

By the Committee on Banking and Insurance; and Senator Richter

597-02472-14

20141278c1

1 A bill to be entitled
2 An act relating to public records; amending s.
3 655.057, F.S.; providing an exemption from public
4 records requirements for certain informal enforcement
5 actions by the Office of Financial Regulation, to
6 which penalties apply for willful disclosure of such
7 confidential information; providing an exemption from
8 public records requirements for certain trade secrets
9 held by the office, to which penalties apply for
10 willful disclosure of such confidential information;
11 defining terms; providing for future legislative
12 review and repeal of the section; providing a
13 statement of public necessity; providing a contingent
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 655.057, Florida Statutes, is amended to
19 read:

20 655.057 Records; limited restrictions upon public access.—

21 (1) Except as otherwise provided in this section and except
22 for such portions thereof which are otherwise public record, all
23 records and information relating to an investigation by the
24 office are confidential and exempt from ~~the provisions of s.~~
25 119.07(1) and s. 24(a), Art. I of the State Constitution until
26 such investigation is completed or ceases to be active. For
27 purposes of this subsection, an investigation is considered
28 “active” while such investigation is being conducted by the
29 office with a reasonable, good faith belief that it may lead to

597-02472-14

20141278c1

30 the filing of administrative, civil, or criminal proceedings. An
31 investigation does not cease to be active if the office is
32 proceeding with reasonable dispatch, and there is a good faith
33 belief that action may be initiated by the office or other
34 administrative or law enforcement agency. After an investigation
35 is completed or ceases to be active, portions of the such
36 records relating to the investigation are ~~shall be~~ confidential
37 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),
38 Art. I of the State Constitution to the extent that disclosure
39 would:

40 (a) Jeopardize the integrity of another active
41 investigation;

42 (b) Impair the safety and soundness of the financial
43 institution;

44 (c) Reveal personal financial information;

45 (d) Reveal the identity of a confidential source;

46 (e) Defame or cause unwarranted damage to the good name or
47 reputation of an individual or jeopardize the safety of an
48 individual; or

49 (f) Reveal investigative techniques or procedures.

50 (2) Except as otherwise provided in this section and except
51 for such portions thereof which are public record, reports of
52 examinations, operations, or condition, including working
53 papers, or portions thereof, prepared by, or for the use of, the
54 office or any state or federal agency responsible for the
55 regulation or supervision of financial institutions in this
56 state are confidential and exempt from ~~the provisions of~~ s.
57 119.07(1) and s. 24(a), Art. I of the State Constitution.

58 However, such reports or papers or portions thereof may be

597-02472-14

20141278c1

59 released to:

60 (a) The financial institution under examination;

61 (b) Any holding company of which the financial institution
62 is a subsidiary;

63 (c) Proposed purchasers if necessary to protect the
64 continued financial viability of the financial institution, upon
65 prior approval by the board of directors of such institution;

66 (d) Persons proposing in good faith to acquire a
67 controlling interest in or to merge with the financial
68 institution, upon prior approval by the board of directors of
69 the ~~such~~ financial institution;

70 (e) Any officer, director, committee member, employee,
71 attorney, auditor, or independent auditor officially connected
72 with the financial institution, holding company, proposed
73 purchaser, or person seeking to acquire a controlling interest
74 in or merge with the financial institution; or

75 (f) A fidelity insurance company, upon approval of the
76 financial institution's board of directors. However, a fidelity
77 insurance company may receive only that portion of an
78 examination report relating to a claim or investigation being
79 conducted by such fidelity insurance company.

80 (g) Examination, operation, or condition reports of a
81 financial institution shall be released by the office within 1
82 year after the appointment of a liquidator, receiver, or
83 conservator to the ~~such~~ financial institution. However, any
84 portion of such reports which discloses the identities of
85 depositors, bondholders, members, borrowers, or stockholders,
86 other than directors, officers, or controlling stockholders of
87 the institution, shall remain confidential and exempt from ~~the~~

597-02472-14

20141278c1

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

90
91 Any confidential information or records obtained from the office
92 pursuant to this paragraph shall be maintained as confidential
93 and exempt from ~~the provisions of s. 119.07(1) and s. 24(a),~~
94 Art. I of the State Constitution.

95 (3) Except as otherwise provided in this section and except
96 for such portions thereof which are otherwise public record,
97 after an investigation relating to an informal enforcement
98 action is completed or ceases to be active, the informal
99 enforcement action is confidential and exempt from s. 119.07(1)
100 and s. 24(a), Art. I of the State Constitution to the extent
101 that disclosure would:

102 (a) Jeopardize the integrity of another active
103 investigation;

104 (b) Impair the safety and soundness of the financial
105 institution;

106 (c) Reveal personal financial information;

107 (d) Reveal the identity of a confidential source;

108 (e) Defame or cause unwarranted damage to the good name or
109 reputation of an individual or jeopardize the safety of an
110 individual; or

111 (f) Reveal investigative techniques or procedures.

112 (4) Except as otherwise provided in this section and except
113 for such portions thereof which are otherwise public record,
114 trade secrets, as defined in s. 688.002, which comply with s.
115 655.0591 and which are held by the office in accordance with its
116 statutory duties with respect to the financial institutions

597-02472-14

20141278c1

117 codes are confidential and exempt from s. 119.07(1) and s.
118 24(a), Art. I of the State Constitution.

119 (5)~~(3)~~ ~~The provisions of~~ This section does ~~de~~ not prevent
120 or restrict:

121 (a) Publishing reports required to be submitted to the
122 office pursuant to s. 655.045(2) (a) or required by applicable
123 federal statutes or regulations to be published.

124 (b) Furnishing records or information to any other state,
125 federal, or foreign agency responsible for the regulation or
126 supervision of financial institutions, including Federal Home
127 Loan Banks.

128 (c) Disclosing or publishing summaries of the condition of
129 financial institutions and general economic and similar
130 statistics and data, provided that the identity of a particular
131 financial institution is not disclosed.

132 (d) Reporting any suspected criminal activity, with
133 supporting documents and information, to appropriate law
134 enforcement and prosecutorial agencies.

135 (e) Furnishing information upon request to the Chief
136 Financial Officer or the Division of Treasury of the Department
137 of Financial Services regarding the financial condition of any
138 financial institution that is, or has applied to be, designated
139 as a qualified public depository pursuant to chapter 280.

140

141 Any confidential information or records obtained from the office
142 pursuant to this subsection shall be maintained as confidential
143 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),
144 Art. I of the State Constitution.

145 (6)~~(4)~~ (a) Orders of courts or of administrative law judges

597-02472-14

20141278c1

146 for the production of confidential records or information shall
147 provide for inspection in camera by the court or the
148 administrative law judge, and, after the court or administrative
149 law judge has made a determination that the documents requested
150 are relevant or would likely lead to the discovery of admissible
151 evidence, such ~~said~~ documents shall be subject to further orders
152 by the court or the administrative law judge to protect the
153 confidentiality thereof. An ~~Any~~ order directing the release of
154 information is ~~shall be~~ immediately reviewable, and a petition
155 by the office for review of such order ~~shall~~ automatically stays
156 ~~stay~~ further proceedings in the trial court or the
157 administrative hearing until the disposition of such petition by
158 the reviewing court. If any other party files such a petition
159 for review, it operates ~~will operate~~ as a stay of such
160 proceedings only upon order of the reviewing court.

161 (b) Confidential records and information furnished pursuant
162 to a legislative subpoena shall be kept confidential by the
163 legislative body or committee that ~~which~~ received the records or
164 information, except in a case involving investigation of charges
165 against a public official subject to impeachment or removal.r
166 ~~and then~~ Disclosure of such information shall be only to the
167 extent determined necessary by the legislative body or committee
168 ~~to be necessary~~.

169 (7) ~~(5)~~ Every credit union and mutual association shall
170 maintain, in the principal office where its business is
171 transacted, full and correct records of the names and residences
172 of all the members of the credit union or mutual association.
173 Such records are ~~shall be~~ subject to the inspection of all the
174 members of the credit union or mutual association, and the

597-02472-14

20141278c1

175 officers authorized to assess taxes under state authority,
176 during business hours of each business day. A current list of
177 members shall be made available to the office's examiners for
178 their inspection and, upon the request of the office, shall be
179 submitted to the office. Except as otherwise provided in this
180 subsection, the list of the members of the credit union or
181 mutual association is confidential and exempt from ~~the~~
182 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
183 Constitution.

184 (8)~~(6)~~ Every bank, trust company, and stock association
185 shall maintain, in the principal office where its business is
186 transacted, full and complete records of the names and
187 residences of all the shareholders of the bank, trust company,
188 or stock association and the number of shares held by each. Such
189 records are ~~shall be~~ subject to the inspection of all the
190 shareholders of the bank, trust company, or stock association,
191 and the officers authorized to assess taxes under state
192 authority, during business hours of each banking day. A current
193 list of shareholders shall be made available to the office's
194 examiners for their inspection and, upon the request of the
195 office, shall be submitted to the office. Except as otherwise
196 provided in this subsection, any portion of this list which
197 reveals the identities of the shareholders is confidential and
198 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I
199 of the State Constitution.

200 (9)~~(7)~~ Materials supplied to the office or to employees of
201 any financial institution by other state or federal governmental
202 agencies, ~~federal or state,~~ shall remain the property of the
203 submitting agency or the corporation, and any document request

597-02472-14

20141278c1

204 must be made to the appropriate agency. Any confidential
205 documents supplied to the office or to employees of any
206 financial institution by other state or federal governmental
207 agencies ~~are, federal or state,~~ shall be confidential and exempt
208 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
209 State Constitution. Such information shall be made public only
210 with the consent of such agency or the corporation.

211 ~~(10)-(8)~~ Examination reports, investigatory records,
212 applications, and related information compiled by the office, or
213 photographic copies thereof, shall be retained by the office for
214 ~~a period of~~ at least 10 years.

215 ~~(11)-(9)~~ A copy of any document on file with the office
216 which is certified by the office as being a true copy may be
217 introduced in evidence as if it were the original. The
218 commission shall establish a schedule of fees for preparing true
219 copies of documents.

220 (12) As used in this section, the term:

221 (a) "Examination report" means records submitted to or
222 prepared by the office as part of the office's duties performed
223 pursuant to s. 655.012 or s. 655.045(1).

224 (b) "Informal enforcement action" means a board resolution,
225 a document of resolution, or an agreement in writing between the
226 office and a financial institution which:

227 1. The office imposes on the institution when the office
228 considers the administrative enforcement guidelines in s.
229 655.031 and determines that a formal enforcement action is not
230 an appropriate administrative remedy;

231 2. Sets forth a program of corrective action to address one
232 or more safety and soundness deficiencies and violations of law

597-02472-14

20141278c1

233 or rule at the institution; and

234 3. Is not subject to enforcement by imposition of an
235 administrative fine pursuant to s. 655.041.

236 (c) "Personal financial information" means:

237 1. Information relating to the existence, nature, source,
238 or amount of a person's personal income, expenses, or debt.

239 2. Information relating to a person's financial
240 transactions of any kind.

241 3. Information relating to the existence, identification,
242 nature, or value of a person's assets, liabilities, or net
243 worth.

244 (d) "Working papers" means the records of the procedures
245 followed, the tests performed, the information obtained, and the
246 conclusions reached in an investigation or examination performed
247 under ss. 655.032 or 655.045. Working papers include planning,
248 documentation, work programs, analyses, memoranda, letters of
249 confirmation and representation, abstracts of the books and
250 records of a financial institution as defined in s.
251 655.005(1)(i), and schedules or commentaries prepared or
252 obtained in the course of such investigation or examination.

253 (13)-(10) A ~~Any~~ person who willfully discloses information
254 made confidential by this section ~~commits is guilty of~~ a felony
255 of the third degree, punishable as provided in s. 775.082, s.
256 775.083, or s. 775.084.

257 (14) This section is subject to the Open Government Sunset
258 Review Act in accordance with s. 119.15 and shall stand repealed
259 on October 2, 2019, unless otherwise saved from repeal through
260 reenactment by the Legislature.

261 Section 2. (1) The Legislature finds it a public necessity

597-02472-14

20141278c1

262 that informal enforcement actions and trade secrets, as defined
263 in s. 688.002, Florida Statutes, be kept confidential and exempt
264 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
265 the State Constitution.

266 (2) Public disclosure of an informal enforcement action
267 could further impair the safety and soundness of a financial
268 institution that is subject to the action. Furthermore, the
269 public disclosure of this information could erode public
270 confidence in financial institutions and the financial
271 institution system in this state and may lead to a reduced level
272 of protection of the interests of the depositors and creditors
273 of financial institutions. Maintaining informal enforcement
274 actions as confidential and exempt from s. 119.07(1), Florida
275 Statutes, and s. 24(a), Article I of the State Constitution will
276 provide to the financial institutions that are chartered by this
277 state the same protections as those already available to
278 financial institutions chartered under federal law and by other
279 states, maintain public confidence in financial institutions
280 subject to the financial institutions codes, protect the safety
281 and soundness of the financial institution system in this state,
282 protect the interests of the depositors and creditors of
283 financial institutions, promote the opportunity for state-
284 chartered financial institutions to be and remain competitive
285 with financial institutions chartered by other states or the
286 United States, and otherwise provide for and promote the
287 purposes of the financial institutions codes as set forth in s.
288 655.001, Florida Statutes.

289 (3) A trade secret derives independent economic value,
290 actual or potential, from not being generally known to, and not

597-02472-14

20141278c1

291 readily ascertainable by, other persons who can obtain economic
292 value from the disclosure or use of the trade secret. Without an
293 exemption for a trade secret held by the office, that trade
294 secret becomes a public record when received and must be
295 divulged upon request. Divulging a trade secret under the public
296 records law would give business competitors an unfair advantage
297 and destroy the value of that property, causing a financial loss
298 to the person or entity submitting the trade secret and
299 weakening the position of that person or entity in the
300 marketplace.

301 Section 3. This act shall take effect on the same date that
302 SB 1012 or similar legislation takes effect, if such legislation
303 is adopted in the same legislative session or an extension
304 thereof and becomes a law.