

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 624.4212, F.S.; creating an exemption from public
 4 records requirements for proprietary business
 5 information submitted to the Office of Insurance
 6 Regulation; defining the term "proprietary business
 7 information"; providing exceptions; providing for
 8 future legislative review and repeal; providing a
 9 statement of public necessity; providing a contingent
 10 effective date.

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

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 14 Section 1. Section 624.4212, Florida Statutes, is created
 15 to read:

16 624.4212 Confidentiality of proprietary business
 17 information.—Proprietary business information held by the Office
 18 of Insurance Regulation in accordance with its statutory duties
 19 with respect to insurer solvency is confidential and exempt from
 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

21 (1) As used in this section, the term "proprietary
 22 business information" means information, regardless of form or
 23 characteristics, which is owned or controlled by an insurer, or
 24 a person or affiliated person who seeks acquisition of
 25 controlling stock in a domestic stock insurer or controlling
 26 company, and which:

27 (a) Is intended to be and is treated by the insurer or the
 28 person as private in that the disclosure of the information

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29 would cause harm to the insurer, the person, or the company's
30 business operations and has not been disclosed unless disclosed
31 pursuant to a statutory requirement, an order of a court or
32 administrative body, or a private agreement that provides that
33 the information will not be released to the public;

34 (b) Is not otherwise readily ascertainable or publicly
35 available by proper means by other persons from another source
36 in the same configuration as requested by the office; and

37 (c) Includes, but is not limited to:

38 1. Trade secrets.

39 2. Information relating to competitive interests, the
40 disclosure of which would impair the competitive business of the
41 provider of the information.

42 3. The source, nature, and amount of the consideration
43 used or to be used in carrying out a merger or other acquisition
44 of control in the ordinary course of business, including the
45 identity of the lender, if the person filing a statement
46 regarding consideration so requests.

47 4. Information relating to bids or other contractual data,
48 the disclosure of which would impair the efforts of the insurer
49 or its affiliates to contract for goods or services on favorable
50 terms.

51 5. Internal auditing controls and reports of internal
52 auditors.

53 (2) Proprietary business information may be found in:

54 (a) The actuarial opinion summary required under s.
55 624.424(1)(b);

56 (b) Information filed by the person or affiliated person

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57 who seeks to divest or acquire controlling stock in an insurer
58 pursuant to s. 628.461;

59 (c) The enterprise risk report required under s. 628.801;

60 (d) Information obtained by the office pursuant to
61 participation in a supervisory college established under s.
62 628.805; or

63 (e) Information received from another governmental entity
64 or the National Association of Insurance Commissioners which is
65 confidential or exempt if held by that entity, for use by the
66 office in the performance of its duties.

67 (3) The office may disclose confidential and exempt
68 proprietary business information:

69 (a) If the insurer to which it pertains gives prior
70 written consent;

71 (b) Pursuant to a court order;

72 (c) To the American Academy of Actuaries upon a request
73 stating that the information is for the purpose of professional
74 disciplinary proceedings and specifying procedures satisfactory
75 to the office for preserving the confidentiality of the
76 information;

77 (d) To other states, federal and international agencies,
78 the National Association of Insurance Commissioners and its
79 affiliates and subsidiaries, and state, federal, and
80 international law enforcement authorities, including members of
81 a supervisory college described in s. 628.805 if the recipient
82 agrees in writing to maintain the confidential and exempt status
83 of the document, material, or other information, and has
84 verified in writing its legal authority to maintain such

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85 confidentiality; or

86 (e) For the purpose of aggregating information on an
87 industrywide basis and disclosing the information to the public
88 only if the specific identities of the insurers, or persons or
89 affiliated persons, are not revealed.

90 (4) This section is subject to the Open Government Sunset
91 Review Act of 1995 in accordance with s. 119.15 and shall stand
92 repealed on October 2, 2018, unless reviewed and saved from
93 repeal through reenactment by the Legislature.

94 Section 2. The Legislature finds that it is a public
95 necessity that proprietary business information that is provided
96 to the Office of Insurance Regulation by an insurer or acquiring
97 party pursuant to the requirements of the Florida Insurance Code
98 or the Holding Company System Regulatory Act of the National
99 Association of Insurance Commissioners in order for the office
100 to conduct its regulatory duties with respect to insurer
101 solvency, be made confidential and exempt from s. 119.07(1),
102 Florida Statutes, and s. 24(a), Article I of the State
103 Constitution. The disclosure of such information could injure an
104 insurer in the marketplace by providing its competitors with
105 detailed insight into the financial status and strategic plans
106 of the insurer, thereby diminishing the advantage that the
107 insurer maintains over competitors that do not possess such
108 information. Without this exemption, an insurer or acquiring
109 party might refrain from providing accurate and unbiased data,
110 thus impairing the office's ability to accurately evaluate the
111 propriety of proposed acquisitions in the state, and the
112 financial condition of insurers and their affiliates.

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113 Proprietary business information derives actual or potential
114 independent economic value from not being generally known to,
115 and not being readily ascertainable by proper means by, other
116 persons who can derive economic value from its disclosure or
117 use. The office, in performing its duties and responsibilities,
118 may need to obtain proprietary business information from
119 insurers and regulated entities. Without an exemption from
120 public records requirements for proprietary business information
121 provided to the office, such information becomes a public record
122 when received and must be divulged upon request. Divulgence of
123 proprietary business information under the public records law
124 would destroy the value of that property to the proprietor,
125 causing a financial loss not only to the proprietor but also to
126 the residents of this state due to the loss of reliable
127 financial data necessary for the accurate evaluation of proposed
128 acquisitions. Release of proprietary business information would
129 give business competitors an unfair advantage and weaken the
130 position in the marketplace of the proprietor who owns or
131 controls the business information. The harm to insurers in the
132 marketplace and to the effective administration of acquisitions
133 caused by the public disclosure of such information far
134 outweighs the public benefits derived from its release.

135 Section 3. This act shall take effect October 1, 2013, if
136 HB 821 or similar legislation is adopted in the same legislative
137 session or an extension thereof and becomes a law.