

By Senator Ring

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1                   A bill to be entitled  
2           An act relating to public records; amending s.  
3           628.461, F.S.; providing an exemption from public-  
4           records requirements for notice of a proposed  
5           divestiture in a domestic insurer provided to the  
6           Commissioner of Insurance pursuant to the acquisition  
7           of a domestic stock insurer; specifying duration of  
8           the exemption; providing an exemption from public-  
9           records requirements for the identity of a lender  
10          pursuant to a merger or other acquisition of control  
11          of a domestic stock insurer where a source of  
12          consideration is a loan made in the lender's ordinary  
13          course of business, upon request of the lender;  
14          providing for future legislative review and repeal of  
15          the exemptions; providing a statement of public  
16          necessity; providing a conditional effective date.

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

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20           Section 1. Paragraph (a) of subsection (2) and paragraph  
21           (a) of subsection (3) of section 628.461, Florida Statutes, as  
22           amended by SB \_\_\_, 2011 Regular Session, are amended to read:

23           628.461 Acquisition of controlling stock.—

24           (2) FILING REQUIREMENTS; PUBLIC-RECORDS EXEMPTION.—A person  
25           may not, individually or in conjunction with any affiliated  
26           person of such person, acquire directly or indirectly, conclude  
27           a tender offer or exchange offer for, enter into any agreement  
28           to exchange securities for, or otherwise finally acquire 10  
29           percent or more of the outstanding voting securities of a

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30 domestic stock insurer or of a controlling company, unless at  
31 the time the offer, request, or invitation is made or the  
32 agreement is entered into, or prior to the acquisition of the  
33 securities if no offer or agreement is involved, such person has  
34 filed with the commissioner and has sent to the insurer, a  
35 statement containing the information required by this section  
36 and the offer, request, invitation, agreement, or acquisition  
37 has been approved by the commissioner in the manner prescribed  
38 in this section.

39 (a) 1. For purposes of this section, any controlling person  
40 of a domestic insurer seeking to divest its controlling interest  
41 in the domestic insurer in any manner shall file with the  
42 commissioner, with a copy provided to the insurer, notice of its  
43 proposed divestiture at least 30 days prior to the cessation of  
44 control. The commissioner shall determine those instances in  
45 which the party or parties seeking to divest a controlling  
46 interest in an insurer will be required to file for and obtain  
47 approval of the transaction.

48 2. Notice of a proposed divestiture in a domestic insurer  
49 provided to the commissioner by a controlling person of a  
50 domestic insurer under subparagraph 1. is confidential and  
51 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
52 Constitution. Information contained in the notice remains  
53 confidential until the conclusion of the transaction unless the  
54 commissioner, in his or her discretion, determines that  
55 confidential treatment will interfere with the enforcement of  
56 this section.

57 3. Subparagraph 2. is subject to the Open Government Sunset  
58 Review Act in accordance with s. 119.15 and shall stand repealed

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59 on October 2, 2016, unless reviewed and saved from repeal  
60 through reenactment by the Legislature.

61 (3) CONTENT OF STATEMENT.—

62 (a) The statement to be filed with the office and furnished  
63 to the insurer and controlling company shall be made under oath  
64 and contain the following information and any additional  
65 information as the office deems necessary to determine the  
66 character, experience, ability, and other qualifications of the  
67 person or affiliated person of such person for the protection of  
68 the policyholders and shareholders of the insurer and the  
69 public:

70 1. The name and address of each person by whom or on whose  
71 behalf the merger or other acquisition of control referred to in  
72 subsection (2) is to be effected, hereinafter referred to as the  
73 "acquiring party," the background information on each natural  
74 person by whom, or on whose behalf, the acquisition is to be  
75 made, and, if the acquisition is to be made by or on behalf of a  
76 corporation, association, or trust, the identity of, and the  
77 background information specified in this section on, each  
78 director, officer, trustee, or other natural person performing  
79 duties similar to those of a director, officer, or trustee for  
80 the corporation, association, or trust or any person who  
81 controls, either directly or indirectly, the corporation,  
82 association, or trust, and:

83 a. If the person is an individual, his or her principal  
84 occupation and all offices and positions held during the past 10  
85 years, and any conviction of crimes other than minor traffic  
86 violations during the past 10 years;

87 b. Whether, during such 10-year period, the person has been

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88 the subject of any proceeding for the revocation of any license  
89 and, if so, the nature of the proceeding and the disposition of  
90 the proceeding.

91 c. Whether, during the 10-year period, the person has been  
92 the subject of any proceeding under the Federal Bankruptcy Code  
93 or whether, during the 10-year period, any corporation,  
94 partnership, firm, trust, or association in which the person was  
95 a director, officer, trustee, partner, or other official has  
96 been subject to any such proceeding, either during the time in  
97 which the person was a director, officer, trustee, partner, or  
98 other official or within 12 months thereafter.

99 d. Whether, during the 10-year period, the person has been  
100 enjoined, either temporarily or permanently, by a court of  
101 competent jurisdiction from violating any federal or state law  
102 regulating the business of insurance, securities, or banking, or  
103 from carrying out any particular practice or practices in the  
104 course of the business of insurance, securities, or banking,  
105 together with details as to any such event.

106 e. If the person is not an individual, a report of the  
107 nature of its business operations during the past 5 years or for  
108 the period of time that the person and any predecessors have  
109 been in existence, whichever is less, an informative description  
110 of the business intended to be conducted by the person and the  
111 person's subsidiaries, and a list of all individuals who are or  
112 who have been selected to become directors, trustees, or  
113 executive officers of the person, or who perform or will perform  
114 functions appropriate to such positions. The list must include  
115 for each individual the information required under subparagraph  
116 (a)1.;

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117           2.a. The source, nature, and amount of the consideration  
118 used or to be used in effecting the merger or other acquisition  
119 of control, a description of any transaction where funds were or  
120 are to be obtained for any such purpose, including any pledge of  
121 the insurer's stock or the stock of any of its subsidiaries or  
122 controlling affiliates, and the identity of persons furnishing  
123 consideration.

124           b. Where a source of consideration is a loan made in the  
125 lender's ordinary course of business, the identity of the lender  
126 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
127 I of the State Constitution, if the lender so requests.

128           c. Sub-subparagraph b. is subject to the Open Government  
129 Sunset Review Act in accordance with s. 119.15 and shall stand  
130 repealed on October 2, 2016, unless reviewed and saved from  
131 repeal through reenactment by the Legislature.

132           3. Fully audited financial information as to the earnings  
133 and financial condition of each acquiring party for the  
134 preceding 5 fiscal years of each acquiring party, or for the  
135 period the acquiring party and any predecessors have been in  
136 existence, whichever is less, and similar unaudited information  
137 as of a date not earlier than 90 days prior to the filing of the  
138 statement;

139           4. Any plans or proposals which each acquiring party may  
140 have to liquidate the insurer, to sell its assets or merge or  
141 consolidate it with any person, or to make any other material  
142 change in its business or corporate structure or management;

143           5. The number and class of shares of any security referred  
144 to in subsection (2) that each acquiring party proposes to  
145 acquire, the terms of the offer, request, invitation, agreement

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146 or acquisition referred to in subsection (2), and a statement as  
147 to the method used to determine the fairness of the proposal;

148 6. The amount of each class of any security referred to in  
149 subsection (2) which is beneficially owned or concerning which  
150 there is a right to acquire beneficial ownership by each  
151 acquiring party;

152 7. A full description of any contracts, arrangement, or  
153 understandings with respect to any security referred to in  
154 subsection (2) in which any acquiring party is involved,  
155 including, but not limited to, transfer of any of the  
156 securities, joint ventures, loan or option arrangements, puts or  
157 calls, guarantees of loans, guarantees against loss or  
158 guarantees of profits, division of losses or profits, or the  
159 giving or withholding of proxies. The description must identify  
160 the persons with whom the contracts, arrangements, or  
161 understandings have been entered into;

162 8. A description of the purchase of any security referred  
163 to in subsection (2) during the 12 calendar months preceding the  
164 filing of the statement by any acquiring party, including the  
165 dates of purchase, names of the purchasers, and consideration  
166 paid or agreed to be paid;

167 9. A description of any recommendations to purchase any  
168 security referred to in subsection (2), made during the 12  
169 calendar months preceding the filing of the statement by any  
170 acquiring party or by anyone based upon interviews or at the  
171 suggestion of the acquiring party;

172 10. Copies of all tender offers for, requests or  
173 invitations for tenders of, exchange offers for, and agreements  
174 to acquire or exchange any securities referred to in subsection

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175 (2), and, if distributed, copies of additional soliciting  
176 material relating to them;

177 11. The term of any agreement, contract, or understanding  
178 made with or proposed to be made with any broker-dealer as to  
179 solicitation of securities referred to in subsection (2) for  
180 tender, and the amount of any fees, commissions, or other  
181 compensation to be paid to broker-dealers with regard thereto;

182 12. An agreement by the person required to file the  
183 statement referred to in subsection (2) that he or she will  
184 provide the annual enterprise risk report, if applicable,  
185 specified in s. 628.801, for so long as control exists;

186 13. An acknowledgement by the person required to file the  
187 statement referred to in subsection (2) that the person and all  
188 subsidiaries within its control in the insurance holding company  
189 system will provide information to the commissioner upon request  
190 as necessary to evaluate enterprise risk to the insurer; and

191 14. Such additional information as the commissioner may by  
192 rule or regulation prescribe as necessary or appropriate for the  
193 protection of policyholders of the insurer or in the public  
194 interest.

195 Section 2. It is the finding of the Legislature that notice  
196 of a proposed divestiture in a domestic insurer provided to the  
197 Commissioner of Insurance by a controlling person of a domestic  
198 insurer who is the acquiring party in the acquisition of a  
199 domestic stock insurer be made confidential and exempt from s.  
200 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
201 State Constitution until the conclusion of the transaction,  
202 unless the commissioner, in his or her discretion, determines  
203 that confidential treatment will interfere with the enforcement

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204 of s. 628.461, Florida Statutes. It is also the finding of the  
205 Legislature that, with respect to a merger or other acquisition  
206 of control of a domestic stock insurer where a source of  
207 consideration is a loan made in the lender's ordinary course of  
208 business, the identity of the lender be held confidential and  
209 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
210 Article I of the State Constitution if the lender requests  
211 confidentiality.

212 Section 3. This act shall take effect on the same date that  
213 SB \_\_\_ or similar legislation takes effect, if such legislation  
214 is adopted in the same legislative session or an extension  
215 thereof and becomes law.