

Committee Substitute for  
Committee Substitute for Senate Bill No. 1262

An act relating to the confidentiality of information concerning investigations conducted under the Money Transmitters' Code; amending s. 560.129, F.S.; providing that information concerning investigations or examinations conducted by the Department of Banking and Finance are confidential and exempt from disclosure under the public records law; deleting certain restrictions placed on access to hearings, proceedings, and related documents of the department; revising certain limitations on the disclosure of consumer complaints and other information concerning an investigation or examination; deleting certain limitations placed on the disclosure of reports prepared by, or for the use of, the Department of Banking and Finance; providing for the disclosure of records or information to certain parties approved by the department to conduct examinations; providing a finding of public necessity; providing an effective date.

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

Section 1. Section 560.129, Florida Statutes, is amended to read:

560.129 Confidentiality.—

(1) For purposes of this section, the definitions contained in s. 560.103, as created by chapter 94-238, Laws of Florida, and chapter 94-354, Laws of Florida, apply.

(2)(a) Except as otherwise provided in this section, all information concerning an investigation or examination by the department pursuant to this chapter, including any consumer complaint, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active. For purposes of this section, an investigation or examination is considered "active" so long as the department or any other administrative, regulatory, or law enforcement agency of any jurisdiction is proceeding with reasonable dispatch and has a reasonable good faith belief that action may be initiated by the department or other administrative, regulatory, or law enforcement agency.

(b) Notwithstanding paragraph (a), all information obtained by the department in the course of its investigation or examination which is a trade secret, as defined in s. 688.002, or which is personal financial information shall remain confidential. If any administrative, civil, or criminal proceeding against the money transmitter or a money transmitter-affiliated party is initiated and the department seeks to use matter that a registrant believes to be a trade secret or personal financial information, such records shall be subject to an in camera review by the administrative law judge, if the matter is before the Division of Administrative Hearings or a judge of any court of this state, any other state, or the United States, as appropriate, for the purpose of determining if the matter is a trade secret or is personal financial

information. If it is determined that the matter is a trade secret, the matter shall remain confidential. If it is determined that the matter is personal financial information, the matter shall remain confidential unless the administrative law judge or judge determines that, in the interests of justice, the matter should become public.

(c) If any administrative, civil, or criminal proceeding against the money transmitter or a money transmitter-affiliated party results in an acquittal or the dismissal of all of the allegations against the money transmitter or a money transmitter-affiliated party, upon the request of any party, the administrative law judge or the judge may order all or a portion of the record of the proceeding to be sealed, and it shall thereafter be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Except as necessary for the department or any other administrative, regulatory, or law enforcement agency of any jurisdiction to enforce the provisions of this chapter or the law of any other state or the United States, a consumer complaint and other information concerning an investigation or examination shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or examination ceases to be active to the extent that disclosure would:

~~(2) RESTRICTED ACCESS TO CERTAIN HEARINGS, PROCEEDINGS, AND RELATED DOCUMENTS.—~~

~~(a) The hearings and proceedings conducted under the code pursuant to this part shall be closed and exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution, and documents related to such hearings and proceedings shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

~~(b) Orders of courts or of administrative law judges for the production of confidential records or information shall provide for inspection in camera by the court or the administrative law judge and, after the court or administrative law judge has made a determination that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. Any order directing the release of information shall be immediately reviewable, and a petition by the department for review of such order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.~~

~~(3) Any emergency order entered under s. 560.112(6) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until the emergency order is made permanent, unless the department finds that such confidentiality will result in substantial risk of financial loss to the public.~~

~~(4) Except for such portions of this section which are otherwise public record, all records and information relating to an investigation by the de-~~

partment under the code are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered active while such investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the department or other regulatory, administrative, or law enforcement agency. After an investigation is completed or ceases to be active, portions of such records relating to the investigation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, to the extent that disclosure would:

- 1.(a) Jeopardize the integrity of another active investigation;
- ~~(b) Impair the safety and soundness of a money transmitter or authorized vendor;~~
- 2.(c) Reveal personal financial information;
- 3.(d) Reveal the identity of a confidential source; or
  - ~~(e) Defame or cause unwarranted damage to the good name or reputation, or jeopardize the safety, of a person; or~~
  - 4.(f) Reveal investigative techniques or procedures.
    - ~~(5) Except as otherwise provided in s. 560.121, and except for such portions that are public record, reports of examinations, operations, or conditions, including working papers, or portions thereof, prepared by, or for the use of, the department or any appropriate regulatory agency are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such reports or papers or portions thereof may be released to:
      - ~~(a) The money transmitter under examination;~~
      - ~~(b) Proposed purchasers if necessary to protect the continued financial viability of the money transmitter; however, the department shall notify the money transmitter prior to releasing such documents;~~
      - ~~(c) Persons proposing in good faith to acquire a controlling interest in or to merge with the money transmitter; however, the department shall obtain permission from the money transmitter prior to releasing such documents;~~
      - ~~(d) Any responsible person, officer, director, employee, attorney, auditor, or independent auditor officially connected with the money transmitter, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the money transmitter; however, the department shall obtain permission from the money transmitter prior to releasing such documents;~~  
~~or~~~~

~~(e) A bonding company, upon approval of the money transmitter.~~

~~Any confidential information or records obtained from the department pursuant to this subsection shall be maintained as confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

~~(3)(6)~~ This section does shall not prevent or restrict:

(a) Furnishing records or information to any appropriate regulatory agency ~~if provided that~~ such agency adheres to the confidentiality provisions of the code;

(b) Furnishing records or information to an independent third party or a certified public accountant who has been approved by the department to conduct an examination under s. 560.118(1)(b), if the independent third party or certified public accountant adheres to the confidentiality provisions of the code; or

~~(b) Disclosing or publishing summaries of the condition of money transmitters as well as general economic and similar statistics or data, provided that the identity of a particular money transmitter is not disclosed and may not be ascertained; or~~

(c) Reporting any suspected criminal activity, with supporting documents and information, to appropriate law enforcement or prosecutorial agencies.

~~Any confidential information or records obtained from the department pursuant to this subsection shall be maintained as confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

~~(7) All reports and records filed with the department pursuant to s. 560.123 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department shall provide any report filed pursuant to such section, or information contained therein, to federal, state, and local law enforcement and prosecutorial agencies, and to any federal or state agency responsible for the regulation or supervision of money transmitters.~~

~~(8) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee that receives the records or information, except in a case involving investigation of charges against a public official subject to impeachment or removal, and then disclosure of such information shall be only to the extent determined to be necessary by the legislative body or committee.~~

(4) All quarterly reports submitted by a money transmitter to the department under s. 560.118(2)(b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(5)(9)~~ Examination reports, investigatory records, applications, and related information compiled by the department, or photographic copies thereof, shall be retained by the department for a period of at least 10 years.

~~(6)(10)~~ Any person who willfully discloses information made confidential by this section commits a felony of the third degree, punishable as provided in s. 775.082 ~~or~~, s. 775.083, ~~or s. 775.084~~.

~~(11) The exemptions created pursuant to subsections (1)-(11) for purposes of the Money Transmitters' Code in this chapter, as created by chapter 94-238, Laws of Florida, and chapter 94-354, Laws of Florida, are exempt from the provisions of ss. 119.07(1) and 286.011 and s. 24(a) and (b), Art. I of the State Constitution.~~

Section 2. The Legislature finds that it is a public necessity that records of investigations and examinations conducted by the Department of Banking and Finance under chapter 560, Florida Statutes, including records of consumer complaints, be held confidential and exempt in order not to compromise the investigation or examination and disclose potentially inaccurate information. Such compromise would impede the effective and efficient operation of active investigatory and examination functions. Additionally, the Legislature finds that it is a public necessity that trade secrets remain confidential and exempt at all times because the disclosure of such information would injure the affected party in the marketplace. Further, the Legislature finds that it is a public necessity that consumer complaints be held confidential and exempt after an investigation or examination ceases to be active to the extent that disclosure would jeopardize other investigations or reveal other information that should be confidential. Disclosure of a consumer complaint could lead to discrimination against the complainant by others. The harm caused to such a complainant by the release of this information outweighs any public benefit derived from its release. Finally, the Legislature finds that it is a public necessity that the entire quarterly report submitted by a money transmitter to the department remain confidential and exempt because such reports contain detailed business information, proprietary matters, and market share data. Disclosure of such information to a third party could harm the money transmitter and could result in a competitive disadvantage if used by another money transmitter.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor June 15, 2000.

Filed in Office Secretary of State June 15, 2000.