

CHAPTER 2014-102

Committee Substitute for Committee Substitute for Senate Bill No. 1320

An act relating to public records; creating s. 662.148, F.S.; providing definitions; providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; providing for the authorized release of certain information by the office; authorizing the publication of certain information; providing a penalty; providing for future legislative review and repeal of the exemption; 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 662.148, Florida Statutes, is created and incorporated into chapter 662, Florida Statutes, as created by SB 1238, 2014 Regular Session, to read:

662.148 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Reports of examinations, operations, or conditions” means records submitted to or prepared by the office as part of the office’s duties performed pursuant to s. 655.012 or s. 655.045(1).

(b) “Working papers” means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an examination under s. 655.032 or s. 655.045. The term also includes books and records.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information appearing in records relating to a registration, an application, or an annual certification of a family trust company, licensed family trust company, or foreign licensed family trust company.

(b) Any personal identifying information appearing in records relating to an examination of a family trust company, licensed family trust company, or foreign licensed family trust company.

(c) Any personal identifying information appearing in reports of examinations, operations, or conditions of a family trust company, licensed family

trust company, or foreign licensed family trust company, including working papers.

(d) Any portion of a list of names of the shareholders or members of a family trust company, licensed family trust company, or foreign licensed family trust company.

(e) Information received by the office from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(f) An emergency cease and desist order issued under s. 662.143 until the emergency order is made permanent unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the family trust company, licensed family trust company, or foreign licensed family trust company under examination. The authorized representative or representatives shall be identified in a resolution or by written consent of the board of directors if the trust company is a corporation, or of the managers if the trust company is a limited liability company.

(b) To a fidelity insurance company, upon written consent of the trust company's board of directors if a corporation, or its managers if a limited liability company.

(c) To an independent auditor, upon written consent of the trust company's board of directors if a corporation, or its managers if a limited liability company.

(d) To a liquidator, receiver, or conservator for a family trust company, licensed family trust company, or foreign licensed family trust company if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a bondholder, customer, family member, member, or stockholder must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To any other state, federal, or foreign agency responsible for the regulation or supervision of family trust companies, licensed family trust companies, or foreign licensed family trust companies.

(f) To a law enforcement agency in the furtherance of the agency's official duties and responsibilities.

(g) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

(h) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of such records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case records or information shall only be disclosed to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of:

(a) A report required by federal law.

(b) The name of the family trust company, licensed family trust company, or foreign licensed family trust company and the name and address of the registered agent of that company.

(5) PENALTY.—A person who willfully discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—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. The Legislature finds that it is a public necessity that personal identifying information contained in records held by the Office of Financial Regulation which pertain to a family trust company, licensed family trust company, or foreign licensed family trust company relating to registration or certification; an examination; reports of examinations, operations, or conditions, including working papers; any portion of a list of the names of shareholders or members; information received by the Office of Financial Regulation from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that jurisdiction; or an emergency cease and desist order be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. This exemption is necessary because:

(1) Financial information and lists of names of family members, qualified participants, and shareholders, if available for public access could jeopardize the financial safety of the family members who are the subject of the information. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such families and family members to threats of extortion, kidnapping, and other crimes not be increased. Placing family names, private family business records and methodologies into the public domain would increase the security risk that a family could become the target of criminal activity.

(2) Public disclosure of an examination, report of examination, or emergency cease and desist order could expose families to security risks, and could defame or cause unwarranted damage to the good name or reputation of the family that is the subject of the information.

(3) Family trust companies often provide a consolidated structure for the ownership of an operating business owned by multiple family members. Placing those private business operations and methods in the public domain could jeopardize their business assets, methodologies, and practices.

Section 3. This act shall take effect on the same date that SB 1238 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.