

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 1273	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Insurance & Banking Subcommittee; Ingram and others	107 Y's	7 N's
COMPANION BILLS:	CS/CS/HB 1271; CS/CS/SB 1300	GOVERNOR'S ACTION: Approved	

SUMMARY ANALYSIS

CS/CS/HB 1273 passed the House on April 28, 2014, as CS/CS/SB 1300.

The bill, which is linked to SB 1308, incorporates the necessary confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards. The bill provides that specified documents constituting proprietary business information and held by OIR are confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information in certain circumstances. The bill also defines "proprietary business information" for purposes of the public record exemption, and includes information contained in certain reports, such as an actuarial opinion summary, enterprise risk reports, and principle-based reserving valuation reports.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. It also provides a statement of public necessity as required by the State Constitution.

This bill and CS/CS/HB 1271 were approved by the Governor on June 13, 2014, ch. 2014-100 and ch. 2014-101, L.O.F., and will become effective on October 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including:

- Trade secret documents;¹
- Risk-based capital information;²
- Information related to orders of supervision;³ and
- Personal consumer and personal financial information.⁴

Section 624.319, F.S., makes OIR's examination and investigation reports and workpapers confidential during the pendency of an examination or investigation. This provision allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no generic exemption for information claimed to be proprietary business information in the Florida Statutes, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. This term is generally defined by the statute creating the exemption, and frequently includes trade secrets.

Currently, the Insurance Code has a specific exemption relating to "proprietary business information" held by the OIR, but relates only to such information provided by a title insurance agency or insurer.⁵

CS/CS/SB 1308: Insurer Solvency

The 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. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. 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. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation.

Among other NAIC model act components, CS/CS/SB 1308 implements the following NAIC confidentiality requirements:

NAIC Property and Casualty Actuarial Opinion Model Law

¹ Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

² Section 624.40851, F.S.

³ Section 624.82, F.S.

⁴ Section 624.23, F.S.

⁵ Section 626.94195, F.S.

Current law requires insurers to provide to OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public.⁶

The NAIC model law provides that states must require insurers to provide *actuarial opinion summaries* and that the regulators must keep these summaries confidential. CS/CS/SB 1308 adopts this requirement and states that “proprietary business information” contained in these summaries are confidential and exempt from public records disclosure, and provides protection from waiver of confidentiality to both property and casualty insurers and life and health insurers.

Model Holding Company Act & Regulations

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators’ ability to obtain and evaluate financial information from affiliates, especially regarding “enterprise risk.”⁷

In adopting the NAIC model act, CS/CS/SB 1308 will require persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report to OIR. The bill requires insurers agree to have the ultimate controlling person and all its affiliates to provide information regarding enterprise risk to the OIR, and provides that the filings and related documents filed pursuant to s. 628.801, F.S. (related to registration and regulation of insurance holding companies), are confidential and exempt from public disclosure.

CS/CS/SB 1308 also provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR. CS/CS/SB 1308 provides that this notice is confidential and exempt until the divestiture transaction is completed, unless the OIR, in its discretion, determines that confidential treatment interferes with enforcement of this section.

The NAIC also made establishment and participation in supervisory colleges an accreditation standard. Supervisory colleges are essentially interstate meetings for insurance regulators to focus on large insurers that write significant amounts of insurance in multiple jurisdictions. CS/CS/SB 1308 provides for the OIR’s participation in a supervisory college with other insurance regulators.

Principle-Based Reserving

CS/CS/SB 1308 prescribes the adoption of the NAIC Valuation Manual as the authoritative source for determining reserves and implementing principle-based reserves for specified insurance products. Life insurance contracts, accident and health contracts, and deposit-type policies are subject to the valuation manual. Initially, principle based reserves would apply to term life insurance and universal life products with a secondary guarantee (also known as no-lapse guarantee). The bill requires the implementation of the Valuation Manual for policies issued on or after the operative date of the valuation manual. The Valuation Manual requires insurers to submit to the OIR various documents and reports, including experience reporting, actuarial opinions, memorandums, and principle-based reports.

Effect of the Bill

⁶ Section 624.424, F.S.

⁷ Enterprise risk is “any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition.” Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

The bill, which is linked to SB 1308, incorporates the necessary confidentiality elements for OIR to meet NAIC accreditation standards. The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805, F.S., if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill defines “proprietary business information” to mean information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- 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 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 as defined in s. 688.002, F.S.,⁸ and that complies with s. 624.4213, F.S.⁹
 - 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.
 - Internal auditing controls and reports of internal auditors.

The bill also provides that proprietary business information contained in the following items held by the OIR is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- The actuarial opinion summary required under ss. 624.424(1)(b) and 625.121(3), F.S., and the information related thereto.
- A notice filed with OIR by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461, F.S.
- The filings required by s. 628.801, F.S., and information related thereto.

⁸ Section 688.002(4), F.S., defines the term “trade secret” to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

⁹ Section 624.4213, F.S., creates a process for submitting trade secret documents to certain agencies, including marking each document as a trade secret.

- The enterprise risk report required by ss. 628.461(3) and 628.801, F.S., and information related thereto.
- Information provided to or obtained by OIR pursuant to participation in a supervisory college established under s. 628.805, F.S.
- Beginning on the operative date of the valuation manual, the following items are confidential and exempt:
 - An actuarial examination conducted pursuant to s. 625.1212(5)(c), F.S., and related information.
 - The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2., F.S., and related information.
 - The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3., F.S., and related information.
 - Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), F.S., which includes potentially company-identifiable or personally identifiable information.

The bill provides a statement of public necessity and for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

As indicated in the bill's statement of public necessity, public disclosure of proprietary business information would disadvantage insurers' competitive interests, particularly in proposed acquisitions, and in turn could lead to some insurers providing inaccurate or biased information to the OIR and an overall loss of confidence in the marketplace. Without this public records exemption, release of this information could impair the economic value of such information and result in financial loss to the proprietor.

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:

This public records exemption bill will have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on OIR, because staff responsible for complying with public record requests could require training related to creation of the new public records exemption. In addition, OIR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the OIR.