

By the Committees on Banking and Insurance; and Criminal Justice

311-1761-00

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 any party, the administrative law judge or the
9 judge may 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. Finally, the Legislature finds that
10 it is a public necessity that the entire quarterly report
11 submitted by a money transmitter to the department remain
12 confidential and exempt because such reports contain detailed
13 business information, proprietary matters, and market share
14 data. Disclosure of such information to a third party could
15 harm the money transmitter and could result in a competitive
16 disadvantage if used by another money transmitter.

17 Section 3. This act shall take effect upon becoming a
18 law.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 CS for SB 1262

- 23 1 Clarifies that if a proceeding against a money
24 transmitter results in an acquittal or dismissal of
25 allegations, upon the request of any party, the judge
26 may order all or a portion of the record to be sealed,
27 and thus confidential and exempt from disclosure.
- 28 2. Adds legislative findings that it is a public necessity
29 that the entire quarterly report submitted by a money
30 transmitter to the department remain confidential and
31 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.