

A bill to be entitled

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; providing for the release of certain records in certain circumstances; providing definitions; 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 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) and s. 24(a), Art. I of the State Constitution

27 until such investigation is completed or ceases to be active.
28 For purposes of this subsection, an investigation is considered
29 "active" while such investigation is being conducted by the
30 office with a reasonable, good faith belief that it may lead to
31 the filing of administrative, civil, or criminal proceedings. An
32 investigation does not cease to be active if the office is
33 proceeding with reasonable dispatch, and there is a good faith
34 belief that action may be initiated by the office or other
35 administrative or law enforcement agency. After an investigation
36 is completed or ceases to be active, portions of such records
37 relating to the investigation shall be confidential and exempt
38 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
39 State Constitution to the extent that disclosure would:

- 40 (a) Jeopardize the integrity of another active
41 investigation;
- 42 (b) Impair the safety and soundness of the financial
43 institution;
- 44 (c) Reveal personal financial information;
- 45 (d) Reveal the identity of a confidential source;
- 46 (e) Defame or cause unwarranted damage to the good name or
47 reputation of an individual or jeopardize the safety of an
48 individual; or
- 49 (f) Reveal investigative techniques or procedures.
- 50 (2) Except as otherwise provided in this section and
51 except for such portions thereof which are public record,
52 reports of examinations, operations, or condition, including

53 working papers, or portions thereof, prepared by, or for the use
54 of, the office or any state or federal agency responsible for
55 the regulation or supervision of financial institutions in this
56 state are confidential and exempt from the provisions of s.
57 119.07(1) and s. 24(a), Art. I of the State Constitution.
58 However, such reports or papers or portions thereof may be
59 released to:

- 60 (a) The financial institution under examination;
- 61 (b) Any holding company of which the financial institution
62 is a subsidiary;
- 63 (c) Proposed purchasers if necessary to protect the
64 continued financial viability of the financial institution, upon
65 prior approval by the board of directors of such institution;
- 66 (d) Persons proposing in good faith to acquire a
67 controlling interest in or to merge with the financial
68 institution, upon prior approval by the board of directors of
69 such financial institution;
- 70 (e) Any officer, director, committee member, employee,
71 attorney, auditor, or independent auditor officially connected
72 with the financial institution, holding company, proposed
73 purchaser, or person seeking to acquire a controlling interest
74 in or merge with the financial institution; or
- 75 (f) A fidelity insurance company, upon approval of the
76 financial institution's board of directors. However, a fidelity
77 insurance company may receive only that portion of an
78 examination report relating to a claim or investigation being

79 | conducted by such fidelity insurance company.

80 | (g) Examination, operation, or condition reports of a
 81 | financial institution shall be released by the office within 1
 82 | year after the appointment of a liquidator, receiver, or
 83 | conservator to such financial institution. However, any portion
 84 | of such reports which discloses the identities of depositors,
 85 | bondholders, members, borrowers, or stockholders, other than
 86 | directors, officers, or controlling stockholders of the
 87 | institution, shall remain confidential and exempt from the
 88 | provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 89 | Constitution.

90 |
 91 | Any confidential information or records obtained from the office
 92 | pursuant to this paragraph shall be maintained as confidential
 93 | and exempt from the provisions of s. 119.07(1) and s. 24(a),
 94 | Art. I of the State Constitution.

95 | (3) Except as otherwise provided in this section and
 96 | except for such portions thereof which are otherwise public
 97 | record, after an investigation relating to an informal
 98 | enforcement action is completed or ceases to be active, informal
 99 | enforcement actions are confidential and exempt from s.
 100 | 119.07(1) and s. 24(a), Art. I of the State Constitution to the
 101 | extent that disclosure would:

102 | (a) Jeopardize the integrity of another active
 103 | investigation.

104 | (b) Impair the safety and soundness of the financial

105 institution.

106 (c) Reveal personal financial information.

107 (d) Reveal the identity of a confidential source.

108 (e) Defame or cause unwarranted damage to the good name or
 109 reputation of an individual or jeopardize the safety of an
 110 individual.

111 (f) Reveal investigative techniques or procedures.

112 (4) Except as otherwise provided in this section and
 113 except for such portions thereof which are otherwise public
 114 record, trade secrets, as defined in s. 688.002, that comply
 115 with s. 655.0591, and that are held by the office in accordance
 116 with its statutory duties with respect to the financial
 117 institutions codes, are confidential and exempt from s.
 118 119.07(1) and s. 24(a), Art. I of the State Constitution.

119 ~~(5)-(3)~~ The provisions of this section do not prevent or
 120 restrict:

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

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

128 (c) Disclosing or publishing summaries of the condition of
 129 financial institutions and general economic and similar
 130 statistics and data, provided that the identity of a particular

131 financial institution is not disclosed.

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

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

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

145 (6) (a) (4) (a) Orders of courts or of administrative law
 146 judges for the production of confidential records or information
 147 shall provide for inspection in camera by the court or the
 148 administrative law judge and, after the court or administrative
 149 law judge has made a determination that the documents requested
 150 are relevant or would likely lead to the discovery of admissible
 151 evidence, said documents shall be subject to further orders by
 152 the court or the administrative law judge to protect the
 153 confidentiality thereof. Any order directing the release of
 154 information shall be immediately reviewable, and a petition by
 155 the office for review of such order shall automatically stay
 156 further proceedings in the trial court or the administrative

157 hearing until the disposition of such petition by the reviewing
158 court. If any other party files such a petition for review, it
159 will operate as a stay of such proceedings only upon order of
160 the reviewing court.

161 (b) Confidential records and information furnished
162 pursuant to a legislative subpoena shall be kept confidential by
163 the legislative body or committee which received the records or
164 information, except in a case involving investigation of charges
165 against a public official subject to impeachment or removal, and
166 then disclosure of such information shall be only to the extent
167 determined by the legislative body or committee to be necessary.

168 (7)~~(5)~~ Every credit union and mutual association shall
169 maintain, in the principal office where its business is
170 transacted, full and correct records of the names and residences
171 of all the members of the credit union or mutual association.
172 Such records shall be subject to the inspection of all the
173 members of the credit union or mutual association, and the
174 officers authorized to assess taxes under state authority,
175 during business hours of each business day. A current list of
176 members shall be made available to the office's examiners for
177 their inspection and, upon the request of the office, shall be
178 submitted to the office. Except as otherwise provided in this
179 subsection, the list of the members of the credit union or
180 mutual association is confidential and exempt from the
181 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
182 Constitution.

183 (8)~~(6)~~ Every bank, trust company, and stock association
184 shall maintain, in the principal office where its business is
185 transacted, full and complete records of the names and
186 residences of all the shareholders of the bank, trust company,
187 or stock association and the number of shares held by each. Such
188 records shall be subject to the inspection of all the
189 shareholders of the bank, trust company, or stock association,
190 and the officers authorized to assess taxes under state
191 authority, during business hours of each banking day. A current
192 list of shareholders shall be made available to the office's
193 examiners for their inspection and, upon the request of the
194 office, shall be submitted to the office. Except as otherwise
195 provided in this subsection, any portion of this list which
196 reveals the identities of the shareholders is confidential and
197 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
198 of the State Constitution.

199 (9)~~(7)~~ Materials supplied to the office or to employees of
200 any financial institution by other governmental agencies,
201 federal or state, shall remain the property of the submitting
202 agency or the corporation, and any document request must be made
203 to the appropriate agency. Any confidential documents supplied
204 to the office or to employees of any financial institution by
205 other governmental agencies, federal or state, shall be
206 confidential and exempt from the provisions of s. 119.07(1) and
207 s. 24(a), Art. I of the State Constitution. Such information
208 shall be made public only with the consent of such agency or the

209 corporation.

210 (10)~~(8)~~ Examination reports, investigatory records,
 211 applications, and related information compiled by the office, or
 212 photographic copies thereof, shall be retained by the office for
 213 a period of at least 10 years.

214 (11)~~(9)~~ A copy of any document on file with the office
 215 which is certified by the office as being a true copy may be
 216 introduced in evidence as if it were the original. The
 217 commission shall establish a schedule of fees for preparing true
 218 copies of documents.

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

220 (a) "Examination report" means records submitted to or
 221 prepared by the office as part of the office's duties performed
 222 pursuant to s. 655.012 or s. 655.045(1).

223 (b) "Informal enforcement action" means a board
 224 resolution, a document of resolution, or an agreement in writing
 225 between the office and a financial institution that:

226 1. The office imposes on an institution when the office
 227 considers the administrative enforcement guidelines in s.
 228 655.031 and determines that a formal enforcement action is not
 229 an appropriate administrative remedy.

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

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

235 (c) "Personal financial information" means:
 236 1. Information relating to the existence, nature, source,
 237 or amount of a person's personal income, expenses, or debt.
 238 2. Information relating to a person's financial
 239 transactions of any kind.
 240 3. Information relating to the existence, identification,
 241 nature, or value of a person's assets, liabilities, or net
 242 worth.
 243 (d) "Working papers" means the records of the procedures
 244 followed, the tests performed, the information obtained, and the
 245 conclusions reached in an examination or investigation performed
 246 under s. 655.032 or s. 655.045. Working papers include planning
 247 documentation, work programs, analyses, memoranda, letters of
 248 confirmation and representation, abstracts of the books and
 249 records of a financial institution as defined in s.
 250 655.005(1)(i), and schedules or commentaries prepared or
 251 obtained in the course of such examination or investigation.
 252 ~~(13)~~~~(10)~~ Any person who willfully discloses information
 253 made confidential by this section is guilty of a felony of the
 254 third degree, punishable as provided in s. 775.082, s. 775.083,
 255 or s. 775.084.
 256 (14) This section is subject to the Open Government Sunset
 257 Review Act in accordance with s. 119.15 and shall stand repealed
 258 on October 2, 2019, unless reviewed and saved from repeal
 259 through reenactment by the Legislature.
 260 Section 2. (1) The Legislature finds that it is a public

261 necessity that informal enforcement actions and trade secrets,
262 as defined in s. 688.002, must be kept confidential and exempt
263 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
264 the State Constitution.

265 (2) Public disclosure of an informal enforcement action
266 could further impair the safety and soundness of a financial
267 institution that is subject to the action. Furthermore, the
268 public disclosure of this information could erode public
269 confidence in financial institutions and the financial
270 institution system in this state and may lead to a reduced level
271 of protection of the interests of the depositors and creditors
272 of financial institutions. Maintaining informal enforcement
273 actions as confidential and exempt from s. 119.07(1), Florida
274 Statutes, and s. 24(a), Article I of the State Constitution
275 will:

276 (a) Provide the same protections for financial
277 institutions chartered by this state as are available to
278 financial institutions chartered under federal law and by other
279 states.

280 (b) Maintain public confidence in financial institutions
281 subject to the financial institutions codes.

282 (c) Protect the safety and soundness of the financial
283 institution system in this state.

284 (d) Protect the interests of the depositors and creditors
285 of financial institutions in this state.

286 (e) Promote the opportunity for state-chartered financial

287 institutions to be and remain competitive with financial
288 institutions chartered by other states or the United States.

289 (f) Provide for and promote the purposes of the financial
290 institutions codes as set forth in s. 655.001, Florida Statutes.

291 (3) A trade secret derives independent economic value,
292 actual or potential, from not being generally known to, and not
293 readily ascertainable by, other persons who can obtain economic
294 value from its disclosure or use. Without an exemption for a
295 trade secret held by the Office of Financial Regulation, that
296 trade secret becomes a public record when received and must be
297 divulged upon request. Divulging a trade secret under the public
298 records laws would destroy the value of that property, causing a
299 financial loss to the person or entity submitting the trade
300 secret. Release of that information would give business
301 competitors an unfair advantage and weaken the position of the
302 person or entity supplying the trade secret in the marketplace.

303 Section 3. This act shall take effect on the same date
304 that HB 673 or similar legislation takes effect, if such
305 legislation is adopted in the same legislative session or an
306 extension thereof and becomes law.