

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1262

SPONSOR: Committee on Banking and Insurance and Criminal Justice

SUBJECT: Public Records Exemption under the Money Transmitters' Code

DATE: March 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich/Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1262 revises the confidentiality provisions under ch. 560, F.S., the Money Transmitters' Code. It makes confidential and exempt from the requirements of s. 119.07(1), F.S., and Section 24(a) of Article I of the State Constitution, all information, with certain exceptions, concerning investigations or examinations conducted by the Department of Banking and Finance, information concerning trade secrets, personal financial information, and consumer complaints. It removes certain confidentiality restrictions placed on access to hearings, proceedings, and related documents of the department and revises certain limitations on the disclosure of other information concerning an investigation. The CS for CS provides a statement of public necessity.

This CS for CS is one of the recommendations of the Joint Legislative Task Force on Illicit Money Laundering which was established last year by Senate President Jennings and House Speaker Thrasher to address the money laundering problem in Florida. The Task Force heard extensive testimony from criminal justice officials, transportation representatives, banking and business persons, state and local government officers, and community leaders. In November 1999, the Task Force issued its final report (*Money Laundering in Florida: Report of the Legislative Task Force*) which contained numerous proposals impacting the areas of law enforcement and prosecution, transportation and distribution, and financial institutions and businesses.

This CS for CS substantially amends section 560.129 of the Florida Statutes.

II. Present Situation:

Public Records and Meetings

Pursuant to ch. 119, F.S., the Public Records law, a person who has custody of a public record must permit that record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public

record or the custodian's designee (s. 119.07(1), F.S.). Section 24(a) of Article I of the State Constitution specifies that persons have the right to inspect or copy any public record made or received in connection with official business except those which are exempt under law.

Under s. 286.011, F.S., meetings of any board or commission of any state agency at which official acts are taken must be open to the public. Section 24(b) of Article I of the State Constitution specifies that meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district where official acts are to be taken or at which public business is transacted or discussed must be open to the public.

Money Transmitters' Code

Under the confidentiality provision of the Money Transmitters' Code, s. 560.129, F.S., hearings and proceedings are confidential and exempt from the public hearings requirements pursuant to s. 286.011, F.S., and documents related to such hearings and proceedings are confidential and exempt from the public records provisions under s. 119.07, F.S. Orders of courts or administrative law judges for production of confidential records provide for an in camera inspection by the court or judge of these records and any ruling allowing the release of such records is subject to immediate review.

Emergency orders issued by the department against money transmitters are confidential until such orders are made permanent. Also, all records and information relating to investigations are confidential and exempt from the public records law, until the investigation is completed and ceases to be "active," however, portions of such records may remain confidential if disclosure would jeopardize another investigation or reveal certain specified information.

Reports of examinations of money transmitters, including working papers, are also confidential, however, such reports may be released to the money transmitter under examination and other specified persons. Money laundering records are also confidential, however, such records may be furnished by the department to federal, state and local law enforcement. All reports and records must further be retained by the department for a period of 10 years. It is a third degree felony for any person to wilfully disclose confidential information.

Illicit Money Laundering Task Force

The Illicit Money Laundering Task Force found that Florida's financial institutions and businesses are major conduits for money laundering operations because they provide a variety of services and products that can be used to conceal the source of illicit money. Financial entities and the self-described "non-banking" community, e.g., money transmitters, offer services and instruments (cashiers' checks, travelers' checks, wire transfers, etc.) that may be utilized in laundering activities. Representatives with the Department of Banking and Finance told the Task Force that certain confidentiality provisions relating to money transmitters were confusing and that it was necessary to repeal the exemptions pertaining to closed hearings and meetings, so that such hearings concerning code violators could be open to the public. The Task Force approved repealing these exemptions, but clarified that investigations and examinations, with certain exceptions, are to remain confidential until they cease to be "active."

During its deliberations, the Task Force was mindful to strike a balance between the interests of state regulators with the legitimate concerns of the money transmitter industry. The Task Force recommendations concerning confidentiality provisions were forged with all sides endeavoring to compromise to achieve the goal of providing a stronger framework to combat money laundering in the state.

III. Effect of Proposed Changes:

Section 1. Amends s. 560.129, F.S., relating to money transmitters, to provide that all information concerning investigations or examinations conducted by the Department of Banking and Finance is confidential and exempt from disclosure under the public records law (s. 119.07(1), F.S.) and s. 24(a), Art. I of the State Constitution, until such investigations or examinations cease to be “active.” An investigation or examination is considered “active” so long as the department or any other administrative, regulatory, or law enforcement agency is proceeding with reasonable dispatch and has a reasonable good faith belief that action may be initiated by said department or agency.

The CS for CS provides that information obtained by the department pursuant to its investigation or examination which is a trade secret under s. 688.002, F.S., or which is personal financial information shall remain confidential. However, if an administrative, civil or criminal proceeding is initiated against a money transmitter and the department seeks to use information which the transmitter believes is a trade secret or personal financial information, such information shall be subject to an *in camera review* by the judge, for the purpose of determining if the matter is a trade secret or personal financial information. If it is determined that the matter is a trade secret, the matter would remain confidential. If it is determined that the matter is personal financial information, the matter shall remain confidential unless the judge determines, in the interests of justice, the matter should become public.

If the proceeding against a money transmitter results in an acquittal or dismissal of allegations, upon the request of any party, the judge may order all or a portion of the record to be sealed, and thus confidential and exempt from disclosure. Except as necessary for the department or any agency to enforce the provisions of ch. 560, F.S., a consumer complaint and other information concerning an investigation or examination are to remain confidential and exempt from the public records law after the investigation ceases to be “active” to the extent disclosure would:

- (1) jeopardize the integrity of another active investigation;
- (2) reveal personal financial information;
- (3) reveal the identity of a confidential source; or
- (4) reveal investigative techniques or procedures.

The CS for CS provides that furnishing records to an independent third party or a certified public accountant (CPA) who conducts an examination is allowed if the third party or CPA adheres to the confidentiality provisions of the code.

The CS for CS also deletes certain restrictions placed on access to hearings and proceedings, and removes confidentiality limitations placed on the disclosure of documents and reports. An exception is made for quarterly reports which are submitted by a money transmitter to the

department. According to representatives with the money transmitter industry, these reports are confidential because they contain detailed financial information which could be useful to competitors.

Section 2. The legislative findings provided in the CS for CS state that it is a public necessity that information contained in investigations and examinations be held confidential in order not to compromise the investigation or examination and disclose potentially inaccurate information. Such compromise would impede the effective operation of active investigatory and examination functions. Additionally, it is a public necessity for trade secrets and consumer complaints to be confidential under certain circumstances. Finally, the Legislature finds that it is a public necessity that the entire quarterly report submitted by a money transmitter to the department remain confidential and exempt because such reports contain detailed business information and disclosure of such information to a third party could harm the money transmitter and could result in a competitive disadvantage if used by another money transmitter.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This CS for CS revises the confidentiality provisions under the Money Transmitters' Code. It makes certain information which relates to investigations and examinations conducted by the Department of Banking and Finance, as well as consumer complaints, exempt from the public records law. Such information becomes public, with certain exceptions, after the investigation or examination ceases to be active. Trade secrets and personal financial information are also exempt from the public records law with certain exceptions. Likewise, quarterly reports are exempt and confidential. The CS for CS also deletes certain restrictions placed on access to hearings and proceedings, and removes limitations placed on the disclosure of documents and reports. Since the bill relates only to public records and open meetings exemptions, it complies with the requirements of s. 24, Art. I of the State Constitution. The bill also contains a statement of public necessity which justifies the noted exemptions.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Hearings and proceedings, as well as documents and records under the money transmitters' code, which are currently confidential will now be open to the public. The interests of money transmitters during the pendency of investigations and examinations are protected because potentially inaccurate information which could be obtained during a department investigation or examination would be confidential. Further, trade secrets and personal financial information of money transmitters is made confidential with certain exceptions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.