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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 ~~do~~ 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.