

By Senator Brodeur

10-02226-23

20231552\_\_

1                                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       624.319, F.S.; providing an exemption from public  
4       records requirements for examination and investigation  
5       reports and work papers relating to pharmacy benefit  
6       managers; providing for future legislative review and  
7       repeal of the exemption; reenacting and amending s.  
8       626.884, F.S.; expanding a public records exemption  
9       for the books and records of administrators held by  
10      the Office of Insurance Regulation for purposes of  
11      examination, audit, and inspection to incorporate the  
12      inclusion of pharmacy benefit managers as  
13      administrators under the Florida Insurance Code;  
14      providing for future legislative review and repeal of  
15      the exemption; providing statements of public  
16      necessity; providing a contingent effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20       Section 1. Section 624.319, Florida Statutes, is amended to  
21      read:

22       624.319 Examination and investigation reports.—

23       (1) The department or office or its examiner shall make a  
24      full and true written report of each examination. The  
25      examination report shall contain only information obtained from  
26      examination of the records, accounts, files, and documents of or  
27      relative to the insurer examined or from testimony of  
28      individuals under oath, together with relevant conclusions and  
29      recommendations of the examiner based thereon. The department or

10-02226-23

20231552\_\_

30 office must ~~shall~~ furnish a copy of the examination report to  
31 the insurer examined at least ~~not less than~~ 30 days before ~~prior~~  
32 ~~to~~ filing the examination report in its office. If such insurer  
33 so requests in writing within such 30-day period, the department  
34 or office must ~~shall~~ grant a hearing with respect to the  
35 examination report and may ~~shall~~ not ~~se~~ file the examination  
36 report until after the hearing and after such modifications have  
37 been made therein as the department or office deems proper.

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

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

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

57 3. For purposes of this subsection, an investigation is  
58 active while it is being conducted by the department or office

10-02226-23

20231552\_\_

59 with a reasonable, good faith belief that it could lead to the  
60 filing of administrative, civil, or criminal proceedings. An  
61 investigation does not cease to be active if the department or  
62 office is proceeding with reasonable dispatch and has a good  
63 faith belief that action could be initiated by the department or  
64 office or other administrative or law enforcement agency. After  
65 an investigation is completed or ceases to be active, portions  
66 of the investigation report relating to the investigation remain  
67 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
68 of the State Constitution if disclosure would:

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

79 (b)1. For purposes of this paragraph, "work papers" means  
80 the records of the procedures followed, the tests performed, the  
81 information obtained and the conclusions reached in an  
82 examination or investigation performed under this section or ss.  
83 624.316, 624.3161, 624.317, ~~and 624.318~~, and 626.8828. Work  
84 papers include planning documentation, work programs, analyses,  
85 memoranda, letters of confirmation and representation, abstracts  
86 of company documents, and schedules or commentaries prepared or  
87 obtained in the course of such examination or investigation.

10-02226-23

20231552\_\_

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

92 b. Information received from another governmental entity or  
93 the National Association of Insurance Commissioners, which is  
94 confidential or exempt when held by that entity, for use by the  
95 department or office in the performance of its examination or  
96 investigation duties pursuant to this section or ss. 624.316,  
97 624.3161, 624.317, ~~and 624.318~~, and 626.8828 is confidential and  
98 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
99 Constitution.

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

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

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

108 b. The National Association of Insurance Commissioners.

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

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

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

10-02226-23

20231552\_\_

- 117 c. Reveal personal financial, medical, or health  
118 information;
- 119 d. Reveal the identity of a confidential source;
- 120 e. Defame or cause unwarranted damage to the good name or  
121 reputation of an individual or jeopardize the safety of an  
122 individual;
- 123 f. Reveal examination techniques or procedures; or
- 124 g. Reveal information that is confidential or exempt under  
125 sub-subparagraph 2.b.
- 126 (c) Lists of insurers or regulated companies are  
127 confidential and exempt from s. 119.07(1) if:
- 128 1. The financial solvency, condition, or soundness of such  
129 insurers or regulated companies is being monitored by the  
130 office;
- 131 2. The list is prepared to internally coordinate regulation  
132 by the office of the financial solvency, condition, or soundness  
133 of the insurers or regulated companies; and
- 134 3. The office determines that public inspection of such  
135 list could impair the financial solvency, condition, or  
136 soundness of such insurers or regulated companies.
- 137 (4) After the examination report has been filed pursuant to  
138 subsection (1), the department or office may publish the results  
139 of any such examination in one or more newspapers published in  
140 this state whenever it deems it to be in the public interest.
- 141 (5) After the examination report of an insurer has been  
142 filed pursuant to subsection (1), an affidavit must ~~shall~~ be  
143 filed with the office, within ~~not more than~~ 30 days after the  
144 report has been filed, on a form furnished by the office and  
145 signed by the officer of the company in charge of the insurer's

10-02226-23

20231552\_\_

146 business in this state, stating that she or he has read the  
147 report and that the recommendations made in the report will be  
148 considered within a reasonable time.

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

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

155 626.884 Maintenance of records by administrator; access;  
156 confidentiality.-

157 (1) Every administrator shall maintain in such  
158 administrator's principal administrative office for the duration  
159 of the written agreement and for 5 years thereafter adequate  
160 books and records of all transactions among such administrator,  
161 insurers, and insured persons. Such books and records shall be  
162 maintained in accordance with prudent standards of insurance  
163 recordkeeping.

164 (2) The office shall have access to books and records  
165 maintained by the administrator for the purpose of examination,  
166 audit, and inspection. Information contained in such books and  
167 records is confidential and exempt from ~~the provisions of s.~~  
168 119.07(1) and s. 24(a), Art. I of the State Constitution if the  
169 disclosure of such information would reveal a trade secret as  
170 defined in s. 688.002. However, the office may use such  
171 information in any proceeding instituted against the  
172 administrator.

173 (3) The insurer shall retain the right of continuing access  
174 to books and records maintained by the administrator sufficient

10-02226-23

20231552\_\_

175 to permit the insurer to fulfill all of its contractual  
176 obligations to insured persons, subject to any restrictions in  
177 the written agreement pertaining to the proprietary rights of  
178 the parties in such books and records.

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

183 Section 3. (1) The Legislature finds that it is a public  
184 necessity that the information contained in examination and  
185 investigation reports and work papers relating to examinations  
186 and investigations of pharmacy benefit managers, who are now  
187 considered administrators, as defined in s. 626.88, Florida  
188 Statutes, for purposes of regulation under the Florida Insurance  
189 Code, be made confidential and exempt from s. 119.07(1), Florida  
190 Statutes, and s. 24(a), Article I of the State Constitution.  
191 Administrators who are pharmacy benefit managers are subject to  
192 additional records production, examination, and investigation  
193 provisions, and those applicable work papers and examinations  
194 and investigation reports are to be made confidential and exempt  
195 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
196 the State Constitution. As a new class of administrators,  
197 pharmacy benefit managers need to be subject to the exemptions  
198 that currently exist for administrators, unless otherwise  
199 provided in statute, in order to protect their confidential  
200 information and business and professional good name or  
201 reputation in a like manner. Additionally, the Department of  
202 Financial Services and the Office of Insurance Regulation, both  
203 of which are responsible for examinations and investigations of

10-02226-23

20231552\_\_

204 administrators under the Florida Insurance Code, need to ensure  
205 that disclosure of such information would not jeopardize the  
206 integrity of another active investigation, reveal the identity  
207 of a confidential source, reveal investigative techniques or  
208 procedures, or reveal information that is received from another  
209 governmental entity or the National Association of Insurance  
210 Commissioners which is confidential or exempt when held by that  
211 entity. For these reasons, the Legislature finds that it is a  
212 public necessity that such information be made confidential and  
213 exempt from public records requirements.

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

10-02226-23

20231552\_\_

233 contained in the books and records of pharmacy benefit managers  
234 confidential and exempt from public records requirements.

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