

By Senator Simmons

10-00918-13

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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.

11  
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 business  
22 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  
29 would cause harm to the insurer, the person, or the company's

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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 used  
43 or to be used in carrying out a merger or other acquisition of  
44 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 1. The actuarial opinion summary required under s.  
55 624.424(1)(b);

56 2. Information filed by the person or affiliated person who  
57 seeks to divest or acquire controlling stock in an insurer  
58 pursuant to s. 628.461;

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59       3. The enterprise risk report required under s. 628.801;

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

63       5. Information received from another governmental entity or  
64 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 written  
70 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  
85 confidentiality; or

86       (e) For the purpose of aggregating information on an  
87 industrywide basis and disclosing the information to the public

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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.  
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

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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 SB \_\_\_\_\_ or similar legislation is adopted in the same  
137 legislative session or an extension thereof and becomes a law.