

By the Committee on Banking and Insurance; and Senator Simmons

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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.

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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 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 as defined in s. 688.002 which comply with
39 s. 624.4213.

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

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

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

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

54 6. The actuarial opinion summary required under s.
55 624.424(1)(b) and the documents, materials, and other
56 information related thereto.

57 7. A notice filed with the office by the person or
58 affiliated person who seeks to divest controlling stock in an

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59 insurer pursuant to s. 628.461.

60 8. The filings required under s. 628.801 and all documents,
61 materials, and other information related thereto.

62 9. The enterprise risk report required under ss. 628.461(3)
63 and 628.801 and the documents, materials, and other information
64 related to the enterprise risk report.

65 10. Information provided to or obtained by the office
66 pursuant to participation in a supervisory college established
67 under s. 628.805.

68 11. Information received from another governmental entity
69 or the National Association of Insurance Commissioners which is
70 confidential or exempt if held by that entity for use by the
71 office in the office's performance of its duties.

72 (2) The office may disclose confidential and exempt
73 proprietary business information:

74 (a) If the insurer to which it pertains gives prior written
75 consent;

76 (b) Pursuant to a court order;

77 (c) To the American Academy of Actuaries upon a request
78 stating that the information is for the purpose of professional
79 disciplinary proceedings and specifying procedures satisfactory
80 to the office for preserving the confidentiality of the
81 information;

82 (d) To other states, federal and international agencies,
83 the National Association of Insurance Commissioners and its
84 affiliates and subsidiaries, and state, federal, and
85 international law enforcement authorities, including members of
86 a supervisory college described in s. 628.805 if the recipient
87 agrees in writing to maintain the confidential and exempt status

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88 of the document, material, or other information, and has
89 verified in writing its legal authority to maintain such
90 confidentiality; or

91 (e) For the purpose of aggregating information on an
92 industrywide basis and disclosing the information to the public
93 only if the specific identities of the insurers, or persons or
94 affiliated persons, are not revealed.

95 (3) This section is subject to the Open Government Sunset
96 Review Act in accordance with s. 119.15 and shall stand repealed
97 on October 2, 2018, unless reviewed and saved from repeal
98 through reenactment by the Legislature.

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

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

140 Section 3. This act shall take effect October 1, 2013, if
141 SB 836 or similar legislation is adopted in the same legislative
142 session or an extension thereof and becomes a law.