

CHAPTER 2014-100

Committee Substitute for Committee Substitute for Senate Bill No. 1300

An act relating to public records; creating s. 624.4212, F.S.; defining the term “proprietary business information”; creating an exemption from public records requirements for proprietary business information and information that is confidential when held by another entity in this state, the Federal Government, or another state or nation, and which is held by the Office of Insurance Regulation; providing exceptions; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

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 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:

(a) 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;

(b) 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

(c) Includes:

1. Trade secrets as defined in s. 688.002 which comply with s. 624.4213.
2. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
3. 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.

4. 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.

5. Internal auditing controls and reports of internal auditors.

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

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

(b) A notice filed with the office by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461.

(c) The filings required under s. 628.801 and information related thereto.

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

(e) Information provided to or obtained by the office pursuant to participation in a supervisory college established under s. 628.805.

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

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

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

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

4. Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), which includes potentially company-identifiable or personally identifiable information.

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

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

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

(b) Pursuant to a court order;

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

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

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

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

Section 2. (1) The Legislature finds that it is a public necessity that proprietary business information that is provided to the Office of Insurance Regulation by an insurer or by an acquiring party pursuant to the Florida Insurance Code or the Holding Company System Regulatory Act of the National Association of Insurance Commissioners in order for the office to conduct its regulatory duties with respect to insurer valuation and solvency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could injure an insurer in the marketplace by providing its competitors with detailed insight into the reserve assumptions and strategies, modeling methodologies, business plans, pricing and marketing strategies, management systems and operational protocols, and financial status of the insurer, thereby diminishing the advantage that the insurer maintains over competitors that do not possess such information. Without this exemption, an insurer or an acquiring party might refrain from providing accurate and unbiased data, thus impairing the office's ability to accurately evaluate the propriety of proposed acquisitions in the state and the financial condition of insurers and their affiliates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The office, in performing its duties and responsibilities, may need to obtain proprietary business information from insurers and regulated entities. Without an exemption from public records requirements for proprietary business information provided to the office, such information becomes a public record when received and must be divulged upon request. Divulgence of proprietary business information under the public records law would destroy the value of

that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for the accurate evaluation of proposed acquisitions. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor who owns or controls the business information.

(2) The Legislature also finds that it is a public necessity that information received by the office from the National Association of Insurance Commissioners, or from an agency in this or another state or nation or the Federal Government, which is otherwise exempt or confidential pursuant to the laws of this or another state or nation or pursuant to federal law or which is confidential or exempt if held by that entity, for use by the office in the performance of duties related to insurer valuation and solvency under the Florida Insurance Code, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Divulgence of such information could impede the exchange of information and communication among regulators across multiple agencies and jurisdictions and jeopardize the ability of regulators to effectively supervise insurers and groups operating in multiple jurisdictions and engaged in significant cross-border activities.

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.