

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 624.4212, F.S.; creating an exemption from public
 4 records requirements for proprietary business
 5 information submitted to the Office of Insurance
 6 Regulation; defining the term "proprietary business
 7 information"; providing exceptions; providing for
 8 future legislative review and repeal; providing a
 9 statement of public necessity; providing a contingent
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 624.4212, Florida Statutes, is created
 15 to read:

16 624.4212 Confidentiality of proprietary business
 17 information.—Proprietary business information held by the Office
 18 of Insurance Regulation in accordance with its statutory duties
 19 with respect to insurer solvency is confidential and exempt from
 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

21 (1) As used in this section, the term "proprietary
 22 business information" means information, regardless of form or
 23 characteristics, that is owned or controlled by an insurer, or a
 24 person or affiliated person who seeks acquisition of controlling
 25 stock in a domestic stock insurer or controlling company, and
 26 that:

27 (a) Is intended to be and is treated by the insurer or the
 28 person as private in that the disclosure of the information

29 would cause harm to the insurer, the person, or the company's
 30 business operations and has not been disclosed unless disclosed
 31 pursuant to a statutory requirement, an order of a court or
 32 administrative body, or a private agreement that provides that
 33 the information will not be 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 secret documents that comply with s. 624.4213.

39 2. Information relating to competitive interests the
 40 disclosure of which would impair the competitive business of the
 41 provider of the information.

42 3. The source, nature, and amount of the consideration
 43 used or to be used in carrying out a merger or other acquisition
 44 of control in the ordinary course of business, including the
 45 identity of the lender, if the person filing a statement
 46 regarding consideration so requests.

47 4. Information relating to bids or other contractual data
 48 the disclosure of which would impair the efforts of the insurer
 49 or its affiliates to contract for goods or services on favorable
 50 terms.

51 5. Internal auditing controls and reports of internal
 52 auditors.

53 6. The actuarial opinion summary required under s.
 54 624.424(1)(b) and the documents, materials, and other
 55 information related thereto.

56 7. A notice filed with the office by the person or

57 affiliated person who seeks to divest controlling stock in an
58 insurer pursuant to s. 628.461.

59 8. The filings required by s. 628.801 and all documents,
60 materials, and other information related thereto.

61 9. The enterprise risk report required by ss. 628.461(3)
62 and 628.801 and the documents, materials, and other information
63 related to the enterprise risk report.

64 10. Information provided to or obtained by the office
65 pursuant to participation in a supervisory college established
66 under s. 628.805.

67 11. Information received from another governmental entity
68 or the National Association of Insurance Commissioners that is
69 confidential or exempt if held by that entity for use by the
70 office in the performance of its duties.

71 (2) The office may disclose confidential and exempt
72 proprietary business information:

73 (a) If the insurer to which it pertains gives prior
74 written consent;

75 (b) Pursuant to a court order;

76 (c) To the American Academy of Actuaries upon a request
77 stating that the information is for the purpose of professional
78 disciplinary proceedings and specifying procedures satisfactory
79 to the office for preserving the confidentiality of the
80 information;

81 (d) To other states, federal and international agencies,
82 the National Association of Insurance Commissioners and its
83 affiliates and subsidiaries, and state, federal, and
84 international law enforcement authorities, including members of

85 a supervisory college described in s. 628.805, if the recipient
86 agrees in writing to maintain the confidential and exempt status
87 of the document, material, or other information and has verified
88 in writing its legal authority to maintain such confidentiality;
89 or

90 (e) For the purpose of aggregating information on an
91 industrywide basis and disclosing the information to the public
92 only if the specific identities of the insurers, or persons or
93 affiliated persons, are not revealed.

94 (3) This section is subject to the Open Government Sunset
95 Review Act of 1995 in accordance with s. 119.15 and shall stand
96 repealed on October 2, 2018, unless reviewed and saved from
97 repeal through reenactment by the Legislature.

98 Section 2. The Legislature finds that it is a public
99 necessity that proprietary business information that is provided
100 to the Office of Insurance Regulation by an insurer or acquiring
101 party pursuant to the requirements of the Florida Insurance Code
102 or the Holding Company System Regulatory Act of the National
103 Association of Insurance Commissioners in order for the office
104 to conduct its regulatory duties with respect to insurer
105 solvency be made confidential and exempt from s. 119.07(1),
106 Florida Statutes, and s. 24(a), Article I of the State
107 Constitution. The disclosure of such information could injure an
108 insurer in the marketplace by providing its competitors with
109 detailed insight into the financial status and strategic plans
110 of the insurer, thereby diminishing the advantage that the
111 insurer maintains over competitors that do not possess such
112 information. Without this exemption, an insurer or acquiring

113 party might refrain from providing accurate and unbiased data,
114 thus impairing the office's ability to accurately evaluate the
115 propriety of proposed acquisitions in the state and the
116 financial condition of insurers and their affiliates.
117 Proprietary business information derives actual or potential
118 independent economic value from not being generally known to,
119 and not being readily ascertainable by proper means by, other
120 persons who can derive economic value from its disclosure or
121 use. The office, in performing its duties and responsibilities,
122 may need to obtain proprietary business information from
123 insurers and regulated entities. Without an exemption from
124 public records requirements for proprietary business information
125 provided to the office, such information becomes a public record
126 when received and must be divulged upon request. Divulgence of
127 proprietary business information under the public records law
128 would destroy the value of that property to the proprietor,
129 causing a financial loss not only to the proprietor but also to
130 the residents of this state due to the loss of reliable
131 financial data necessary for the accurate evaluation of proposed
132 acquisitions. Release of proprietary business information would
133 give business competitors an unfair advantage and weaken the
134 position in the marketplace of the proprietor who owns or
135 controls the business information. The harm to insurers in the
136 marketplace and to the effective administration of acquisitions
137 caused by the public disclosure of such information far
138 outweighs the public benefits derived from its release.

139 Section 3. This act shall take effect October 1, 2013, if
140 HB 821 or similar legislation is adopted in the same legislative

CS/HB 823

2013

141 session or an extension thereof and becomes law.