

**By** the Committees on Governmental Oversight and Accountability;  
and Banking and Insurance; and Senator Richter

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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) until such investigation is completed or ceases to be  
26      active. For purposes of this subsection, an investigation is  
27      considered "active" while such investigation is being conducted  
28      by the office with a reasonable, good faith belief that it may  
29      lead to the filing of administrative, civil, or criminal

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

38 (a) Jeopardize the integrity of another active  
39 investigation;

40 (b) Impair the safety and soundness of the financial  
41 institution;

42 (c) Reveal personal financial information;

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

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

47 (f) Reveal investigative techniques or procedures.

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

57 (a) The financial institution under examination;

58 (b) Any holding company of which the financial institution

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59 is a subsidiary;

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

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

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

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

77 (g) Examination, operation, or condition reports of a  
78 financial institution shall be released by the office within 1  
79 year after the appointment of a liquidator, receiver, or  
80 conservator to the ~~such~~ financial institution. However, any  
81 portion of such reports which discloses the identities of  
82 depositors, bondholders, members, borrowers, or stockholders,  
83 other than directors, officers, or controlling stockholders of  
84 the institution, shall remain confidential and exempt from ~~the~~  
85 ~~provisions of~~ s. 119.07(1).

86  
87 Any confidential information or records obtained from the office

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88 pursuant to this paragraph shall be maintained as confidential  
89 and exempt from ~~the provisions of~~ s. 119.07(1).

90 (3) Except as otherwise provided in this section and except  
91 for those portions that are otherwise public record, after an  
92 investigation relating to an informal enforcement action is  
93 completed or ceases to be active, informal enforcement actions  
94 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
95 I of the State Constitution to the extent that disclosure would:

96 (a) Jeopardize the integrity of another active  
97 investigation.

98 (b) Impair the safety and soundness of the financial  
99 institution.

100 (c) Reveal personal financial information.

101 (d) Reveal the identity of a confidential source.

102 (e) Defame or cause unwarranted damage to the good name or  
103 reputation of an individual or jeopardize the safety of an  
104 individual.

105 (f) Reveal investigative techniques or procedures.

106 (4) Except as otherwise provided in this section and except  
107 for those portions that are otherwise public record, trade  
108 secrets as defined in s. 688.002 which comply with s. 655.0591  
109 and which are held by the office in accordance with its  
110 statutory duties with respect to the financial institutions  
111 codes are confidential and exempt from s. 119.07(1) and s.  
112 24(a), Art. I of the State Constitution.

113 (5) ~~(3)~~ ~~The provisions of~~ This section does ~~de~~ not prevent  
114 or restrict:

115 (a) Publishing reports required to be submitted to the  
116 office pursuant to s. 655.045(2) (a) or required by applicable

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117 federal statutes or regulations to be published.

118 (b) Furnishing records or information to any other state,  
119 federal, or foreign agency responsible for the regulation or  
120 supervision of financial institutions, including Federal Home  
121 Loan Banks.

122 (c) Disclosing or publishing summaries of the condition of  
123 financial institutions and general economic and similar  
124 statistics and data, provided that the identity of a particular  
125 financial institution is not disclosed.

126 (d) Reporting any suspected criminal activity, with  
127 supporting documents and information, to appropriate law  
128 enforcement and prosecutorial agencies.

129 (e) Furnishing information upon request to the Chief  
130 Financial Officer or the Division of Treasury of the Department  
131 of Financial Services regarding the financial condition of any  
132 financial institution that is, or has applied to be, designated  
133 as a qualified public depository pursuant to chapter 280.

134  
135 Any confidential information or records obtained from the office  
136 pursuant to this subsection shall be maintained as confidential  
137 and exempt from ~~the provisions of~~ s. 119.07(1).

138 (6) (a) (4) (a) Orders of courts or of administrative law  
139 judges for the production of confidential records or information  
140 shall provide for inspection in camera by the court or the  
141 administrative law judge and, after the court or administrative  
142 law judge has made a determination that the documents requested  
143 are relevant or would likely lead to the discovery of admissible  
144 evidence, such ~~said~~ documents shall be subject to further orders  
145 by the court or the administrative law judge to protect the

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146 confidentiality thereof. An ~~Any~~ order directing the release of  
147 information is ~~shall be~~ immediately reviewable, and a petition  
148 by the office for review of such order shall automatically stays  
149 ~~stay~~ further proceedings in the trial court or the  
150 administrative hearing until the disposition of such petition by  
151 the reviewing court. If any other party files such a petition  
152 for review, it operates ~~will operate~~ as a stay of such  
153 proceedings only upon order of the reviewing court.

154 (b) Confidential records and information furnished pursuant  
155 to a legislative subpoena shall be kept confidential by the  
156 legislative body or committee that ~~which~~ received the records or  
157 information, except in a case involving investigation of charges  
158 against a public official subject to impeachment or removal. r  
159 ~~and then~~ Disclosure of such information shall be only to the  
160 extent determined necessary by the legislative body or committee  
161 ~~to be necessary~~.

162 (7) ~~(5)~~ Every credit union and mutual association shall  
163 maintain, in the principal office where its business is  
164 transacted, full and correct records of the names and residences  
165 of all the members of the credit union or mutual association.  
166 Such records are ~~shall be~~ subject to the inspection of all the  
167 members of the credit union or mutual association, and the  
168 officers authorized to assess taxes under state authority,  
169 during business hours of each business day. A current list of  
170 members shall be made available to the office's examiners for  
171 their inspection and, upon the request of the office, shall be  
172 submitted to the office. Except as otherwise provided in this  
173 subsection, the list of the members of the credit union or  
174 mutual association is confidential and exempt from ~~the~~

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175 ~~provisions of s. 119.07(1).~~

176 (8)~~(6)~~ Every bank, trust company, and stock association  
177 shall maintain, in the principal office where its business is  
178 transacted, full and complete records of the names and  
179 residences of all the shareholders of the bank, trust company,  
180 or stock association and the number of shares held by each. Such  
181 records are ~~shall be~~ subject to the inspection of all the  
182 shareholders of the bank, trust company, or stock association,  
183 and the officers authorized to assess taxes under state  
184 authority, during business hours of each banking day. A current  
185 list of shareholders shall be made available to the office's  
186 examiners for their inspection and, upon the request of the  
187 office, shall be submitted to the office. Except as otherwise  
188 provided in this subsection, any portion of this list which  
189 reveals the identities of the shareholders is confidential and  
190 exempt from ~~the provisions of s. 119.07(1).~~

191 (9)~~(7)~~ Materials supplied to the office or to employees of  
192 any financial institution by other state or federal governmental  
193 agencies, ~~federal or state,~~ shall remain the property of the  
194 submitting agency or the corporation, and any document request  
195 must be made to the appropriate agency. Any confidential  
196 documents supplied to the office or to employees of any  
197 financial institution by other state or federal governmental  
198 agencies are, ~~federal or state,~~ shall be confidential and exempt  
199 from ~~the provisions of s. 119.07(1).~~ Such information shall be  
200 made public only with the consent of such agency or the  
201 corporation.

202 (10)~~(8)~~ Examination reports, investigatory records,  
203 applications, and related information compiled by the office, or

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204 photographic copies thereof, shall be retained by the office for  
205 ~~a period of~~ at least 10 years.

206 ~~(11)-(9)~~ A copy of any document on file with the office  
207 which is certified by the office as being a true copy may be  
208 introduced in evidence as if it were the original. The  
209 commission shall establish a schedule of fees for preparing true  
210 copies of documents.

211 (12) For purposes of this section, the term:

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

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

218 1. The office imposes on an institution when the office  
219 considers the administrative enforcement guidelines in s.  
220 655.031 and determines that a formal enforcement action is not  
221 an appropriate administrative remedy;

222 2. Sets forth a program of corrective action to address one  
223 or more safety and soundness deficiencies and violations of law  
224 or rule at the institution; and

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

227 (c) "Personal financial information" means:

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

230 2. Information relating to a person's financial  
231 transactions of any kind.

232 3. Information relating to the existence, identification,



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233 nature, or value of a person's assets, liabilities, or net  
234 worth.

235 (d) "Working papers" means the records of the procedures  
236 followed, the tests performed, the information obtained, and the  
237 conclusions reached in an examination or investigation performed  
238 under s. 655.032 or s. 655.045. Working papers include planning  
239 documentation, work programs, analyses, memoranda, letters of  
240 confirmation and representation, abstracts of the books and  
241 records of a financial institution as defined in s. 655.005(1),  
242 and schedules or commentaries prepared or obtained in the course  
243 of such examination or investigation.

244 (13)~~(10)~~ A Any person who willfully discloses information  
245 made confidential by this section commits is guilty of a felony  
246 of the third degree, punishable as provided in s. 775.082, s.  
247 775.083, or s. 775.084.

248 (14) Subsections (3) and (4) are subject to the Open  
249 Government Sunset Review Act in accordance with s. 119.15 and  
250 are repealed on October 2, 2019, unless reviewed and saved from  
251 repeal through reenactment by the Legislature.

252 Section 2. (1) The Legislature finds that it is a public  
253 necessity that informal enforcement actions and trade secrets,  
254 as defined in s. 688.002, Florida Statutes, be kept confidential  
255 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
256 Article I of the State Constitution.

257 (2) Public disclosure of an informal enforcement action  
258 could further impair the safety and soundness of a financial  
259 institution that is subject to the action. Furthermore, the  
260 public disclosure of this information could erode public  
261 confidence in financial institutions and the financial

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262 institution system in this state and may lead to a reduced level  
263 of protection of the interests of the depositors and creditors  
264 of financial institutions. Maintaining informal enforcement  
265 actions as confidential and exempt from s. 119.07(1), Florida  
266 Statutes, and s. 24(a), Article I of the State Constitution will  
267 provide to the financial institutions that are chartered by this  
268 state the same protections as those already available to  
269 financial institutions chartered under federal law and by other  
270 states, maintain public confidence in financial institutions  
271 subject to the financial institutions codes, protect the safety  
272 and soundness of the financial institution system in this state,  
273 protect the interests of the depositors and creditors of  
274 financial institutions, promote the opportunity for state-  
275 chartered financial institutions to be and remain competitive  
276 with financial institutions chartered by other states or the  
277 United States, and otherwise provide for and promote the  
278 purposes of the financial institutions codes as set forth in s.  
279 655.001, Florida Statutes.

280 (3) A trade secret derives independent economic value,  
281 actual or potential, from not being generally known to, and not  
282 readily ascertainable by, other persons who can obtain economic  
283 value from the disclosure or use of the trade secret. Without an  
284 exemption for a trade secret held by the office, that trade  
285 secret becomes a public record when received and must be  
286 divulged upon request. Divulging a trade secret under the public  
287 records law would give business competitors an unfair advantage  
288 and destroy the value of that property, causing a financial loss  
289 to the person or entity submitting the trade secret and  
290 weakening the position of that person or entity in the

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291 marketplace.

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