

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.

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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

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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

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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

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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.