

By the Committee on Criminal Justice

307-1663-00

1                                   A bill to be entitled

2           An act relating to the confidentiality of

3           information concerning investigations conducted

4           under the Money Transmitters' Code; amending s.

5           560.129, F.S.; providing that information

6           concerning investigations or examinations

7           conducted by the Department of Banking and

8           Finance are confidential and exempt from

9           disclosure under the public records law;

10          deleting certain restrictions placed on access

11          to hearings, proceedings, and related documents

12          of the department; revising certain limitations

13          on the disclosure of consumer complaints and

14          other information concerning an investigation

15          or examination; deleting certain limitations

16          placed on the disclosure of reports prepared

17          by, or for the use of, the Department of

18          Banking and Finance; providing for the

19          disclosure of records or information to certain

20          parties approved by the department to conduct

21          examinations; providing a finding of public

22          necessity; providing an effective date.

23

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

25

26           Section 1. Section 560.129, Florida Statutes, is

27 amended to read:

28           560.129 Confidentiality.--

29           (1) For purposes of this section, the definitions

30 contained in s. 560.103, as created by chapter 94-238, Laws of

31 Florida, and chapter 94-354, Laws of Florida, apply.

1           (2)(a) Except as otherwise provided in this section,  
2 all information concerning an investigation or examination by  
3 the department pursuant to this chapter, including any  
4 consumer complaint, is confidential and exempt from s.  
5 119.07(1) and s. 24(a), Art. I of the State Constitution until  
6 the investigation or examination ceases to be active. For  
7 purposes of this section, an investigation or examination is  
8 considered "active" so long as the department or any other  
9 administrative, regulatory, or law enforcement agency of any  
10 jurisdiction is proceeding with reasonable dispatch and has a  
11 reasonable good faith belief that action may be initiated by  
12 the department or other administrative, regulatory, or law  
13 enforcement agency.

14           (b) Notwithstanding paragraph (a), all information  
15 obtained by the department in the course of its investigation  
16 or examination which is a trade secret, as defined in s.  
17 688.002, or which is personal financial information shall  
18 remain confidential. If any administrative, civil, or criminal  
19 proceeding against the money transmitter or a money  
20 transmitter-affiliated party is initiated and the department  
21 seeks to use matter that a registrant believes to be a trade  
22 secret or personal financial information, such records shall  
23 be subject to an in camera review by the administrative law  
24 judge, if the matter is before the Division of Administrative  
25 Hearings or a judge of any court of this state, any other  
26 state, or the United States, as appropriate, for the purpose  
27 of determining if the matter is a trade secret or is personal  
28 financial information. If it is determined that the matter is  
29 a trade secret, the matter shall remain confidential. If it is  
30 determined that the matter is personal financial information,  
31 the matter shall remain confidential unless the administrative

1 law judge or judge determines that, in the interests of  
2 justice, the matter should become public.

3 (c) If any administrative, civil, or criminal  
4 proceeding against the money transmitter or a money  
5 transmitter-affiliated party results in an acquittal or the  
6 dismissal of all of the allegations against the money  
7 transmitter or a money transmitter-affiliated party, upon the  
8 request of either party, the administrative law judge or the  
9 judge shall order all or a portion of the record of the  
10 proceeding to be sealed, and it shall thereafter be  
11 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
12 of the State Constitution.

13 (d) Except as necessary for the department or any  
14 other administrative, regulatory, or law enforcement agency of  
15 any jurisdiction to enforce the provisions of this chapter or  
16 the law of any other state or the United States, a consumer  
17 complaint and other information concerning an investigation or  
18 examination shall remain confidential and exempt from s.  
19 119.07(1) and s. 24(a), Art. I of the State Constitution after  
20 the investigation or examination ceases to be active to the  
21 extent that disclosure would:

22 ~~(2) RESTRICTED ACCESS TO CERTAIN HEARINGS,~~  
23 ~~PROCEEDINGS, AND RELATED DOCUMENTS.--~~

24 ~~(a) The hearings and proceedings conducted under the~~  
25 ~~code pursuant to this part shall be closed and exempt from the~~  
26 ~~provisions of s. 286.011 and s. 24(b), Art. I of the State~~  
27 ~~Constitution, and documents related to such hearings and~~  
28 ~~proceedings shall be confidential and exempt from the~~  
29 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
30 ~~Constitution.~~

31

1           ~~(b) Orders of courts or of administrative law judges~~  
2 ~~for the production of confidential records or information~~  
3 ~~shall provide for inspection in camera by the court or the~~  
4 ~~administrative law judge and, after the court or~~  
5 ~~administrative law judge has made a determination that the~~  
6 ~~documents requested are relevant or would likely lead to the~~  
7 ~~discovery of admissible evidence, the documents shall be~~  
8 ~~subject to further orders by the court or the administrative~~  
9 ~~law judge to protect the confidentiality thereof. Any order~~  
10 ~~directing the release of information shall be immediately~~  
11 ~~reviewable, and a petition by the department for review of~~  
12 ~~such order shall automatically stay further proceedings in the~~  
13 ~~trial court or the administrative hearing until the~~  
14 ~~disposition of such petition by the reviewing court. If any~~  
15 ~~other party files such a petition for review, it will operate~~  
16 ~~as a stay of such proceedings only upon order of the reviewing~~  
17 ~~court.~~

18           ~~(3) Any emergency order entered under s. 560.112(6) is~~  
19 ~~confidential and exempt from the provisions of s. 119.07(1)~~  
20 ~~and s. 24(a), Art. I of the State Constitution, until the~~  
21 ~~emergency order is made permanent, unless the department finds~~  
22 ~~that such confidentiality will result in substantial risk of~~  
23 ~~financial loss to the public.~~

24           ~~(4) Except for such portions of this section which are~~  
25 ~~otherwise public record, all records and information relating~~  
26 ~~to an investigation by the department under the code are~~  
27 ~~confidential and exempt from the provisions of s. 119.07(1)~~  
28 ~~and s. 24(a), Art. I of the State Constitution, until such~~  
29 ~~investigation is completed or ceases to be active. For~~  
30 ~~purposes of this subsection, an investigation is considered~~  
31 ~~active while such investigation is being conducted by the~~

1 ~~department with a reasonable, good faith belief that it may~~  
2 ~~lead to the filing of administrative, civil, or criminal~~  
3 ~~proceedings. An investigation does not cease to be active if~~  
4 ~~the department is proceeding with reasonable dispatch, and~~  
5 ~~there is a good faith belief that action may be initiated by~~  
6 ~~the department or other regulatory, administrative, or law~~  
7 ~~enforcement agency. After an investigation is completed or~~  
8 ~~ceases to be active, portions of such records relating to the~~  
9 ~~investigation shall be confidential and exempt from the~~  
10 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
11 ~~Constitution, to the extent that disclosure would:~~

12 1.(a) Jeopardize the integrity of another active  
13 investigation;

14 ~~(b) Impair the safety and soundness of a money~~  
15 ~~transmitter or authorized vendor;~~

16 2.(c) Reveal personal financial information;

17 3.(d) Reveal the identity of a confidential source; or

18 ~~(e) Defame or cause unwarranted damage to the good~~  
19 ~~name or reputation, or jeopardize the safety, of a person; or~~

20 4.(f) Reveal investigative techniques or procedures.

21 ~~(5) Except as otherwise provided in s. 560.121, and~~  
22 ~~except for such portions that are public record, reports of~~  
23 ~~examinations, operations, or conditions, including working~~  
24 ~~papers, or portions thereof, prepared by, or for the use of,~~  
25 ~~the department or any appropriate regulatory agency are~~  
26 ~~confidential and exempt from the provisions of s. 119.07(1)~~  
27 ~~and s. 24(a), Art. I of the State Constitution. However, such~~  
28 ~~reports or papers or portions thereof may be released to:~~

29 ~~(a) The money transmitter under examination;~~

30 ~~(b) Proposed purchasers if necessary to protect the~~  
31 ~~continued financial viability of the money transmitter;~~

1 ~~however, the department shall notify the money transmitter~~  
2 ~~prior to releasing such documents;~~

3 ~~(c) Persons proposing in good faith to acquire a~~  
4 ~~controlling interest in or to merge with the money~~  
5 ~~transmitter; however, the department shall obtain permission~~  
6 ~~from the money transmitter prior to releasing such documents;~~

7 ~~(d) Any responsible person, officer, director,~~  
8 ~~employee, attorney, auditor, or independent auditor officially~~  
9 ~~connected with the money transmitter, proposed purchaser, or~~  
10 ~~person seeking to acquire a controlling interest in or merge~~  
11 ~~with the money transmitter; however, the department shall~~  
12 ~~obtain permission from the money transmitter prior to~~  
13 ~~releasing such documents; or~~

14 ~~(e) A bonding company, upon approval of the money~~  
15 ~~transmitter.~~

16  
17 ~~Any confidential information or records obtained from the~~  
18 ~~department pursuant to this subsection shall be maintained as~~  
19 ~~confidential and exempt from the provisions of s. 119.07(1)~~  
20 ~~and s. 24(a), Art. I of the State Constitution.~~

21 ~~(3)(6)~~ This section does shall not prevent or  
22 restrict:

23 (a) Furnishing records or information to any  
24 appropriate regulatory agency if ~~provided that~~ such agency  
25 adheres to the confidentiality provisions of the code;

26 (b) Furnishing records or information to an  
27 independent third party or a certified public accountant who  
28 has been approved by the department to conduct an examination  
29 under s. 560.118(1)(b), if the independent third party or  
30 certified public accountant adheres to the confidentiality  
31 provisions of the code; or

1           ~~(b) Disclosing or publishing summaries of the~~  
2 ~~condition of money transmitters as well as general economic~~  
3 ~~and similar statistics or data, provided that the identity of~~  
4 ~~a particular money transmitter is not disclosed and may not be~~  
5 ~~ascertained; or~~

6           (c) Reporting any suspected criminal activity, with  
7 supporting documents and information, to appropriate law  
8 enforcement or prosecutorial agencies.

9  
10 ~~Any confidential information or records obtained from the~~  
11 ~~department pursuant to this subsection shall be maintained as~~  
12 ~~confidential and exempt from the provisions of s. 119.07(1)~~  
13 ~~and s. 24(a), Art. I of the State Constitution.~~

14           ~~(7) All reports and records filed with the department~~  
15 ~~pursuant to s. 560.123 are confidential and exempt from the~~  
16 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
17 ~~Constitution. However, the department shall provide any report~~  
18 ~~filed pursuant to such section, or information contained~~  
19 ~~therein, to federal, state, and local law enforcement and~~  
20 ~~prosecutorial agencies, and to any federal or state agency~~  
21 ~~responsible for the regulation or supervision of money~~  
22 ~~transmitters.~~

23           ~~(8) Confidential records and information furnished~~  
24 ~~pursuant to a legislative subpoena shall be kept confidential~~  
25 ~~by the legislative body or committee that receives the records~~  
26 ~~or information, except in a case involving investigation of~~  
27 ~~charges against a public official subject to impeachment or~~  
28 ~~removal, and then disclosure of such information shall be only~~  
29 ~~to the extent determined to be necessary by the legislative~~  
30 ~~body or committee.~~

31

1           (4) All quarterly reports submitted by a money  
2 transmitter to the department under s. 560.118(2)(b) are  
3 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
4 of the State Constitution.

5           ~~(5)(9)~~ Examination reports, investigatory records,  
6 applications, and related information compiled by the  
7 department, or photographic copies thereof, shall be retained  
8 by the department for a period of at least 10 years.

9           ~~(6)(10)~~ Any person who willfully discloses information  
10 made confidential by this section commits a felony of the  
11 third degree, punishable as provided in s. 775.082 ors.  
12 775.083, ~~or s. 775.084.~~

13           ~~(11) The exemptions created pursuant to subsections~~  
14 ~~(1)-(11) for purposes of the Money Transmitters' Code in this~~  
15 ~~chapter, as created by chapter 94-238, Laws of Florida, and~~  
16 ~~chapter 94-354, Laws of Florida, are exempt from the~~  
17 ~~provisions of ss. 119.07(1) and 286.011 and s. 24(a) and (b),~~  
18 ~~Art. I of the State Constitution.~~

19           Section 2. The Legislature finds that it is a public  
20 necessity that records of investigations and examinations  
21 conducted by the Department of Banking and Finance under  
22 chapter 560, Florida Statutes, including records of consumer  
23 complaints, be held confidential and exempt in order not to  
24 compromise the investigation or examination and disclose  
25 potentially inaccurate information. Such compromise would  
26 impede the effective and efficient operation of active  
27 investigatory and examination functions. Additionally, the  
28 Legislature finds that it is a public necessity that trade  
29 secrets remain confidential and exempt at all times because  
30 the disclosure of such information would injure the affected  
31 party in the marketplace. Further, the Legislature finds that



1 it is a public necessity that consumer complaints be held  
2 confidential and exempt after an investigation or examination  
3 ceases to be active to the extent that disclosure would  
4 jeopardize other investigations or reveal other information  
5 that should be confidential. Disclosure of a consumer  
6 complaint could lead to discrimination against the complainant  
7 by others. The harm caused to such a complainant by the  
8 release of this information outweighs any public benefit  
9 derived from its release.

10 Section 3. This act shall take effect upon becoming a  
11 law.

12  
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14 COMMITTEE SUBSTITUTE FOR  
15 Senate Bill 1262

- 16 1. Expands what is confidential to include "personal  
17 financial information" of a money transmitter that is  
18 obtained by the Department of Banking and Finance during  
19 an investigation or examination.  
20 2. Provides that investigations or examinations which do  
21 not result in the filing of charges no longer be  
22 confidential with certain exceptions.  
23 3. Provides that if there is an administrative or court  
24 hearing and the department seeks to use trade secrets or  
25 personal financial information, such secrets or  
26 information will be subject to an in camera review by  
27 the judge. If the judge determines that the matter is a  
28 trade secret, it will remain confidential unless the  
29 judge determines that, in the interests of justice, it  
30 should become public.  
31 4. Provides that, upon the request of either party, an  
administrative law or other judge may seal all or a  
portion of the record if proceedings against a money  
transmitter result in acquittal or dismissal of charges.