

CHAPTER 2012-207

Committee Substitute for Committee Substitute for House Bill No. 645

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for proprietary business information provided by title insurance agencies and insurers to the Office of Insurance Regulation; providing a definition; authorizing disclosure of aggregated information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

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

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that proprietary business information provided to the Office of Insurance Regulation by a title insurance agency or insurer, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue data, loss expense data, gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, and the amount of employee wages paid, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of

statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers and title insurance agencies provided to the Office of Insurance Regulation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 643 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

Approved by the Governor May 4, 2012.

Filed in Office Secretary of State May 4, 2012.