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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2014	.	
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The Committee on Banking and Insurance (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

624.4212 Confidentiality of proprietary business and other
information.—

(1) As used in this section, the term "proprietary business
information" means information, regardless of form or



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11 characteristics, which is owned or controlled by an insurer, or
12 a person or an affiliated person who seeks acquisition of
13 controlling stock in a domestic stock insurer or controlling
14 company, and which:

15 (a) Is intended to be and is treated by the insurer or the
16 person as private in that the disclosure of the information
17 would cause harm to the insurer, the person, or the company's
18 business operations and that the information has not been
19 disclosed unless disclosed pursuant to a statutory requirement,
20 an order of a court or administrative body, or a private
21 agreement that provides that the information will not be
22 released to the public;

23 (b) Is not otherwise readily ascertainable or publicly
24 available by proper means by other persons from another source
25 in the same configuration as requested by the office; and

26 (c) Includes, but is not limited to:

27 1. Trade secrets as defined in s. 688.002 which comply with
28 s. 624.4213.

29 2. Information relating to competitive interests, the
30 disclosure of which would impair the competitive business of the
31 provider of the information.

32 3. The source, nature, and amount of the consideration used
33 or to be used in carrying out a merger or other acquisition of
34 control in the ordinary course of business, including the
35 identity of the lender, if the person filing a statement
36 regarding consideration so requests.

37 4. Information relating to bids or other contractual data,
38 the disclosure of which would impair the efforts of the insurer
39 or its affiliates to contract for goods or services on favorable



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40 terms.

41 5. Internal auditing controls and reports of internal
42 auditors.

43 (2) Proprietary business information contained in the
44 following items held by the office is confidential and exempt
45 from s. 119.07(1) and s. 24(a), Art. I of the State
46 Constitution:

47 1. The actuarial opinion summary required under ss.
48 624.424(1)(b) and 625.121(3) and information related thereto.

49 2. A notice filed with the office by the person or
50 affiliated person who seeks to divest controlling stock in an
51 insurer pursuant to s. 628.461.

52 3. The filings required under s. 628.801 and information
53 related thereto.

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

56 5. Information provided to or obtained by the office
57 pursuant to participation in a supervisory college established
58 under s. 628.805.

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

61 a. An actuarial examination conducted pursuant to s.
62 625.1212(5)(c), and information related thereto;

63 b. The annual certification submitted by the insurer
64 pursuant to s. 625.1212(6)(b)2., and information related
65 thereto;

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

68 d. Mortality, morbidity, policyholder behavior, or expense



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69 experience and other data submitted pursuant to s. 625.1212(7),
70 which includes potentially company-identifiable or personally
71 identifiable information.

72 (3) Information received from the NAIC or another
73 governmental entity in this or another state, the Federal
74 Government, or another nation which is confidential or exempt if
75 held by that entity and which is held by the office for use in
76 the office's performance of its duties relating to insurer
77 valuation and solvency is confidential and exempt from s.
78 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

81 (a) If the insurer to which it pertains gives prior written
82 consent;

83 (b) Pursuant to a court order;

84 (c) To the American Academy of Actuaries upon a request
85 stating that the information is for the purpose of professional
86 disciplinary proceedings and specifying procedures satisfactory
87 to the office for preserving the confidentiality of the
88 information;

89 (d) To other states, federal and international agencies,
90 the National Association of Insurance Commissioners and its
91 affiliates and subsidiaries, and state, federal, and
92 international law enforcement authorities, including members of
93 a supervisory college described in s. 628.805 if the recipient
94 agrees in writing to maintain the confidential and exempt status
95 of the document, material, or other information and has
96 certified in writing its legal authority to maintain such
97 confidentiality; or



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98 (e) For the purpose of aggregating information on an
99 industrywide basis and disclosing the information to the public
100 only if the specific identities of the insurers, or persons or
101 affiliated persons, are not revealed.

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

106 Section 2. (1) The Legislature finds that it is a public
107 necessity that proprietary business information that is provided
108 to the Office of Insurance Regulation by an insurer or by an
109 acquiring party pursuant to the Florida Insurance Code or the
110 Holding Company System Regulatory Act of the National
111 Association of Insurance Commissioners in order for the office
112 to conduct its regulatory duties with respect to insurer
113 valuation and solvency, be made confidential and exempt from s.
114 119.07(1), Florida Statutes, and s. 24(a), Article I of the
115 State Constitution. The disclosure of such information could
116 injure an insurer in the marketplace by providing its
117 competitors with detailed insight into the reserve assumptions
118 and strategies, modeling methodologies, business plans, pricing
119 and marketing strategies, management systems and operational
120 protocols, and financial status of the insurer, thereby
121 diminishing the advantage that the insurer maintains over
122 competitors that do not possess such information. Without this
123 exemption, an insurer or an acquiring party might refrain from
124 providing accurate and unbiased data, thus impairing the
125 office's ability to accurately evaluate the propriety of
126 proposed acquisitions in the state and the financial condition



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127 of insurers and their affiliates. Proprietary business
128 information derives actual or potential independent economic
129 value from not being generally known to, and not being readily
130 ascertainable by proper means by, other persons who can derive
131 economic value from its disclosure or use. The office, in
132 performing its duties and responsibilities, may need to obtain
133 proprietary business information from insurers and regulated
134 entities. Without an exemption from public records requirements
135 for proprietary business information provided to the office,
136 such information becomes a public record when received and must
137 be divulged upon request. Divulgence of proprietary business
138 information under the public records law would destroy the value
139 of that property to the proprietor, causing a financial loss not
140 only to the proprietor but also to the residents of this state
141 due to the loss of reliable financial data necessary for the
142 accurate evaluation of proposed acquisitions. Release of
143 proprietary business information would give business competitors
144 an unfair advantage and weaken the position in the marketplace
145 of the proprietor who owns or controls the business information.

146 (2) The Legislature also finds that it is a public
147 necessity that information received by the office from the
148 National Association of Insurance Commissioners, or from an
149 agency in this or another state or nation or the Federal
150 Government, which is otherwise exempt or confidential pursuant
151 to the laws of this or another state or nation or pursuant to
152 federal law or which is confidential or exempt if held by that
153 entity, for use by the office in the performance of duties
154 related to insurer valuation and solvency under the Florida
155 Insurance Code, be made confidential and exempt from s.



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156 119.07(1), Florida Statutes, and s. 24(a), Article I of the
157 State Constitution. Divulgence of such information could impede
158 the exchange of information and communication among regulators
159 across multiple agencies and jurisdictions and jeopardize the
160 ability of regulators to effectively supervise insurers and
161 groups operating in multiple jurisdictions and engaged in
162 significant cross-border activities.

163 Section 3. This act shall take effect October 1, 2014, if
164 SB 1308 or similar legislation is adopted in the same
165 legislative session or an extension thereof and becomes a law.

166
167 ===== T I T L E A M E N D M E N T =====

168 And the title is amended as follows:

169 Delete everything before the enacting clause
170 and insert:

171 A bill to be entitled
172 An act relating to public records; creating s.
173 624.4212, F.S.; defining the term "proprietary
174 business information"; creating an exemption from
175 public records requirements for proprietary business
176 information and information that is confidential when
177 held by another entity in this state, the Federal
178 Government, or another state or nation, and which is
179 held by the Office of Insurance Regulation; providing
180 exceptions; providing for future legislative review
181 and repeal; providing a statement of public necessity;
182 providing a contingent effective date.