

By Senator Hays

11-00403-14

20141002

1                   A bill to be entitled

2                   An act relating to public records; creating s.  
3                   559.5558, F.S.; providing a public records exemption  
4                   for information held by the Office of Financial  
5                   Regulation pursuant to an investigation or examination  
6                   of consumer collection agencies; providing for future  
7                   repeal and legislative review of the exemption under  
8                   the Open Government Sunset Review Act; providing a  
9                   statement of public necessity; providing a contingent  
10                  effective date.

11  
12                  Be It Enacted by the Legislature of the State of Florida:

13  
14                  Section 1. Section 559.5558, Florida Statutes, is created  
15                  to read:  
16                  559.5558 Public records exemption.—

17                  (1) DEFINITIONS.—As used in this section, the term

18                  "personal financial and health information" means:

19                  (a) Information relating to the existence, nature, source,  
20                  or amount of a consumer's personal income, expenses, and debt;

21                  (b) Information relating to a consumer's financial  
22                  transactions of any kind;

23                  (c) Information relating to the existence, identification,  
24                  nature, or value of a consumer's assets, liabilities, or net  
25                  worth;

26                  (d) A consumer's personal health condition, disease, or  
27                  injury; or

28                  (e) A history of a consumer's personal medical diagnosis or  
29                  treatment.

11-00403-14

20141002

30           (2) INVESTIGATIONS AND EXAMINATIONS.—

31           (a) Except as otherwise provided in this section,  
32           information held by the office pursuant to an investigation or  
33           examination of a violation of this part is confidential and  
34           exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
35           Constitution. However, information made confidential and exempt  
36           pursuant to this section may be disclosed by the office to a law  
37           enforcement agency or another administrative agency in the  
38           performance of its official duties and responsibilities.

39           (b) Such information is no longer confidential and exempt  
40           once the investigation or examination is completed or ceases to  
41           be active unless disclosure of the information would:

42           1. Jeopardize the integrity of another active investigation  
43           or examination;

44           2. Reveal the personal identifying information of a  
45           consumer, unless the consumer is also the complainant. In the  
46           case of a complainant, the complainant's personal identifying  
47           information is subject to disclosure after the investigation or  
48           examination is completed or ceases to be active; however, the  
49           complainant's personal financial and health information remains  
50           confidential and exempt;

51           3. Reveal the identity of a confidential source;

52           4. Reveal investigative or examination techniques or  
53           procedures; or

54           5. Reveal trade secrets, as defined in s. 688.002.

55           (c) For purposes of this section, an investigation or  
56           examination shall be considered active if the investigation or  
57           examination is proceeding with reasonable dispatch and the  
58           office has a reasonable good faith belief that the investigation

11-00403-14

20141002

59       or examination may lead to the filing of an administrative,  
60       civil, or criminal proceeding or the denial or conditional grant  
61       of an application for registration or other approval required  
62       under this part.

63       (3) REVIEW AND REPEAL.—This section is subject to the Open  
64       Government Sunset Review Act in accordance with s. 119.15 and  
65       shall stand repealed on October 2, 2019, unless reviewed and  
66       saved from repeal through reenactment by the Legislature.

67       Section 2. The Legislature finds that it is a public  
68       necessity that information held by the Office of Financial  
69       Regulation pursuant to an investigation or examination conducted  
70       under part VI of chapter 559, Florida Statutes, be confidential  
71       and exempt from public records requirements for the following  
72       reasons:

73       (1) An investigation or examination conducted by the Office  
74       of Financial Regulation may lead to the filing of an  
75       administrative, civil, or criminal proceeding or to the denial  
76       or conditional granting of a registration. The premature release  
77       of such information could frustrate or thwart the investigation  
78       or examination and impair the ability of the office to  
79       effectively and efficiently administer part VI of chapter 559,  
80       Florida Statutes.

81       (2) Information held by the Office of Financial Regulation  
82       which is provided to a law enforcement agency or another  
83       administrative agency for further investigation or examination  
84       needs to remain confidential and exempt until the investigation  
85       or examination is completed or ceases to be active. Release of  
86       this information before the completion of that investigation or  
87       examination would jeopardize the integrity of the investigation

11-00403-14

20141002

88 and impair the ability of other agencies to carry out their  
89 statutory duties.

90 (3) Investigations and examinations of consumer collection  
91 agencies frequently involve the gathering of sensitive personal  
92 information, including financial and health information  
93 concerning complainants and consumers. The office may not  
94 otherwise have access to this sensitive personal information but  
95 for the investigation or examination. Because of the sensitive  
96 personal nature of the information gathered, if the individuals  
97 who are the subjects of such information are identifiable, the  
98 disclosure of this information to the public could cause  
99 unwarranted damage to the good names or reputations of the  
100 individuals, especially if information associated with the  
101 individuals is inaccurate. Furthermore, if the individuals who  
102 are the subjects of such information are identifiable, public  
103 access to such information could jeopardize the financial safety  
104 of such individuals by placing them at risk of becoming the  
105 subjects of identity theft. The Legislature further finds that  
106 it is a public necessity that health information held by the  
107 office be made confidential and exempt because matters of  
108 personal health are traditionally private and confidential  
109 concerns between the patient and the health care provider. The  
110 private and confidential nature of personal health matters  
111 pervades both the public and private health care sectors.  
112 Moreover, public disclosure of health information could have a  
113 negative effect upon a person's business and personal  
114 relationships and could also have detrimental financial  
115 consequences.

116 (4) Releasing information identifying a confidential source

11-00403-14

20141002

117       could jeopardize both the integrity of a current and future  
118       investigation or examination as well as the safety of the  
119       confidential source.

120       (5) Revealing investigative or examination techniques and  
121       procedures could allow a person to hide or conceal violations of  
122       law that otherwise would have been discovered during an  
123       investigation or examination. This exemption is necessary for  
124       the office, as well as law enforcement and other administrative  
125       agencies, in order for such agencies to effectively and  
126       efficiently carry out their statutory duties, which would be  
127       significantly impaired without this exemption.

128       (6) A trade secret derives independent economic value,  
129       actual or potential, from not being generally known to, and not  
130       readily ascertainable by, other persons who can obtain economic  
131       value from its disclosure or use. Without an exemption for a  
132       trade secret held by the office, that trade secret becomes a  
133       public record when received and must be divulged upon request.  
134       Divulging a trade secret under the public records law would  
135       destroy the value of that property, causing a financial loss to  
136       the person or entity submitting the trade secret. Release of  
137       that information would give business competitors an unfair  
138       advantage and weaken the position of the person or entity  
139       supplying the trade secret in the marketplace.

140       Section 3. This act shall take effect on the same date that  
141       SB \_\_ or substantially similar legislation takes effect, if such  
142       legislation is adopted in the same legislative session or an  
143       extension thereof and becomes a law.