

## CHAPTER 2023-30

### Committee Substitute for Senate Bill No. 1552

An act relating to public records; amending s. 624.319, F.S.; providing an exemption from public records requirements for examination and investigation reports and work papers relating to pharmacy benefit managers; providing for future legislative review and repeal of the exemption; reenacting and amending s. 626.884, F.S.; expanding a public records exemption for the books and records of administrators held by the Office of Insurance Regulation for purposes of examination, audit, and inspection to incorporate the inclusion of pharmacy benefit managers as administrators under the Florida Insurance Code; providing for future legislative review and repeal of the exemption; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Section 624.319, Florida Statutes, is amended to read:

624.319 Examination and investigation reports.—

(1) The department or office or its examiner shall make a full and true written report of each examination. The examination report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the insurer examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The department or office must ~~shall~~ furnish a copy of the examination report to the insurer examined at least ~~not less than~~ 30 days ~~before~~ ~~prior to~~ filing the examination report in its office. If such insurer so requests in writing within such 30-day period, the department or office must ~~shall~~ grant a hearing with respect to the examination report and may ~~shall~~ not so file the examination report until after the hearing and after such modifications have been made therein as the department or office deems proper.

(2) The examination report so filed is admissible in evidence in any action or proceeding brought by the department or office against the person examined, or against its officers, employees, or agents. In all other proceedings, the admissibility of the examination report is governed by the evidence code. The department or office or its examiners may testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, regardless of whether a written report of the examination has been made, furnished, or filed in the department or office. The production of documents during the course of an examination or investigation does not constitute a waiver of the attorney-client or work-product privilege.

(3)(a)1. Examination reports, until filed, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Investigation reports are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active.

3. For purposes of this subsection, an investigation is active while it is being conducted by the department or office with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department or office is proceeding with reasonable dispatch and has a good faith belief that action could be initiated by the department or office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the investigation report relating to the investigation remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

- a. Jeopardize the integrity of another active investigation;
- b. Impair the safety and financial soundness of the licensee or affiliated party;
- c. Reveal personal financial information;
- d. Reveal the identity of a confidential source;
- e. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- f. Reveal investigative techniques or procedures.

(b)1. For purposes of this paragraph, “work papers” means the records of the procedures followed, the tests performed, the information obtained and the conclusions reached in an examination or investigation performed under this section or ss. 624.316, 624.3161, 624.317, and 624.318, and 626.8828. Work papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained in the course of such examination or investigation.

2.a. Work papers held by the department or office are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the examination report is filed or until the investigation is completed or ceases to be active.

b. Information received from another governmental entity or the National Association of Insurance Commissioners, which is confidential or exempt when held by that entity, for use by the department or office in the performance of its examination or investigation duties pursuant to this section or ss. 624.316, 624.3161, 624.317, and 624.318, and 626.8828 is

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

c. This exemption applies to work papers and such information held by the department or office before, on, or after the effective date of this exemption.

3. Confidential and exempt work papers and information may be disclosed to:

a. Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and

b. The National Association of Insurance Commissioners.

4. After an examination report is filed or an investigation is completed or ceases to be active, portions of work papers may remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

a. Jeopardize the integrity of another active examination or investigation;

b. Impair the safety or financial soundness of the licensee, affiliated party, or insured;

c. Reveal personal financial, medical, or health information;

d. Reveal the identity of a confidential source;

e. Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual;

f. Reveal examination techniques or procedures; or

g. Reveal information that is confidential or exempt under sub-subparagraph 2.b.

(c) Lists of insurers or regulated companies are confidential and exempt from s. 119.07(1) if:

1. The financial solvency, condition, or soundness of such insurers or regulated companies is being monitored by the office;

2. The list is prepared to internally coordinate regulation by the office of the financial solvency, condition, or soundness of the insurers or regulated companies; and

3. The office determines that public inspection of such list could impair the financial solvency, condition, or soundness of such insurers or regulated companies.

(4) After the examination report has been filed pursuant to subsection (1), the department or office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

(5) After the examination report of an insurer has been filed pursuant to subsection (1), an affidavit ~~must shall~~ be filed with the office, within not more than 30 days after the report has been filed, on a form furnished by the office and signed by the officer of the company in charge of the insurer's business in this state, stating that she or he has read the report and that the recommendations made in the report will be considered within a reasonable time.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and save from repeal through reenactment by the Legislature.

Section 2. Section 626.884, Florida Statutes, is reenacted and amended to read:

626.884 Maintenance of records by administrator; access; confidentiality.—

(1) Every administrator shall maintain in such administrator's principal administrative office for the duration of the written agreement and for 5 years thereafter adequate books and records of all transactions among such administrator, insurers, and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance record-keeping.

(2) The office shall have access to books and records maintained by the administrator for the purpose of examination, audit, and inspection. Information contained in such books and records is confidential and exempt from the ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such information would reveal a trade secret as defined in s. 688.002. However, the office may use such information in any proceeding instituted against the administrator.

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to the proprietary rights of the parties in such books and records.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. (1) The Legislature finds that it is a public necessity that the information contained in examination and investigation reports and work papers relating to examinations and investigations of pharmacy benefit managers, who are now considered administrators, as defined in s. 626.88, Florida Statutes, for purposes of regulation under the Florida Insurance Code, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution in accordance with s. 624.319, Florida Statutes. Administrators who are pharmacy benefit managers are subject to additional records production, examination, and investigation provisions, and those applicable work papers and examinations and investigation reports are to be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution in accordance with s. 624.319, Florida Statutes. As a new class of administrators, pharmacy benefit managers need to be subject to the exemptions that currently exist for administrators, unless otherwise provided in statute, in order to protect their confidential information and business and professional good name or reputation in a like manner. Additionally, the Department of Financial Services and the Office of Insurance Regulation, both of which are responsible for examinations and investigations of administrators under the Florida Insurance Code, need to ensure that disclosure of such information would not jeopardize the integrity of another active investigation, reveal the identity of a confidential source, reveal investigative techniques or procedures, or reveal information that is received from another governmental entity or the National Association of Insurance Commissioners which is confidential or exempt when held by that entity. For these reasons, the Legislature finds that it is a public necessity that such information be made confidential and exempt from public records requirements.

(2) The Legislature finds that it is a public necessity that the trade secret information contained in the books and records of pharmacy benefit managers, who are now considered administrators, as defined in s. 626.88, Florida Statutes, for purposes of regulation under the Florida Insurance Code, which are held by the Office of Insurance Regulation in relation to examinations, audits, or inspections of pharmacy benefit managers be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that the release of trade secret information could destroy the value of a business's proprietary information and cause financial loss to the business by giving its competitors an unfair advantage and weakening its position in the marketplace. As a new class of administrators, pharmacy benefit managers need to be subject to the exemptions that currently exist for administrators, unless otherwise provided in statute, in order to protect their trade secret information. For these reasons, the Legislature finds that it is a public necessity to make such trade secret information contained in the books and records of pharmacy benefit managers confidential and exempt from public records requirements.

Section 4. This act shall take effect on the same date that SB 1550 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Approved by the Governor May 3, 2023.

Filed in Office Secretary of State May 3, 2023.