

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 624.4212, F.S.; providing an exemption from public
 4 records requirements for proprietary business
 5 information and information that is confidential when
 6 held by another entity in this state, the Federal
 7 Government, or another state or nation and which is
 8 held by the Office of Insurance Regulation; providing
 9 exceptions; defining the term "proprietary business
 10 information"; providing for future legislative review
 11 and repeal; providing a statement of public necessity;
 12 providing a contingent effective date.

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

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 16 Section 1. Section 624.4212, Florida Statutes, is created
 17 to read:

18 624.4212 Confidentiality of proprietary business and other
 19 information.-

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

26 (a) Is intended to be and is treated by the insurer or the

27 person as private in that the disclosure of the information
 28 would cause harm to the insurer, the person, or the company's
 29 business operations and in that the information has not been
 30 disclosed unless disclosed pursuant to a statutory requirement,
 31 an order of a court or administrative body, or a private
 32 agreement that provides that the information will not be
 33 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
 39 with 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
 44 used or to be used in carrying out a merger or other acquisition
 45 of 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 (2) Proprietary business information contained in the
55 following items held by the office is confidential and exempt
56 from s. 119.07(1) and s. 24(a), Art. I of the State
57 Constitution:

58 (a) The actuarial opinion summary required under ss.
59 624.424(1)(b) and 625.121(3) and information related thereto.

60 (b) A notice filed with the office by the person or
61 affiliated person who seeks to divest controlling stock in an
62 insurer pursuant to s. 628.461.

63 (c) The filings required under s. 628.801 and information
64 related thereto.

65 (d) The enterprise risk report required under ss.
66 628.461(3) and 628.801 and the information related thereto.

67 (e) Information provided to or obtained by the office
68 pursuant to participation in a supervisory college established
69 under s. 628.805.

70 (f) Beginning on the operative date of the valuation
71 manual as defined in s. 625.1212(2):

72 1. An actuarial examination conducted pursuant to s.
73 625.1212(5)(c) and information related thereto.

74 2. The annual certification submitted by the insurer
75 pursuant to s. 625.1212(6)(b)2. and information related thereto.

76 3. The principle-based valuation report filed pursuant to
77 s. 625.1212(6)(b)3. and information related thereto.

78 4. Mortality, morbidity, policyholder behavior, or expense

79 experience and other data submitted pursuant to s. 625.1212(7)
80 which includes potentially company-identifiable or personally
81 identifiable information.

82 (3) Information received from the NAIC or a governmental
83 entity in this or another state, the Federal Government, or
84 another nation which is confidential or exempt if held by that
85 entity and which is held by the office for use in the office's
86 performance of its duties relating to insurer valuation and
87 solvency is confidential and exempt from s. 119.07(1) and s.
88 24(a), Art. I of the State Constitution.

89 (4) The office may disclose information made confidential
90 and exempt under this section:

91 (a) If the insurer to which it pertains gives prior
92 written consent;

93 (b) Pursuant to a court order;

94 (c) To the American Academy of Actuaries upon a request
95 stating that the information is for the purpose of professional
96 disciplinary proceedings and specifying procedures satisfactory
97 to the office for preserving the confidentiality of the
98 information;

99 (d) To other states, federal and international agencies,
100 the NAIC and its affiliates and subsidiaries, and state,
101 federal, and international law enforcement authorities,
102 including members of a supervisory college described in s.
103 628.805, if the recipient agrees in writing to maintain the
104 confidential and exempt status of the document, material, or

105 other information and has certified in writing its legal
106 authority to maintain such confidentiality; or

107 (e) For the purpose of aggregating information on an
108 industrywide basis and disclosing the information to the public
109 only if the specific identities of the insurers, or persons or
110 affiliated persons, are not revealed.

111 (5) This section is subject to the Open Government Sunset
112 Review Act in accordance with s. 119.15 and shall stand repealed
113 on October 2, 2019, unless reviewed and saved from repeal
114 through reenactment by the Legislature.

115 Section 2. (1) The Legislature finds that it is a public
116 necessity that proprietary business information that is provided
117 to the Office of Insurance Regulation by an insurer or by an
118 acquiring party pursuant to the Florida Insurance Code or the
119 Holding Company System Regulatory Act of the National
120 Association of Insurance Commissioners in order for the office
121 to conduct its regulatory duties with respect to insurer
122 valuation and solvency be made confidential and exempt from s.
123 119.07(1), Florida Statutes, and s. 24(a), Article I of the
124 State Constitution. The disclosure of such information could
125 injure an insurer in the marketplace by providing its
126 competitors with detailed insight into the reserve assumptions
127 and strategies, modeling methodologies, business plans, pricing
128 and marketing strategies, management systems and operational
129 protocols, and financial status of the insurer, thereby
130 diminishing the advantage that the insurer maintains over

131 competitors that do not possess such information. Without this
132 exemption, an insurer or an acquiring party might refrain from
133 providing accurate and unbiased data, thus impairing the
134 office's ability to accurately evaluate the propriety of
135 proposed acquisitions in the state and the financial condition
136 of insurers and their affiliates. Proprietary business
137 information derives actual or potential independent economic
138 value from not being generally known to, and not being readily
139 ascertainable by proper means by, other persons who can derive
140 economic value from its disclosure or use. The office, in
141 performing its duties and responsibilities, may need to obtain
142 proprietary business information from insurers and regulated
143 entities. Without an exemption from public records requirements
144 for proprietary business information provided to the office,
145 such information becomes a public record when received and must
146 be divulged upon request. Divulgence of proprietary business
147 information under the public records law would destroy the value
148 of that property to the proprietor, causing a financial loss not
149 only to the proprietor but also to the residents of this state
150 due to the loss of reliable financial data necessary for the
151 accurate evaluation of proposed acquisitions. Release of
152 proprietary business information would give business competitors
153 an unfair advantage and weaken the position in the marketplace
154 of the proprietor who owns or controls the business information.

155 (2) The Legislature also finds that it is a public
156 necessity that information received by the office from the

157 National Association of Insurance Commissioners, or from an
158 agency in this or another state or nation or the Federal
159 Government, which is otherwise exempt or confidential pursuant
160 to the laws of this or another state or nation or pursuant to
161 federal law or which is confidential or exempt if held by that
162 entity, for use by the office in the performance of duties
163 related to insurer valuation and solvency under the Florida
164 Insurance Code, be made confidential and exempt from s.
165 119.07(1), Florida Statutes, and s. 24(a), Article I of the
166 State Constitution. Divulgence of such information could impede
167 the exchange of information and communication among regulators
168 across multiple agencies and jurisdictions and jeopardize the
169 ability of regulators to effectively supervise insurers and
170 groups operating in multiple jurisdictions and engaged in
171 significant cross-border activities.

172 Section 3. This act shall take effect October 1, 2014, if
173 HB 1271 or similar legislation is adopted in the same
174 legislative session or an extension thereof and becomes law.