

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

13  
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 business  
21 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 that the information has not been

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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 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 (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 1. The actuarial opinion summary required under ss.

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59 624.424(1)(b) and 625.121(3) and information related thereto.

60 2. 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 3. The filings required under s. 628.801 and information  
64 related thereto.

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

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

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

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

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

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

79 d. Mortality, morbidity, policyholder behavior, or expense  
80 experience and other data submitted pursuant to s. 625.1212(7),  
81 which includes potentially company-identifiable or personally  
82 identifiable information.

83 (3) Information received from the NAIC or another  
84 governmental entity in this or another state, the Federal  
85 Government, or another nation which is confidential or exempt if  
86 held by that entity and which is held by the office for use in  
87 the office's performance of its duties relating to insurer

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88 valuation and solvency is confidential and exempt from s.  
89 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

94 (b) Pursuant to a court order;

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

100 (d) To other states, federal and international agencies,  
101 the National Association of Insurance Commissioners and its  
102 affiliates and subsidiaries, and state, federal, and  
103 international law enforcement authorities, including members of  
104 a supervisory college described in s. 628.805 if the recipient  
105 agrees in writing to maintain the confidential and exempt status  
106 of the document, material, or other information and has  
107 certified in writing its legal authority to maintain such  
108 confidentiality; or

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

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

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117           Section 2. (1) The Legislature finds that it is a public  
118 necessity that proprietary business information that is provided  
119 to the Office of Insurance Regulation by an insurer or by an  
120 acquiring party pursuant to the Florida Insurance Code or the  
121 Holding Company System Regulatory Act of the National  
122 Association of Insurance Commissioners in order for the office  
123 to conduct its regulatory duties with respect to insurer  
124 valuation and solvency, be made confidential and exempt from s.  
125 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
126 State Constitution. The disclosure of such information could  
127 injure an insurer in the marketplace by providing its  
128 competitors with detailed insight into the reserve assumptions  
129 and strategies, modeling methodologies, business plans, pricing  
130 and marketing strategies, management systems and operational  
131 protocols, and financial status of the insurer, thereby  
132 diminishing the advantage that the insurer maintains over  
133 competitors that do not possess such information. Without this  
134 exemption, an insurer or an acquiring party might refrain from  
135 providing accurate and unbiased data, thus impairing the  
136 office's ability to accurately evaluate the propriety of  
137 proposed acquisitions in the state and the financial condition  
138 of insurers and their affiliates. Proprietary business  
139 information derives actual or potential independent economic  
140 value from not being generally known to, and not being readily  
141 ascertainable by proper means by, other persons who can derive  
142 economic value from its disclosure or use. The office, in  
143 performing its duties and responsibilities, may need to obtain  
144 proprietary business information from insurers and regulated  
145 entities. Without an exemption from public records requirements

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146 for proprietary business information provided to the office,  
147 such information becomes a public record when received and must  
148 be divulged upon request. Divulgence of proprietary business  
149 information under the public records law would destroy the value  
150 of that property to the proprietor, causing a financial loss not  
151 only to the proprietor but also to the residents of this state  
152 due to the loss of reliable financial data necessary for the  
153 accurate evaluation of proposed acquisitions. Release of  
154 proprietary business information would give business competitors  
155 an unfair advantage and weaken the position in the marketplace  
156 of the proprietor who owns or controls the business information.

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

174 Section 3. This act shall take effect October 1, 2014, if

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175 SB 1308 or similar legislation is adopted in the same  
176 legislative session or an extension thereof and becomes a law.