

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

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

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 19 Section 1. Paragraph (a) of subsection (2) and paragraph
 20 (a) of subsection (3) of section 628.461, Florida Statutes, as
 21 amended by HB 1167, 2011 Regular Session, are amended to read:

22 628.461 Acquisition of controlling stock.—

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

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

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

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

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56 3. Subparagraph 2. is subject to the Open Government
57 Sunset Review Act in accordance with s. 119.15 and shall stand
58 repealed on October 2, 2016, unless reviewed and saved from
59 repeal through reenactment by the Legislature.

60 (3) CONTENT OF STATEMENT.—

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

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

82 a. If the person is an individual, his or her principal
83 occupation and all offices and positions held during the past 10

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84 | years, and any conviction of crimes other than minor traffic
85 | violations during the past 10 years;

86 | b. Whether, during such 10-year period, the person has
87 | been the subject of any proceeding for the revocation of any
88 | license and, if so, the nature of the proceeding and the
89 | disposition of the proceeding.

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

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

105 | e. If the person is not an individual, a report of the
106 | nature of its business operations during the past 5 years or for
107 | the period of time that the person and any predecessors have
108 | been in existence, whichever is less, an informative description
109 | of the business intended to be conducted by the person and the
110 | person's subsidiaries, and a list of all individuals who are or
111 | who have been selected to become directors, trustees, or

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112 executive officers of the person, or who perform or will perform
113 functions appropriate to such positions. The list must include
114 for each individual the information required under subparagraph
115 (a)1.;

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

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

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

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

138 4. Any plans or proposals which each acquiring party may
139 have to liquidate the insurer, to sell its assets or merge or

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140 consolidate it with any person, or to make any other material
141 change in its business or corporate structure or management;

142 5. The number and class of shares of any security referred
143 to in subsection (2) that each acquiring party proposes to
144 acquire, the terms of the offer, request, invitation, agreement
145 or acquisition referred to in subsection (2), and a statement as
146 to the method used to determine the fairness of the proposal;

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

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

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

166 9. A description of any recommendations to purchase any
167 security referred to in subsection (2), made during the 12

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168 calendar months preceding the filing of the statement by any
169 acquiring party or by anyone based upon interviews or at the
170 suggestion of the acquiring party;

171 10. Copies of all tender offers for, requests or
172 invitations for tenders of, exchange offers for, and agreements
173 to acquire or exchange any securities referred to in subsection
174 (2), and, if distributed, copies of additional soliciting
175 material relating to them;

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

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

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

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

194 Section 2. It is the finding of the Legislature that
195 notice of a proposed divestiture in a domestic insurer provided

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196 to the Commissioner of Insurance by a controlling person of a
197 domestic insurer who is the acquiring party in the acquisition
198 of a domestic stock insurer be made confidential and exempt from
199 s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the
200 State Constitution until the conclusion of the transaction,
201 unless the commissioner, in his or her discretion, determines
202 that confidential treatment will interfere with the enforcement
203 of section 628.461, Florida Statutes. It is also the finding of
204 the Legislature that, with respect to a merger or other
205 acquisition of control of a domestic stock insurer where a
206 source of consideration is a loan made in the lender's ordinary
207 course of business, the identity of the lender be held
208 confidential and exempt from s. 119.07(1), Florida Statutes, and
209 s. 24(a), Art. I of the State Constitution if the lender
210 requests confidentiality.

211 Section 3. This act shall take effect on the same date
212 that HB 1167 or similar legislation takes effect, if such
213 legislation is adopted in the same legislative session or an
214 extension thereof and becomes law.