

By the Committee on Banking and Insurance; and Senator Sebesta

311-2250-04

1 A bill to be entitled
2 An act relating to a public records exemption;
3 creating s. 516.115, F.S.; creating an
4 exemption from public records requirements for
5 information obtained by the Office of Financial
6 Regulation of the Financial Services Commission
7 in connection with investigations and
8 examinations under the Florida Consumer Finance
9 Act; providing for future legislative review
10 and repeal; providing a statement of public
11 necessity; providing an effective date.

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

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15 Section 1. Section 516.115, Florida Statutes, is
16 created to read:
17 516.115 Public records exemption for investigation and
18 examination information.--

19 (1) Except as otherwise provided by this section,
20 information received or created during an investigation or
21 examination by the Office of Financial Regulation of the
22 Financial Services Commission pursuant to this chapter,
23 including any consumer complaint, is confidential and exempt
24 from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution until the investigation or examination is
26 completed or ceases to be active.

27 (2) The office may provide such confidential and
28 exempt information to a law enforcement agency, administrative
29 agency, or regulatory organization in the furtherance of its
30 duties and responsibilities. The law enforcement agency,
31 administrative agency, or regulatory organization must

1 maintain the confidential and exempt status of the information
2 so long as it would otherwise be confidential and exempt from
3 disclosure.

4 (3) If such confidential and exempt information is
5 offered into evidence in any administrative, civil, or
6 criminal proceeding, the presiding officer may, in her or his
7 discretion, prevent the disclosure of such information.

8 (4) Such information shall remain confidential and
9 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
10 Constitution until after the office completes its
11 investigation or examination or the investigation or
12 examination ceases to be active to the extent disclosure
13 would:

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

16 (b) Reveal the name, address, telephone number, social
17 security number, or any other identifying information of a
18 complainant, customer, or account holder.

19 (c) Reveal the identity of a confidential source.

20 (d) Reveal investigative techniques or procedures.

21 (e) Reveal a trade secret as defined in s. 688.002.

22 (f) Reveal proprietary business information obtained
23 by the office from any person which is only made available to
24 the office on a confidential or similarly restricted basis.

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26 For purposes of this section, an investigation or examination
27 shall be considered "active" so long as the office or any law
28 enforcement or administrative agency or regulatory
29 organization is proceeding with reasonable dispatch and has a
30 reasonable good faith belief that the investigation or
31 examination may lead to the filing of an administrative,

1 civil, or criminal proceeding or to the denial or conditional
2 grant of a license, registration, or permit.

3 (5) This exemption does not prohibit disclosure of
4 information that is required by law to be filed with the
5 office or that is otherwise subject to s. 119.07(1) and s.
6 24(a), Art. I of the State Constitution.

7 (6) This section is subject to the Open Government
8 Sunset Review Act of 1995 in accordance with s. 119.15, and
9 shall stand repealed on October 2, 2009, unless reviewed and
10 saved from repeal through reenactment by the Legislature.

11 Section 2. (1) The Legislature finds that it is a
12 public necessity that information received or created during
13 an investigation or examination conducted by the Office of
14 Financial Regulation of the Financial Services Commission
15 pursuant to chapter 516, Florida Statutes, including any
16 consumer complaint, be confidential and exempt from section
17 119.07(1), Florida Statutes, and Section 24(a) of Article I of
18 the State Constitution until the investigation or examination
19 is completed or ceases to be active or, if the office submits
20 the information to any law enforcement or administrative
21 agency or regulatory organization for further investigation,
22 that agency's or organization's investigation is completed or
23 ceases to be active, in order to protect the integrity of such
24 investigations or examinations. An investigation or
25 examination may lead to filing an administrative, civil, or
26 criminal proceeding or to denying or conditionally granting a
27 license, registration, or permit. The public necessity exists
28 to the extent disclosure might jeopardize the integrity of
29 another active investigation or examination; reveal the name,
30 address, telephone number, social security number, or any
31 other identifying information of any complainant, customer, or

1 account holder; disclose the identity of a confidential
2 source; disclose investigative techniques or procedures;
3 reveal a trade secret as defined in section 688.002, Florida
4 Statutes; or reveal proprietary business information.

5 (2) Examinations and investigations by the office
6 frequently involve the gathering of personal, sensitive
7 information concerning individuals, such as complainants,
8 customers, account holders, or other confidential sources. The
9 office may not otherwise have this information in its
10 possession but for the examination or investigation. Because
11 of the sensitive nature of the information gathered, the
12 information should not be made available to the public. If
13 disclosed, this information may cause unwarranted damage to
14 such persons by facilitating identity theft or jeopardizing
15 the safety of such individuals.

16 (3) Revealing investigative techniques or procedures
17 may inhibit the effective and efficient administration of the
18 office to conduct investigations. Revelation of such
19 techniques or procedures could allow a person to hide or
20 conceal violations of law that would have otherwise been
21 discovered during and examination or investigation. As such,
22 the office's ability to perform an effective investigation or
23 examination may be hindered.

24 (4) Proprietary information or trade secrets are on
25 occasion necessary for the office to review as part of an
26 ongoing examination or investigation. Disclosure of such
27 information to the public may cause injury to the affected
28 entity in the marketplace if revealed. Providing the
29 confidentiality will provide the office with the necessary
30 tools to perform its function while maintaining adequate
31 protection for the affected business.

1 Section 3. This act shall take effect July 1, 2004.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 2416

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6 Eliminates the authority of the Office of Financial Regulation
7 (OFR) to make certain information identifying OFR personnel
8 involved in an investigation or examination exempt and
9 confidential from s. 119.07(1), F.S., and s. 24(a), Art. I of
the State Constitution, if the OFR determines that such
involvement would endanger the lives or physical safety of the
personnel or their families.

10 Eliminates a privilege against civil liability to a person who
11 furnishes information to the OFR, unless such person acts in
bad faith or with malice in providing such information.

12 Provides that the bill is effective July 1, 2004, and deletes
13 the provision that it is contingent upon the enactment of
another bill.

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