

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 providing for the release of certain records in
12 certain circumstances; providing definitions;
13 providing for future legislative review and repeal of
14 the exemption; providing a statement of public
15 necessity; providing a contingent effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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

21 655.057 Records; limited restrictions upon public access.—

22 (1) Except as otherwise provided in this section and
23 except for such portions thereof which are otherwise public
24 record, all records and information relating to an investigation
25 by the office are confidential and exempt from the provisions of
26 s. 119.07(1) until such investigation is completed or ceases to

27 | be active. For purposes of this subsection, an investigation is
28 | considered "active" while such investigation is being conducted
29 | by the office with a reasonable, good faith belief that it may
30 | lead to the filing of administrative, civil, or criminal
31 | proceedings. An investigation does not cease to be active if the
32 | office is proceeding with reasonable dispatch, and there is a
33 | good faith belief that action may be initiated by the office or
34 | other administrative or law enforcement agency. After an
35 | investigation is completed or ceases to be active, portions of
36 | such records relating to the investigation shall be confidential
37 | and exempt from the provisions of s. 119.07(1) to the extent
38 | that disclosure would:

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

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

43 | (c) Reveal personal financial information;

44 | (d) Reveal the identity of a confidential source;

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

48 | (f) Reveal investigative techniques or procedures.

49 | (2) Except as otherwise provided in this section and
50 | except for such portions thereof which are public record,
51 | reports of examinations, operations, or condition, including
52 | working papers, or portions thereof, prepared by, or for the use

53 of, the office or any state or federal agency responsible for
54 the regulation or supervision of financial institutions in this
55 state are confidential and exempt from the provisions of s.
56 119.07(1). However, such reports or papers or portions thereof
57 may be released to:

58 (a) The financial institution under examination;

59 (b) Any holding company of which the financial institution
60 is a subsidiary;

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

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

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

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

78 (g) Examination, operation, or condition reports of a

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

87

88 Any confidential information or records obtained from the office
89 pursuant to this paragraph shall be maintained as confidential
90 and exempt from the provisions of s. 119.07(1).

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

98 (a) Jeopardize the integrity of another active
99 investigation.

100 (b) Impair the safety and soundness of the financial
101 institution.

102 (c) Reveal personal financial information.

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

104 (e) Defame or cause unwarranted damage to the good name or

105 reputation of an individual or jeopardize the safety of an
 106 individual.

107 (f) Reveal investigative techniques or procedures.

108 (4) Except as otherwise provided in this section and
 109 except for such portions thereof which are otherwise public
 110 record, trade secrets, as defined in s. 688.002, that comply
 111 with s. 655.0591, and that are held by the office in accordance
 112 with its statutory duties with respect to the financial
 113 institutions codes, are confidential and exempt from s.
 114 119.07(1) and s. 24(a), Art. I of the State Constitution.

115 (5)~~(3)~~ The provisions of this section do not prevent or
 116 restrict:

117 (a) Publishing reports required to be submitted to the
 118 office pursuant to s. 655.045(2)(a) or required by applicable
 119 federal statutes or regulations to be published.

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

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

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

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

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

140 (6) (a) ~~(4) (a)~~ Orders of courts or of administrative law
 141 judges for the production of confidential records or information
 142 shall provide for inspection in camera by the court or the
 143 administrative law judge and, after the court or administrative
 144 law judge has made a determination that the documents requested
 145 are relevant or would likely lead to the discovery of admissible
 146 evidence, said documents shall be subject to further orders by
 147 the court or the administrative law judge to protect the
 148 confidentiality thereof. Any order directing the release of
 149 information shall be immediately reviewable, and a petition by
 150 the office for review of such order shall automatically stay
 151 further proceedings in the trial court or the administrative
 152 hearing until the disposition of such petition by the reviewing
 153 court. If any other party files such a petition for review, it
 154 will operate as a stay of such proceedings only upon order of
 155 the reviewing court.

156 (b) Confidential records and information furnished

157 | pursuant to a legislative subpoena shall be kept confidential by
158 | the legislative body or committee which received the records or
159 | information, except in a case involving investigation of charges
160 | against a public official subject to impeachment or removal, and
161 | then disclosure of such information shall be only to the extent
162 | determined by the legislative body or committee to be necessary.

163 | (7)~~(5)~~ Every credit union and mutual association shall
164 | maintain, in the principal office where its business is
165 | transacted, full and correct records of the names and residences
166 | of all the members of the credit union or mutual association.
167 | Such records shall be subject to the inspection of all the
168 | members of the credit union or mutual association, and the
169 | officers authorized to assess taxes under state authority,
170 | during business hours of each business day. A current list of
171 | members shall be made available to the office's examiners for
172 | their inspection and, upon the request of the office, shall be
173 | submitted to the office. Except as otherwise provided in this
174 | subsection, the list of the members of the credit union or
175 | mutual association is confidential and exempt from the
176 | provisions of s. 119.07(1).

177 | (8)~~(6)~~ Every bank, trust company, and stock association
178 | shall maintain, in the principal office where its business is
179 | transacted, full and complete records of the names and
180 | residences of all the shareholders of the bank, trust company,
181 | or stock association and the number of shares held by each. Such
182 | records shall be subject to the inspection of all the

183 shareholders of the bank, trust company, or stock association,
184 and the officers authorized to assess taxes under state
185 authority, during business hours of each banking day. A current
186 list of shareholders shall be made available to the office's
187 examiners for their inspection and, upon the request of the
188 office, shall be submitted to the office. Except as otherwise
189 provided in this subsection, any portion of this list which
190 reveals the identities of the shareholders is confidential and
191 exempt from the provisions of s. 119.07(1).

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

202 (10)~~(8)~~ Examination reports, investigatory records,
203 applications, and related information compiled by the office, or
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
216 resolution, a document of resolution, or an agreement in writing
217 between the office and a financial institution that:

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
223 one or more safety and soundness deficiencies and violations of
224 law or rule at the institution.

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,
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.
 242 655.005(1)(i), and schedules or commentaries prepared or
 243 obtained in the course of such examination or investigation.

244 ~~(13)-(10)~~ Any person who willfully discloses information
 245 made confidential by this section is guilty of a felony of the
 246 third degree, punishable as provided in s. 775.082, s. 775.083,
 247 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 shall stand repealed on October 2, 2019, unless reviewed and
 251 saved from 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, must be kept
 255 confidential and exempt from s. 119.07(1), Florida Statutes, and
 256 s. 24(a), 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
 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
 267 will:

268 (a) Provide the same protections for financial
 269 institutions chartered by this state as are available to
 270 financial institutions chartered under federal law and by other
 271 states.

272 (b) Maintain public confidence in financial institutions
 273 subject to the financial institutions codes.

274 (c) Protect the safety and soundness of the financial
 275 institution system in this state.

276 (d) Protect the interests of the depositors and creditors
 277 of financial institutions in this state.

278 (e) Promote the opportunity for state-chartered financial
 279 institutions to be and remain competitive with financial
 280 institutions chartered by other states or the United States.

281 (f) Provide for and promote the purposes of the financial
 282 institutions codes as set forth in s. 655.001, Florida Statutes.

283 (3) A trade secret derives independent economic value,
 284 actual or potential, from not being generally known to, and not
 285 readily ascertainable by, other persons who can obtain economic
 286 value from its disclosure or use. Without an exemption for a

287 trade secret held by the Office of Financial Regulation, that
288 trade secret becomes a public record when received and must be
289 divulged upon request. Divulging a trade secret under the public
290 records laws would destroy the value of that property, causing a
291 financial loss to the person or entity submitting the trade
292 secret. Release of that information would give business
293 competitors an unfair advantage and weaken the position of the
294 person or entity supplying the trade secret in the marketplace.

295 Section 3. This act shall take effect on the same date
296 that HB 673 or similar legislation takes effect, if such
297 legislation is adopted in the same legislative session or an
298 extension thereof and becomes law.