

By the Committee on Financial Services and Representative
Crow

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; revising a penalty; providing a
22 finding of public necessity; providing an
23 effective date.

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

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27 Section 1. Section 560.129, Florida Statutes, is
28 amended to read:

29 560.129 Confidentiality.--
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1 (1) For purposes of this section, the definitions
2 contained in s. 560.103, as created by chapter 94-238, Laws of
3 Florida, and chapter 94-354, Laws of Florida, apply.

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

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

1 a trade secret, the matter shall remain confidential. If it is
2 determined that the matter is personal financial information,
3 the matter shall remain confidential unless the administrative
4 law judge or judge determines that, in the interests of
5 justice, the matter should become public.

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

16 (d) Except as necessary for the department or any
17 other administrative, regulatory, or law enforcement agency of
18 any jurisdiction to enforce the provisions of this chapter or
19 the law of any other state or the United States, a consumer
20 complaint and other information concerning an investigation or
21 examination shall remain confidential and exempt from s.
22 119.07(1) and s. 24(a), Art. I of the State Constitution after
23 the investigation or examination ceases to be active to the
24 extent that disclosure would:

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

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

1 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
2 ~~Constitution.~~

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

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

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

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

14 1.(a) Jeopardize the integrity of another active
15 investigation;

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

18 2.(c) Reveal personal financial information;

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

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

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

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

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

1 ~~(b) Proposed purchasers if necessary to protect the~~
2 ~~continued financial viability of the money transmitter;~~
3 ~~however, the department shall notify the money transmitter~~
4 ~~prior to releasing such documents;~~

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

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

16 ~~(e) A bonding company, upon approval of the money~~
17 ~~transmitter.~~

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

23 ~~(3)(6)~~ This section does shall not prevent or
24 restrict:

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

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

1 certified public accountant adheres to the confidentiality
2 provisions of the code; or
3 ~~(b) Disclosing or publishing summaries of the~~
4 ~~condition of money transmitters as well as general economic~~
5 ~~and similar statistics or data, provided that the identity of~~
6 ~~a particular money transmitter is not disclosed and may not be~~
7 ~~ascertained; or~~
8 (c) Reporting any suspected criminal activity, with
9 supporting documents and information, to appropriate law
10 enforcement or prosecutorial agencies.
11
12 ~~Any confidential information or records obtained from the~~
13 ~~department pursuant to this subsection shall be maintained as~~
14 ~~confidential and exempt from the provisions of s. 119.07(1)~~
15 ~~and s. 24(a), Art. I of the State Constitution.~~
16 ~~(7) All reports and records filed with the department~~
17 ~~pursuant to s. 560.123 are confidential and exempt from the~~
18 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
19 ~~Constitution. However, the department shall provide any report~~
20 ~~filed pursuant to such section, or information contained~~
21 ~~therein, to federal, state, and local law enforcement and~~
22 ~~prosecutorial agencies, and to any federal or state agency~~
23 ~~responsible for the regulation or supervision of money~~
24 ~~transmitters.~~
25 ~~(8) Confidential records and information furnished~~
26 ~~pursuant to a legislative subpoena shall be kept confidential~~
27 ~~by the legislative body or committee that receives the records~~
28 ~~or information, except in a case involving investigation of~~
29 ~~charges against a public official subject to impeachment or~~
30 ~~removal, and then disclosure of such information shall be only~~
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1 ~~to the extent determined to be necessary by the legislative~~
2 ~~body or committee.~~

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

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

11 ~~(6)(10)~~ Any person who willfully discloses information
12 made confidential by this section commits a misdemeanor felony
13 of the first third degree, punishable as provided in s.
14 775.082 or, s. 775.083, ~~or s. 775.084.~~

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

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

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

12 Section 3. This act shall take effect upon becoming a
13 law.

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15 HOUSE SUMMARY

16 Provides a public records exemption for information
17 concerning investigations or examinations conducted by
18 the Department of Banking and Finance. Deletes
19 restrictions placed on access to hearings, proceedings,
20 and related documents of the department. Revises
21 limitations on the disclosure of consumer complaints and
22 other information concerning an investigation or
23 examination. Deletes limitations placed on the disclosure
24 of reports prepared by, or for the use of, the Department
25 of Banking and Finance. Provides for the disclosure of
26 records or information to parties approved by the
27 department to conduct examinations.
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