

By the Committee on Banking and Insurance; and Senators Mayfield and Steube

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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 736, 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

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30 and incorporated into part III of chapter 663, Florida Statutes,
31 as created by SB 736, 2017 Regular Session, to read:

32 663.416 Public records exemption.-

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

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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
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

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88 activity.

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

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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
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

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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
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 736, 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

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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)
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

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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
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

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233 federal law.

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

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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
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

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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.

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

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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
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:

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- 349 (a) The financial institution under examination;
- 350 (b) Any holding company of which the financial institution
351 is a subsidiary;
- 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.

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

(5) This section does not prevent or restrict:

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

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

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

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

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

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

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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
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

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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,
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), Florida
452 Statutes, in SB 736, 2017 Regular Session. The international
453 trust company representative offices and limited service
454 affiliates servicing international trust entities are thus
455 subject to examination by the Office of Financial Regulation. As
456 a result, the office may receive sensitive personal and
457 financial information relating to such entities in conjunction
458 with its duties under chapters 655 and 663, Florida Statutes. An
459 exemption from public records requirements prevents gaps in the
460 law by providing the same protections to international trust
461 entities and limited service affiliates which are afforded to
462 other financial institutions, thereby preventing any
463 disadvantage to these similarly regulated entities in comparison
464 to other entities currently defined as "financial institutions."

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465 An exemption from public records requirements for reports of
466 examinations, operations, or condition, including working
467 papers, is necessary to ensure the office's ability to
468 effectively and efficiently administer its examination and
469 investigation duties. Examination and investigation are
470 essential components of financial institutions regulation. They
471 deter fraud and ensure the safety and soundness of the financial
472 system. Examinations also provide a means of early detection of
473 violations, allowing for corrective action to be taken before
474 any harm can be done.

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

491 Section 7. This act shall take effect on the same date that
492 SB 736 or similar legislation takes effect, if such legislation
493 is adopted in the same legislative session or an extension

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494 | thereof and becomes a law.