

## CHAPTER 2022-102

### Senate Bill No. 7020

An act relating to review under the Open Government Sunset Review Act; amending s. 663.416, F.S., which provides an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to affiliated international trust entities; removing the scheduled repeal of the exemption; amending s. 663.540, F.S., which provides an exemption from public records requirements for certain information held by the office relating to qualified limited service affiliates; removing the scheduled repeal of the exemption; amending s. 655.057, F.S., which provides exemptions from public records requirements for certain information held by the office relating to active investigations of and the regulation of financial institutions; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 663.416, Florida Statutes, is amended 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. Section 663.540, Florida Statutes, is amended 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 3. 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 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.

(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) 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.

(6)(a) Orders of courts or of administrative law judges for the production of confidential records or information must provide for inspection in camera by the court or the administrative law judge. After the court or administrative law judge determines that the documents requested are relevant or would likely lead to the discovery of admissible evidence and that the information sought is not otherwise reasonably available from other sources, the documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. An order directing the release of information is immediately reviewable, and a petition by the office for review of such order automatically stays 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 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 received the records or information. However, in a case involving investigation of charges against a public official subject to impeachment or removal, disclosure of such information shall be only to the extent necessary as determined by the legislative body or committee.

(c) Documents, statements, books, records, and any other information provided to the office by any person pursuant to an investigation, examination, or other supervisory activity by the office are not considered a waiver of any privilege or other legal right in an administrative or legal proceeding in which the office is not a party.

(7) Every credit union and mutual association shall maintain full and correct records of the names and residences of all the members of the credit union or mutual association in the principal office where its business is transacted. Such records are subject to inspection by all members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during normal business hours. No member or any other person has the right to copy the membership records for any purpose other than in the course of business of the credit union or mutual association, as authorized by the office or the board of directors of the credit union or mutual association. 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 s. 119.07(1).

(8) 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 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 normal business hours. No shareholder or any other person has the right to copy the shareholder records for any purpose other than in the course of business of the bank, the trust company, or the stock association, as authorized by the office or the board of directors of the bank, the trust company, or the stock association. 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 s. 119.07(1).

(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.

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

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

~~(14) 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 4. This act shall take effect October 1, 2022.

Approved by the Governor May 10, 2022.

Filed in Office Secretary of State May 10, 2022.