

By Senator Mayfield

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1                   A bill to be entitled  
2           An act relating to public records; creating ss.  
3           663.416 and 663.540, F.S.; defining terms; providing  
4           exemptions from public records requirements for  
5           certain information held by the Office of Financial  
6           Regulation relating to international trust company  
7           representative offices or limited service affiliates,  
8           respectively, and relating to affiliated international  
9           trust entities; authorizing the disclosure of the  
10          information by the office to specified persons;  
11          providing construction; providing criminal penalties;  
12          providing future legislative review and repeal of the  
13          exemptions; providing statements of public necessity;  
14          amending s. 655.057, F.S.; providing that certain  
15          exemptions from public records requirements for  
16          information relating to investigations; reports of  
17          examinations, operations, or condition, including  
18          working papers; and certain materials supplied by  
19          governmental agencies are exempt from s. 24(a) of  
20          Article I of the State Constitution, as a result of  
21          the expansion of such exemptions to include the  
22          records of international trust entities and limited  
23          service affiliates, as made by SB \_\_\_\_\_, 2017 Regular  
24          Session; providing a statement of public necessity;  
25          providing a contingent effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29           Section 1. Section 663.416, Florida Statutes, is created  
30           and incorporated into part III of chapter 663, Florida Statutes,  
31           as created by SB \_\_\_\_\_, 2017 Regular Session, to read:

32           663.416 Public records exemption.-

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33 (1) DEFINITIONS.—As used in this section, the term:

34 (a) "Reports of examinations, operations, or condition"  
35 means records submitted to or prepared by the office as part of  
36 the office's duties performed pursuant to s. 655.012 or s.  
37 655.045.

38 (b) "Working papers" means the records of the procedure  
39 followed, the tests performed, the information obtained, and the  
40 conclusions reached in an investigation or examination performed  
41 under s. 655.032 or s. 655.045. The term includes planning  
42 documentation, work programs, analyses, memoranda, letters of  
43 confirmation and representation, abstracts of the books and  
44 records of a financial institution, as defined in s. 655.005,  
45 and schedules or commentaries prepared or obtained in the course  
46 of such investigation or examination.

47 (2) PUBLIC RECORDS EXEMPTION.—The following information  
48 held by the office is confidential and exempt from s. 119.07(1)  
49 and s. 24(a), Art. I of the State Constitution:

50 (a) Any personal identifying information of the customers  
51 or prospective customers of an affiliated international trust  
52 entity which appears in records relating to reports of  
53 examinations, operations, or condition of an international trust  
54 company representative office, including working papers.

55 (b) Any portion of a list of names of the shareholders or  
56 members of an affiliated international trust entity.

57 (c) Information received by the office from a person from  
58 another state or country or the Federal Government which is  
59 otherwise confidential or exempt pursuant to the laws of that  
60 state or country or pursuant to federal law.

61 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT

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62 INFORMATION.—Information made confidential and exempt under  
63 subsection (2) may be disclosed by the office:

64 (a) To the authorized representative or representatives of  
65 the international trust company representative office under  
66 examination. The authorized representative or representatives  
67 must be identified in a resolution or by written consent of the  
68 board of directors, or the equivalent, of the international  
69 trust entity.

70 (b) To a fidelity insurance company, upon written consent  
71 of the board of directors, or the equivalent, of the  
72 international trust entity.

73 (c) To an independent auditor, upon written consent of the  
74 board of directors, or the equivalent, of the international  
75 trust entity.

76 (d) To the liquidator, receiver, or conservator for the  
77 international trust entity, if a liquidator, receiver, or  
78 conservator is appointed. However, any portion of the  
79 information which discloses the identity of a customer or  
80 prospective customer of the international trust entity, or a  
81 shareholder or member of the international trust entity, must be  
82 redacted by the office before releasing such portion to the  
83 liquidator, receiver, or conservator.

84 (e) To a law enforcement agency in furtherance of the  
85 agency's official duties and responsibilities.

86 (f) To the appropriate law enforcement or prosecutorial  
87 agency for the purpose of reporting any suspected criminal  
88 activity.

89 (g) Pursuant to a legislative subpoena. A legislative body  
90 or committee that receives records or information pursuant to

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91 such a subpoena must maintain the confidential status of the  
92 records or information, except in a case involving the  
93 investigation of charges against a public official subject to  
94 impeachment or removal, in which case the records or information  
95 may be disclosed only to the extent necessary as determined by  
96 such legislative body or committee.

97 (4) PUBLICATION OF INFORMATION.—This section does not  
98 prevent or restrict the publication of a report required by  
99 federal law.

100 (5) PENALTY.—A person who willfully discloses information  
101 made confidential and exempt by this section commits a felony of  
102 the third degree, punishable as provided in s. 775.082, s.  
103 775.083, or s. 775.084.

104 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
105 to the Open Government Sunset Review Act in accordance with s.  
106 119.15 and is repealed on October 2, 2022, unless reviewed and  
107 saved from repeal through reenactment by the Legislature.

108 Section 2. The Legislature finds that it is a public  
109 necessity to make confidential and exempt from s. 119.07(1),  
110 Florida Statutes, and s. 24(a), Article I of the State  
111 Constitution personal identifying information of the customers  
112 or prospective customers of an affiliated international trust  
113 entity which appears in records that are held by the Office of  
114 Financial Regulation and that relate to reports of examinations,  
115 operations, or condition of an international trust company  
116 representative office, including working papers; any portion of  
117 a list of names of the shareholders or members of an affiliated  
118 international trust entity which is held by the office; and  
119 information received by the Office of Financial Regulation from

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120 a person from another state or country or the Federal Government  
121 which is otherwise confidential or exempt pursuant to the laws  
122 of that state or country or pursuant to federal law.

123 (1) An exemption from public records requirements is  
124 necessary for such records and information because the Office of  
125 Financial Regulation may receive sensitive personal and  
126 financial information, including personal identifying  
127 information relating to such entities, in the course of its  
128 investigation and examination duties. Public disclosure of the  
129 personal identifying information of existing customers,  
130 prospective customers, shareholders, or members of the  
131 affiliated international trust entity could defame or jeopardize  
132 the personal and financial safety of those individuals and their  
133 family members. The individuals served by the affiliated  
134 international trust entity are often individuals of high net  
135 worth. Individuals of high net worth and shareholders of  
136 financial institutions are frequently the targets of criminal  
137 predators seeking access to their assets. It is important that  
138 the exposure of such individuals and their family members to  
139 threats of extortion, kidnapping, and other crimes not be  
140 increased. Placing the personal identifying information of these  
141 individuals within the public domain would increase the security  
142 risk that those individuals or their families could become the  
143 target of criminal activity.

144 (2) Public disclosure of information received by the Office  
145 of Financial Regulation from a person from another state or  
146 country or the Federal Government which is otherwise  
147 confidential or exempt pursuant to the laws of that state or  
148 country or pursuant to federal law may deteriorate the office's

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149 relationships with other regulatory bodies. The office  
150 frequently engages in joint examinations with federal  
151 regulators. If such information were subject to disclosure to  
152 the public, not only would such disclosure deter other  
153 regulatory bodies from communicating vital information to the  
154 office, but the office would violate existing information-  
155 sharing agreements governing the sharing of confidential  
156 supervisory information.

157 Section 3. Section 663.540, Florida Statutes, is created  
158 and incorporated into part IV of chapter 663, Florida Statutes,  
159 as created by SB \_\_\_\_, 2017 Regular Session, to read:

160 663.540 Public records exemption.—

161 (1) DEFINITIONS.—As used in this section, the term:

162 (a) "Reports of examinations, operations, or condition"  
163 means records submitted to or prepared by the office as part of  
164 the office's duties performed pursuant to s. 655.012 or s.  
165 663.537.

166 (b) "Working papers" means the records of the procedure  
167 followed, the tests performed, the information obtained, and the  
168 conclusions reached in an investigation or examination performed  
169 under s. 655.032 or s. 663.537. The term also includes books and  
170 records. The term includes planning documentation, work  
171 programs, analyses, memoranda, letters of confirmation and  
172 representation, abstracts of the books and records of a  
173 financial institution, as defined in s. 655.005, and schedules  
174 or commentaries prepared or obtained in the course of such  
175 investigation or examination.

176 (2) PUBLIC RECORDS EXEMPTION.—The following information  
177 held by the office is confidential and exempt from s. 119.07(1)

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178 and s. 24(a), Art. I of the State Constitution:

179 (a) Reports of examinations, operations, or condition of a  
180 limited service affiliate, including working papers.

181 (b) Any personal identifying information of the customers  
182 or prospective customers of an affiliated international trust  
183 entity which appears in records relating to reports of  
184 examinations, operations, or condition of a limited service  
185 affiliate, including working papers.

186 (c) Any portion of a list of names of the shareholders or  
187 members of a limited service affiliate.

188 (d) Information received by the office from a person from  
189 another state or country or the Federal Government which is  
190 otherwise confidential or exempt pursuant to the laws of that  
191 state or country or pursuant to federal law.

192 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
193 INFORMATION.—Information made confidential and exempt under  
194 subsection (2) may be disclosed by the office:

195 (a) To the authorized representative or representatives of  
196 the limited service affiliate under examination. The authorized  
197 representative or representatives must be identified in a  
198 resolution or by written consent of the board of directors, if  
199 the limited service affiliate is a corporation, or of the  
200 managers, if the limited service affiliate is a limited  
201 liability company.

202 (b) To a fidelity insurance company, upon written consent  
203 of the limited service affiliate's board of directors, if the  
204 limited service affiliate is a corporation, or of the managers,  
205 if the limited service affiliate is a limited liability company.

206 (c) To an independent auditor, upon written consent of the

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207 limited service affiliate's board of directors, if the limited  
208 service affiliate is a corporation, or of the managers, if the  
209 limited service affiliate is a limited liability company.

210 (d) To the liquidator, receiver, or conservator for a  
211 limited service affiliate, if a liquidator, receiver, or  
212 conservator is appointed. However, any portion of the  
213 information which discloses the identity of a customer of the  
214 affiliated international trust entity, or a shareholder or  
215 member of the limited service affiliate, must be redacted by the  
216 office before releasing such portion to the liquidator,  
217 receiver, or conservator.

218 (e) To a law enforcement agency in furtherance of the  
219 agency's official duties and responsibilities.

220 (f) To the appropriate law enforcement or prosecutorial  
221 agency for the purpose of reporting any suspected criminal  
222 activity.

223 (g) Pursuant to a legislative subpoena. A legislative body  
224 or committee that receives records or information pursuant to  
225 such a subpoena must maintain the confidential status of the  
226 records or information, except in a case involving the  
227 investigation of charges against a public official subject to  
228 impeachment or removal, in which case the records or information  
229 may be disclosed only to the extent necessary as determined by  
230 such legislative body or committee.

231 (4) PUBLICATION OF INFORMATION.—This section does not  
232 prevent or restrict the publication of a report required by  
233 federal law.

234 (5) PENALTY.—A person who willfully discloses information  
235 made confidential and exempt by this section commits a felony of



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236 the third degree, punishable as provided in s. 775.082, s.  
237 775.083, or s. 775.084.

238 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
239 to the Open Government Sunset Review Act in accordance with s.  
240 119.15 and is repealed on October 2, 2022, unless reviewed and  
241 saved from repeal through reenactment by the Legislature.

242 Section 4. The Legislature finds that it is a public  
243 necessity to make confidential and exempt from s. 119.07(1),  
244 Florida Statutes, and s. 24(a), Article I of the State  
245 Constitution reports of examinations, operations, or condition  
246 of a limited service affiliate, including working papers, held  
247 by the Office of Financial Regulation; personal identifying  
248 information, held by the office, of the customers or prospective  
249 customers of an affiliated international trust entity which  
250 appears in records relating to reports of examinations,  
251 operations, or condition of a limited service affiliate,  
252 including working papers; any portion of a list of names of the  
253 shareholders or members of a limited service affiliate which is  
254 held by the office; and information received by the office from  
255 a person from another state or country or the Federal Government  
256 which is otherwise confidential or exempt pursuant to the laws  
257 of that state or country or pursuant to federal law.

258 (1) An exemption from public records requirements is  
259 necessary for reports of examinations, operations, or condition,  
260 including working papers, relating to limited service affiliates  
261 to ensure the Office of Financial Regulation's ability to  
262 effectively and efficiently administer the examination and  
263 investigation duties of the office under ss. 655.012, 655.032,  
264 and 663.537, Florida Statutes. Examination and investigation are

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265 essential components of financial institutions regulation. These  
266 processes deter fraud and ensure the safety and soundness of the  
267 financial system. Examinations also provide a means of early  
268 detection of violations, allowing for corrective action to be  
269 taken before any harm can be done. In the course of these  
270 duties, the office may receive sensitive personal and financial  
271 information. Public disclosure of this information would  
272 significantly impair the office's ability to perform these  
273 duties and may also impair the reputation of the limited service  
274 affiliate and the safety and soundness of the affiliated  
275 international trust entity by exposing those institutions to  
276 unwarranted reputational risk.

277 (2) An exemption from public records requirements is  
278 necessary for personal identifying information of existing and  
279 prospective customers of an affiliated international trust  
280 entity or shareholders or members of a limited service  
281 affiliate, because if such information is available for public  
282 access, such access could defame or jeopardize the personal and  
283 financial safety of those individuals. The individuals served by  
284 the affiliated international trust entity are often individuals  
285 of high net worth. Individuals of high net worth and  
286 shareholders or members of financial institutions are frequently  
287 the targets of criminal predators seeking access to their  
288 assets. It is important that the exposure of such individuals  
289 and their family members to threats of extortion, kidnapping,  
290 and other crimes not be increased. Placing the personal  
291 identifying information of these individuals within the public  
292 domain would increase the security risk that those individuals  
293 or their families could become the target of criminal activity.

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294       (3) An exemption from public records requirements is  
295 necessary for information received by the Office of Financial  
296 Regulation from a person from another state or country or the  
297 Federal Government which is otherwise confidential or exempt  
298 pursuant to the laws of that state or country or pursuant to  
299 federal law, as public disclosure may deteriorate the office's  
300 relationships with other regulatory bodies. The office  
301 frequently engages in joint examinations with federal  
302 regulators. If such information were subject to disclosure to  
303 the public, not only would this disclosure deter other  
304 regulatory bodies from communicating vital information to the  
305 office, but the office would violate existing information-  
306 sharing agreements governing the sharing of confidential  
307 supervisory information.

308       Section 5. Subsections (1), (2), (5), and (9) of section  
309 655.057, Florida Statutes, are amended, and subsection (15) is  
310 added to that section, to read:

311       655.057 Records; limited restrictions upon public access.—

312       (1) Except as otherwise provided in this section and except  
313 for such portions thereof which are otherwise public record, all  
314 records and information relating to an investigation by the  
315 office are confidential and exempt from s. 119.07(1) and s.  
316 24(a), Art. I of the State Constitution until such investigation  
317 is completed or ceases to be active. For purposes of this  
318 subsection, an investigation is considered "active" while such  
319 investigation is being conducted by the office with a  
320 reasonable, good faith belief that it may lead to the filing of  
321 administrative, civil, or criminal proceedings. An investigation  
322 does not cease to be active if the office is proceeding with

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323 reasonable dispatch, and there is a good faith belief that  
324 action may be initiated by the office or other administrative or  
325 law enforcement agency. After an investigation is completed or  
326 ceases to be active, portions of the records relating to the  
327 investigation are confidential and exempt from s. 119.07(1) and  
328 s. 24(a), Art. I of the State Constitution to the extent that  
329 disclosure would:

330 (a) Jeopardize the integrity of another active  
331 investigation;

332 (b) Impair the safety and soundness of the financial  
333 institution;

334 (c) Reveal personal financial information;

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

336 (e) Defame or cause unwarranted damage to the good name or  
337 reputation of an individual or jeopardize the safety of an  
338 individual; or

339 (f) Reveal investigative techniques or procedures.

340 (2) Except as otherwise provided in this section and except  
341 for such portions thereof which are public record, reports of  
342 examinations, operations, or condition, including working  
343 papers, or portions thereof, prepared by, or for the use of, the  
344 office or any state or federal agency responsible for the  
345 regulation or supervision of financial institutions in this  
346 state are confidential and exempt from s. 119.07(1) and s.  
347 24(a), Art. I of the State Constitution. However, such reports  
348 or papers or portions thereof may be released to:

349 (a) The financial institution under examination;

350 (b) Any holding company of which the financial institution  
351 is a subsidiary;

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

355 (d) Persons proposing in good faith to acquire a  
356 controlling interest in or to merge with the financial  
357 institution, upon prior approval by the board of directors of  
358 such financial institution;

359 (e) Any officer, director, committee member, employee,  
360 attorney, auditor, or independent auditor officially connected  
361 with the financial institution, holding company, proposed  
362 purchaser, or person seeking to acquire a controlling interest  
363 in or merge with the financial institution; or

364 (f) A fidelity insurance company, upon approval of the  
365 financial institution's board of directors. However, a fidelity  
366 insurance company may receive only that portion of an  
367 examination report relating to a claim or investigation being  
368 conducted by such fidelity insurance company.

369 (g) Examination, operation, or condition reports of a  
370 financial institution shall be released by the office within 1  
371 year after the appointment of a liquidator, receiver, or  
372 conservator to the financial institution. However, any portion  
373 of such reports which discloses the identities of depositors,  
374 bondholders, members, borrowers, or stockholders, other than  
375 directors, officers, or controlling stockholders of the  
376 institution, shall remain confidential and exempt from s.  
377 119.07(1) and s. 24(a), Art. I of the State Constitution.

378  
379 Any confidential information or records obtained from the office  
380 pursuant to this paragraph shall be maintained as confidential

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381 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
382 Constitution.

383 (5) This section does not prevent or restrict:

384 (a) Publishing reports that are required to be submitted to  
385 the office pursuant to s. 655.045(2) or required by applicable  
386 federal statutes or regulations to be published.

387 (b) Furnishing records or information to any other state,  
388 federal, or foreign agency responsible for the regulation or  
389 supervision of financial institutions.

390 (c) Disclosing or publishing summaries of the condition of  
391 financial institutions and general economic and similar  
392 statistics and data, provided that the identity of a particular  
393 financial institution is not disclosed.

394 (d) Reporting any suspected criminal activity, with  
395 supporting documents and information, to appropriate law  
396 enforcement and prosecutorial agencies.

397 (e) Furnishing information upon request to the Chief  
398 Financial Officer or the Division of Treasury of the Department  
399 of Financial Services regarding the financial condition of any  
400 financial institution that is, or has applied to be, designated  
401 as a qualified public depository pursuant to chapter 280.

402 (f) Furnishing information to Federal Home Loan Banks  
403 regarding its member institutions pursuant to an information  
404 sharing agreement between the Federal Home Loan Banks and the  
405 office.

406  
407 Any confidential information or records obtained from the office  
408 pursuant to this subsection shall be maintained as confidential  
409 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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410 Constitution.

411 (9) Materials supplied to the office or to employees of any  
412 financial institution by other state or federal governmental  
413 agencies remain the property of the submitting agency or the  
414 corporation, and any document request must be made to the  
415 appropriate agency. Any confidential documents supplied to the  
416 office or to employees of any financial institution by other  
417 state or federal governmental agencies are confidential and  
418 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
419 Constitution. Such information shall be made public only with  
420 the consent of such agency or the corporation.

421 (15) Subsections (1), (2), (5), and (9) are subject to the  
422 Open Government Sunset Review Act in accordance with s. 119.15  
423 and are repealed on October 2, 2022, unless reviewed and saved  
424 from repeal through reenactment by the Legislature.

425 Section 6. The Legislature finds that it is a public  
426 necessity to make confidential and exempt from s. 119.07(1),  
427 Florida Statutes, and s. 24(a), Article I of the State  
428 Constitution records and information relating to an  
429 investigation by the Office of Financial Regulation; portions of  
430 records relating to a completed or inactive investigation by the  
431 office which would jeopardize the integrity of another active  
432 investigation, impair the safety and soundness of the financial  
433 institution, reveal personal financial information, reveal the  
434 identity of a confidential source, defame or cause unwarranted  
435 damage to the good name or reputation of an individual or  
436 jeopardize the safety of an individual, or reveal investigative  
437 techniques or procedures; reports of examinations, operations,  
438 or condition, including working papers, or portions thereof,

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439 prepared by, or for the use of, the office or any state or  
440 federal agency responsible for the regulation or supervision of  
441 financial institutions in this state; any portion of such  
442 reports which discloses the identities of depositors,  
443 bondholders, members, borrowers, or stockholders, other than  
444 directors, officers, or controlling stockholders of the  
445 institution; and materials supplied to the office or to  
446 employees of any financial institution by other state or federal  
447 governmental agencies. This exemption is necessary because:

448 (1) The terms "international trust entity" and "limited  
449 service affiliate" referenced in newly created parts III and IV  
450 of chapter 663, Florida Statutes, are added to the definition of  
451 the term "financial institution" in s. 655.005(1)(i) in SB .  
452 The international trust company representative offices and  
453 limited service affiliates servicing international trust  
454 entities are thus subject to examination by the Office of  
455 Financial Regulation. As a result, the office may receive  
456 sensitive personal and financial information relating to such  
457 entities in conjunction with its duties under chapters 655 and  
458 663, Florida Statutes. An exemption from public records  
459 requirements prevents gaps in the law by providing the same  
460 protections to international trust entities and limited service  
461 affiliates which are afforded to other financial institutions,  
462 thereby preventing any disadvantage to these similarly regulated  
463 entities in comparison to other entities currently defined as  
464 "financial institutions." An exemption from public records  
465 requirements for reports of examinations, operations, or  
466 condition, including working papers, is necessary to ensure the  
467 office's ability to effectively and efficiently administer its



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468 examination and investigation duties. Examination and  
469 investigation are essential components of financial institutions  
470 regulation. They deter fraud and ensure the safety and soundness  
471 of the financial system. Examinations also provide a means of  
472 early detection of violations, allowing for corrective action to  
473 be taken before any harm can be done.

474 (2) Public disclosure of records and information relating  
475 to an examination or investigation by the office could expose  
476 the subject financial institution to unwarranted damage to its  
477 good name or reputation and impair its safety and soundness, as  
478 well as the safety and soundness of the financial system in the  
479 state. Public disclosure of records and information relating to  
480 an investigation by the office which could jeopardize the  
481 integrity of another active investigation or reveal  
482 investigative techniques or procedures of the office would  
483 impair the office's ability to effectively and efficiently  
484 administer its duties under ss. 655.032 and 655.045, Florida  
485 Statutes. Any portion of a record or information relating to an  
486 investigation or examination which reveals personal financial  
487 information or the identity of a confidential source may defame,  
488 or cause unwarranted damage to the good name or reputation of,  
489 those individuals, or jeopardize their safety.

490 Section 7. This act shall take effect on the same date that  
491 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
492 is adopted in the same legislative session or an extension  
493 thereof and becomes a law.