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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.

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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 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:

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 (a) 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 (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 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 manual
71 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
76 thereto;

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

79 4. 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.