

CHAPTER 2017-84

Committee Substitute for Committee Substitute for House Bill No. 437

An act relating to public records; creating ss. 663.416 and 663.540, F.S.; defining terms; providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or qualified limited service affiliates, respectively, and relating to affiliated international trust entities; authorizing the disclosure of the information by the office to specified persons; providing construction; providing criminal penalties; providing future legislative review and repeal of the exemptions; providing statements of public necessity; amending s. 655.057, F.S.; providing that certain exemptions from public records requirements for information relating to investigations, reports of examinations, operations, or condition, including working papers, and certain materials supplied by governmental agencies are exempt from Section 24(a) of Article I of the State Constitution, as a result of the expansion of such exemptions to include the records of international trust entities and qualified limited service affiliates, as made by CS/CS/HB 435, 2017 Regular Session; 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 663.416, Florida Statutes, is created and incorporated into part III of chapter 663, Florida Statutes, as created by CS/CS/HB 435, 2017 Regular Session, to read:

663.416 Public records exemption.—

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

(a) “Reports of examinations, operations, or condition” 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.

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

(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 of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers.

(b) Any portion of a list of names of the shareholders or members of an affiliated international trust entity.

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

(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 international trust company representative office under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity.

(b) To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.

(c) To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.

(d) To the liquidator, receiver, or conservator for the international trust entity, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

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

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

(g) 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 the records or information, except in a

case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only 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 report required by federal law.

(5) PENALTY.—A person who willfully, in violation of this section, 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, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers; any portion of a list of names of the shareholders or members of an affiliated international trust entity which is held by the office; and information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is necessary for such records and information because the Office of Financial Regulation may receive sensitive personal and financial information, including personal identifying information relating to such entities, in the course of its investigation and examination duties. Public disclosure of the personal identifying information of existing customers, prospective customers, shareholders, or members of the affiliated international trust entity could defame or jeopardize the personal and financial safety of those individuals and their family members. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

(2) Public disclosure of information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would such disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.

Section 3. Section 663.540, Florida Statutes, is created and incorporated into part IV of chapter 663, Florida Statutes, as created by CS/CS/HB 435, 2017 Regular Session, to read:

663.540 Public records exemption.—

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

(a) "Reports of examinations, operations, or condition" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 663.537.

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032 or s. 663.537. The term includes 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, and schedules or commentaries prepared or obtained in the course of such investigation or examination.

(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 of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or condition of a qualified limited service affiliate, including working papers.

(b) Any portion of a list of names of the shareholders or members of a qualified limited service affiliate.

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

(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 qualified limited service affiliate under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, if the qualified limited service affiliate is a corporation, or of the managers, if the qualified limited service affiliate is a limited liability company.

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

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

(d) To the liquidator, receiver, or conservator for a qualified limited service affiliate, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer of the affiliated international trust entity, or a shareholder or member of the qualified limited service affiliate, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

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

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

(g) 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 the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only 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 report required by federal law.

(5) PENALTY.—A person who willfully, in violation of this section, 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, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a qualified limited service affiliate or in records relating to reports of examinations, operations, or condition of a qualified limited service affiliate, including working papers; any portion of a list of names of the shareholders or members of a qualified limited service affiliate which is held by the Office of Financial Regulation; and information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is necessary for personal identifying information of existing and prospective customers of an affiliated international trust entity or shareholders or members of a qualified limited service affiliate, because if such information is available for public access, such access could defame or jeopardize the personal and financial safety of those individuals. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

(2) An exemption from public records requirements is necessary for information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law, as public disclosure may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would this disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.

Section 5. Subsections (1), (2), (5), and (9) of section 655.057, Florida Statutes, are amended, and subsection (15) is added to that section, 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 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 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 records relating to the investigation 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; 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 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 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 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 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

(5) This section does not prevent or restrict:

(a) Publishing reports that are required to be submitted to the office pursuant to s. 655.045(2) 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.

(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.

(f) Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the office.

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

(9) Materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies 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 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information shall be made public only with the consent of such agency or the corporation.

(15) Subsections (1), (2), (5), and (9) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution records and information relating to an investigation by the Office of Financial Regulation; portions of records relating to a completed or inactive investigation by the office which would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures; 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; 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; and materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies.

(1) The terms “international trust entity” and “qualified limited service affiliate” referenced in newly created parts III and IV of chapter 663, Florida Statutes, are added to the definition of the term “financial institution” in s. 655.005(1)(i), Florida Statutes, in CS/CS/HB 435. The international trust company representative offices and qualified limited service affiliates servicing international trust entities are thus subject to examination by the Office of Financial Regulation. As a result, the office may receive sensitive personal and financial information relating to such entities in conjunction with its duties under chapters 655 and 663, Florida Statutes. An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and qualified limited service affiliates which are afforded to other financial institutions,

thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as “financial institutions.” An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the office’s ability to effectively and efficiently administer its examination and investigation duties. Examination and investigation are essential components of financial institutions regulation. They deter fraud and ensure the safety and soundness of the financial system. Examinations also provide a means of early detection of violations, allowing for corrective action to be taken before any harm can be done.

(2) The Legislature finds that it is a public necessity that information and records relating to an examination or investigation by the office be held confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Public disclosure of records and information relating to an examination or investigation by the office could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the office which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the office would impair the office’s ability to effectively and efficiently administer its duties under ss. 655.032 and 655.045, Florida Statutes. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

Section 7. This act shall take effect on the same date that CS/CS/HB 435 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 9, 2017.

Filed in Office Secretary of State June 9, 2017.