

By Senator Ring

32-02083-11

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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

32-02083-11

20111800__

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

32-02083-11

20111800__

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

32-02083-11

20111800__

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.;

32-02083-11

20111800__

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

32-02083-11

20111800__

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

32-02083-11

20111800

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

32-02083-11

20111800__

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.