HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HB 1895 (PCB SA 03-31)   Public Records Exemption/Credit Scoring Methodologies
SPONSOR(S): State Administration
TIED BILLS: HB 987   **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	3 Y, 1 N	Williamson	Everhart
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 987, the tied bill, relates to use of credit reports by insurers regarding personal lines motor vehicle insurance and homeowner's insurance. The bill provides that an insurer may not use a credit report as an underwriting or rating factor unless the insurer provides the Office of Insurance Regulation (office) with the methodology used.

This bill creates a public records exemption for those credit scoring methodologies and related data and information that are trade secrets filed with the office pursuant to a rate filing. This bill provides for future review and repeal, and provides a statement of public necessity. It also provides a contingent effective date.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?   Yes[] No[] N/A[x]
2. Lower taxes?   Yes[] No[] N/A[x]
3. Expand individual freedom?   Yes[] No[] N/A[x]
4. Increase personal responsibility?   Yes[] No[] N/A[x]
5. Empower families?   Yes[] No[] N/A[x]

For any principle that received a "no" above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

HB 987, the tied bill, relates to use of credit reports by insurers regarding personal lines motor vehicle insurance and homeowner's insurance. It regulates and limits the use of credit reports by insurers for underwriting and rating purposes. Additionally, an insurer may not use a credit report as an underwriting or rating factor unless certain information is provided to the Office of Insurance Regulation (office). In order to use the credit report, an insurer must provide sufficient information for the office to determine that the methodology used by the insurer reasonably predicts the insurance risk posed by the applicant or insured.

Effect of Bill

This bill creates a public records exemption for credit scoring methodologies and related data and information that are trade secrets filed with the office. Such confidential and exempt[1] information must be filed with the office pursuant to a rate filing or other filing required by law.

This bill provides for future review and repeal, and provides a statement of public necessity. It also provides an effective date contingent upon the passage of HB 987 or similar legislation.

C. SECTION DIRECTORY:

Section 1. Creates s. 627.9742, F.S., creating a public records exemption for credit scoring methodologies and related data and information that are trade secrets filed with the Office of Insurance Regulation.

Section 2. Provides for future review and repeal.

Section 3. Provides a statement of public necessity.

Section 4. Makes the bill take effect January 1, 2004, if HB 987 or a similar bill becomes law.

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[1] There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

    1. Revenues: None.

    2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

    1. Revenues: None.

    2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

    1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.

    2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

    Public Records Law

    Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

    Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995[2] provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an

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[2] Section 119.15, F.S.

individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.