

## CHAPTER 2014-99

### Committee Substitute for Committee Substitute for Senate Bill No. 1278

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; defining terms; providing for future legislative review and repeal of the section; 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 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office are confidential and exempt from ~~the provisions of~~ s. 119.07(1) 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 office 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 office is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the such records relating to the investigation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) to the extent that disclosure would:

- (a) Jeopardize the integrity of another active investigation;
- (b) Impair the safety and soundness of the financial institution;
- (c) Reveal personal financial information;
- (d) Reveal the identity of a confidential source;
- (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- (f) Reveal investigative techniques or procedures.

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt from ~~the provisions of~~ s. 119.07(1). However, such reports or papers or portions thereof may be released to:

- (a) The financial institution under examination;
- (b) Any holding company of which the financial institution is a subsidiary;
- (c) Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;
- (d) Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;
- (e) Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or
- (f) A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.
- (g) Examination, operation, or condition reports of a financial institution shall be released by the office within 1 year after the appointment of a liquidator, receiver, or conservator to the such financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from ~~the provisions of~~ s. 119.07(1).

Any confidential information or records obtained from the office pursuant to this paragraph shall be maintained as confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(3) Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or ceases to be active, informal enforcement actions are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

- (a) Jeopardize the integrity of another active investigation.

- (b) Impair the safety and soundness of the financial institution.
- (c) Reveal personal financial information.
- (d) Reveal the identity of a confidential source.
- (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.
- (f) Reveal investigative techniques or procedures.

(4) Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the office in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5)(3) The provisions of This section does do not prevent or restrict:

(a) Publishing reports required to be submitted to the office pursuant to s. 655.045(2)(a) or required by applicable federal statutes or regulations to be published.

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.

(c) Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.

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

(e) Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(6)(a)(4)(a) 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, such said documents shall be subject to further orders by the court

or the administrative law judge to protect the confidentiality thereof. An Any order directing the release of information is ~~shall be~~ immediately reviewable, and a petition by the office for review of such order ~~shall~~ automatically stays 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 operates ~~will operate~~ as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee ~~that~~ which received 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 necessary by the legislative body or committee ~~to be necessary~~.

~~(7)(5)~~ Every credit union and mutual association shall maintain, in the principal office where its business is transacted, full and correct records of the names and residences of all the members of the credit union or mutual association. Such records are ~~shall be~~ subject to the inspection of all the members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during business hours of each business day. A current list of members shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, the list of the members of the credit union or mutual association is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

~~(8)(6)~~ Every bank, trust company, and stock association shall maintain, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, trust company, or stock association and the number of shares held by each. Such records are ~~shall be~~ subject to the inspection of all the shareholders of the bank, trust company, or stock association, and the officers authorized to assess taxes under state authority, during business hours of each banking day. A current list of shareholders shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, any portion of this list which reveals the identities of the shareholders is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

~~(9)(7)~~ Materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies, ~~federal or state,~~ shall remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential documents supplied to the office or to employees of any financial institution by other state or federal governmental agencies are, ~~federal or state,~~ shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1). Such information shall be made public only with the consent of such agency or the corporation.

~~(10)(8)~~ Examination reports, investigatory records, applications, and related information compiled by the office, or photographic copies thereof, shall be retained by the office for a period of at least 10 years.

~~(11)(9)~~ A copy of any document on file with the office which is certified by the office as being a true copy may be introduced in evidence as if it were the original. The commission shall establish a schedule of fees for preparing true copies of documents.

~~(12)~~ For purposes of this section, the term:

(a) "Examination report" 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) "Informal enforcement action" means a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which:

1. The office imposes on an institution when the office considers the administrative enforcement guidelines in s. 655.031 and determines that a formal enforcement action is not an appropriate administrative remedy;

2. Sets forth a program of corrective action to address one or more safety and soundness deficiencies and violations of law or rule at the institution; and

3. Is not subject to enforcement by imposition of an administrative fine pursuant to s. 655.041.

(c) "Personal financial information" means:

1. Information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt.

2. Information relating to a person's financial transactions of any kind.

3. Information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth.

(d) "Working papers" means the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032 or s. 655.045. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation.

~~(13)(10)~~ A Any person who willfully discloses information made confidential by this section commits is ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14) Subsections (3) and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are 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 informal enforcement actions and trade secrets, as defined in s. 688.002, Florida Statutes, be kept confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Public disclosure of an informal enforcement action could further impair the safety and soundness of a financial institution that is subject to the action. Furthermore, the public disclosure of this information could erode public confidence in financial institutions and the financial institution system in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. Maintaining informal enforcement actions as confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution will provide to the financial institutions that are chartered by this state the same protections as those already available to financial institutions chartered under federal law and by other states, maintain public confidence in financial institutions subject to the financial institutions codes, protect the safety and soundness of the financial institution system in this state, protect the interests of the depositors and creditors of financial institutions, promote the opportunity for state-chartered financial institutions to be and remain competitive with financial institutions chartered by other states or the United States, and otherwise provide for and promote the purposes of the financial institutions codes as set forth in s. 655.001, Florida Statutes.

(3) A trade secret derives independent economic value, actual or potential, from not being generally known to, and not readily ascertainable by, other persons who can obtain economic value from the disclosure or use of the trade secret. Without an exemption for a trade secret held by the office, that trade secret becomes a public record when received and must be divulged upon request. Divulging a trade secret under the public records law would give business competitors an unfair advantage and destroy the value of that property, causing a financial loss to the person or entity submitting the trade secret and weakening the position of that person or entity in the marketplace.

Section 3. This act shall take effect on the same date that SB 1012 or similar legislation takes effect, if such 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.