

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7049 PCB GOS 21-06 OGSR/Office of Insurance Regulation

SPONSOR(S): Government Operations Subcommittee, Shoaf

TIED BILLS: **IDEN./SIM. BILLS:** SB 7014

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|-------------|--|
| Orig. Comm.: Government Operations Subcommittee | 15 Y, 0 N | Toliver | Smith |
| 1) Commerce Committee | 20 Y, 0 N | Fortenberry | Hamon |
| 2) State Affairs Committee | 19 Y, 0 N | Toliver | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of Insurance Regulation (OIR) is primarily responsible for licensing insurance companies, monitoring the solvency of regulated insurers, examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program.

The NAIC created two model acts that each member must enact to stay accredited: the Own Risk Solvency Assessment (ORSA) Model Act and the Corporate Governance Annual Disclosure (CGAD) Model Act. An ORSA is an internal assessment of all reasonably foreseeable and relevant material risks that is designed to provide OIR with a comprehensive view of the ability of an insurer to withstand financial stress. Each ORSA report must also contain a high-level summary of its contents, termed an ORSA summary report. A CGAD requires disclosures of the insurer's corporate governance structure as well as the policies and practices of its Board of Directors and Senior Management.

In 2016, the Florida Legislature passed CS/CS/SB 1422 that enacted solvency regulation measures designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. Among other requirements, the bill enacted portions of the ORSA Model Act and the CGAD Model Act, requiring insurers to submit an ORSA and a CGAD to OIR each year.

In 2016, the Legislature created a public record exemption for ORSA summary reports, substantially similar ORSA reports, CGAD reports, and supporting documents held by OIR. Information otherwise available for public inspection is specifically excluded from the exemption.

The bill saves from repeal these public record exemptions, which will repeal on October 2, 2021, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Regulation of Insurance in Florida

States are the primary regulators of insurance companies and in Florida, the Office of Insurance Regulation (OIR)⁵ is primarily responsible for licensing insurance companies, monitoring the solvency of regulated insurers, examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary.

National Association of Insurance Commissioners Accreditation

OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators.⁶ As a member of the NAIC, OIR is required to participate in the organization's accreditation program.⁷ NAIC accreditation is a certification that a state insurance department is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years. The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards.

Own Risk and Solvency Assessment (ORSA)

An ORSA is an "internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 20.121(3)(a)1., F.S.

⁶ *About*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, https://content.naic.org/index_about.htm (last visited Feb. 2, 2021).

⁷ *Accreditation*, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited Feb. 2, 2021).

associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks.”⁸ The NAIC created the ORSA Model Act that requires each insurer to submit an ORSA report to the regulatory entity of the state. The NAIC made it an accreditation requirement that member states adopt the ORSA Model Act by 2018. In 2016, the Legislature passed CS/CS/SB 1422, which adopted major components of the ORSA Model Act. The bill required insurers to:

- Conduct an ORSA at least annually and whenever there has been significant changes to the risk profile of the insurer or the insurance group.
- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks.
- File an ORSA summary report, based on the NAIC ORSA Guidance Manual, with OIR that must:
 - Be submitted once every calendar year.
 - Include a brief description of material changes and updates from the prior year’s report.
 - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process.
 - Be prepared in accordance with the NAIC ORSA guidance manual and the insurer must maintain and make available for OIR examination documentation and supporting information.

Corporate Governance Annual Disclosure (CGAD)

The NAIC also created the Corporate Governance Model Act to provide insurance regulators with sufficient information on insurer governance structures, practices, and processes through an annual disclosure, known as the CGAD.⁹ In 2016, the Legislature mandated that insurers submit CGADs to OIR by June 1 of each year. The CGAD must describe the:

- Corporate governance framework and structure of the insurer or insurance group.
- Policies and practices of the most senior governing entity and significant committees.
- Policies and practices for directing senior management.
- Processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas that have an impact on the insurer’s business activities.¹⁰

The chief executive officer or corporate secretary of the insurer or insurance group must sign the CGAD attesting that, to the best of his or her knowledge and belief, the insurer has implemented the corporate governance practices and provided a copy of the disclosure to the board of directors or the appropriate board committee.¹¹

⁸ Section 628.8015(d), F.S.

⁹ Section 628.8015(1)(a), F.S., defines CGAD to mean “a report filed by an insurer or insurance group in accordance with [section 628.8015, F.S.]”

¹⁰ Section 628.8015(3)(b)4., F.S.

¹¹ Section 628.8015(3)(b)2., F.S.

Public Record Exemption under Review

Section 624.4212, F.S., provides a public record exemption for certain proprietary business information¹² held by OIR, such as the actuarial opinion summary, principle-based valuation report, enterprise risk report, and insurance holding company registration.¹³

In 2016, the Legislature created a public record exemption for the following information held by OIR:

- ORSA summary report, a substantially similar ORSA report, and supporting documents.
- CGAD and supporting documents.¹⁴

The information is confidential and exempt¹⁵ from public record requirements. Information obtained by OIR that is otherwise available for public inspection is specifically excluded from the exemption.¹⁶

The 2016 public necessity statement¹⁷ for the ORSA portion of the exemption provides:

The ORSA summary report, substantially similar ORSA report, and supporting documents contain highly sensitive and strategic financial information about an insurer or insurer group. ... Divulging the ORSA [documents] will injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and marketing strategies, management systems and operation protocols.¹⁸

The public necessity statement for the CGAD portion of the exemption provides:

The [CGAD] describes an insurer's governance and the internal practices and procedures used in conducting the business affairs of the company, making strategic operational decisions affecting its competitive position, and managing its financial condition. Release of the [CGAD] and supporting documents will injure

¹² The term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or an affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and that the information has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes trade secrets; information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; the source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests; information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms; and internal auditing controls and reports of internal auditors.

Section 624.4212(1), F.S.

¹³ Section 624.4212(2), F.S.

¹⁴ Section 624.4212(3), F.S.

¹⁵ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (Aug. 1, 1985).

¹⁶ *Id.*

¹⁷ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

¹⁸ Chapter 2016-205, L.O.F.

the insurer or insurance group in the marketplace by providing competitors with the insurer's or the insurance group's confidential business information.¹⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.²⁰ Additionally, the 2016 law creating ORSA and CGAD submission requirements provided that those substantive provisions will also repeal if the public record exemption is allowed to repeal.²¹

During the 2020 interim, subcommittee staff met with OIR staff to discuss the exemption. OIR staff stated that the office had no trouble implementing or interpreting the exemption. OIR staff has indicated they were unaware of any litigation concerning the exemption. OIR emphasized the importance of the exemption, and the importance of the substantive ORSA and CGAD provisions linked to the exemption, in maintaining the confidentiality of insurers' proprietary business information, and in continuing to meet NAIC accreditation standards. OIR recommended that the exemption be maintained as is.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the public record exemption for certain proprietary business information, an ORSA summary report, a substantially similar ORSA report, and supporting documents, as well as for a CGAD and supporting documents. By removing the scheduled repeal date of the public record exemptions, the bill also saves from repeal the substantive ORSA and CGAD provisions linked to the exemptions.

B. SECTION DIRECTORY:

Section 1 amends s. 624.4212, F.S., to remove the scheduled repeal date of the public record exemption.

Section 2 provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁹ *Id.*

²⁰ Section 624.4212(6), F.S.

²¹ Chapter 2016-206, L.O.F.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.