v. American Tobacco Company et al., Case #95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, be made exempt and confidential when held by the State of Florida for the purpose of negotiating and verifying the calculation of annual tobacco settlement payments. In order for the state to determine that the annual payments that it receives from tobacco companies are accurate and verifiable, it is necessary for the state to obtain proprietary confidential business information of the tobacco companies that are signatories to the agreement. Disclosure of the proprietary confidential business information of these tobacco companies would harm them in the market place by placing them at a competitive disadvantage with companies that do not provide such information to the State of Florida and would adversely affect their business interests. If the participating tobacco companies are harmed in the market place, their annual sales of tobacco products will be reduced, which will diminish the annual amounts that they pay to the State of Florida, and will thereby harm the financial interests of the state and the people of Florida. The public and private harm in disclosing this information significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor governmental action is not diminished by nondisclosure of this information. Therefore, the Legislature finds that it is a public necessity that this proprietary confidential business information be made

confidential and exempt from the requirements of section 119.07(1), Florida Statutes, and s. 24(a) of Art. I of the State Constitution.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 1, 2001.

Filed in Office Secretary of State June 1, 2001.