

By the Committees on Governmental Oversight and Accountability;
and 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 CS/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 CS/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 the books and records of an
53 international trust company representative office or in records
54 relating to reports of examinations, operations, or condition of
55 an international trust company representative office, including
56 working papers.

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

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

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

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

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

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

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

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

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

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

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

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

106 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
107 to the Open Government Sunset Review Act in accordance with s.
108 119.15 and is repealed on October 2, 2022, unless reviewed and
109 saved from repeal through reenactment by the Legislature.

110 Section 2. The Legislature finds that it is a public
111 necessity to make confidential and exempt from s. 119.07(1),
112 Florida Statutes, and s. 24(a), Article I of the State
113 Constitution personal identifying information of the customers
114 or prospective customers of an affiliated international trust
115 entity which appears in the books and records of an
116 international trust company representative office or in records

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117 relating to reports of examinations, operations, or condition of
118 an international trust company representative office, including
119 working papers; any portion of a list of names of the
120 shareholders or members of an affiliated international trust
121 entity which is held by the office; and information received by
122 the Office of Financial Regulation from a person from another
123 state or country or the Federal Government which is otherwise
124 confidential or exempt pursuant to the laws of that state or
125 country or pursuant to federal law.

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

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146 target of criminal activity.

147 (2) Public disclosure of information received by the Office
148 of Financial Regulation from a person from another state or
149 country or the Federal Government which is otherwise
150 confidential or exempt pursuant to the laws of that state or
151 country or pursuant to federal law may deteriorate the office's
152 relationships with other regulatory bodies. The office
153 frequently engages in joint examinations with federal
154 regulators. If such information were subject to disclosure to
155 the public, not only would such disclosure deter other
156 regulatory bodies from communicating vital information to the
157 office, but the office would violate existing information-
158 sharing agreements governing the sharing of confidential
159 supervisory information.

160 Section 3. Section 663.540, Florida Statutes, is created
161 and incorporated into part IV of chapter 663, Florida Statutes,
162 as created by CS/SB 736, 2017 Regular Session, to read:

163 663.540 Public records exemption.—

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

165 (a) "Reports of examinations, operations, or condition"
166 means records submitted to or prepared by the office as part of
167 the office's duties performed pursuant to s. 655.012 or s.
168 663.537.

169 (b) "Working papers" means the records of the procedure
170 followed, the tests performed, the information obtained, and the
171 conclusions reached in an investigation or examination performed
172 under s. 655.032 or s. 663.537. The term includes planning
173 documentation, work programs, analyses, memoranda, letters of
174 confirmation and representation, abstracts of the books and

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175 records of a financial institution, as defined in s. 655.005,
176 and schedules or commentaries prepared or obtained in the course
177 of such investigation or examination.

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

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

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

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

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

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

203 (b) To a fidelity insurance company, upon written consent

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204 of the limited service affiliate's board of directors, if the
205 limited service affiliate is a corporation, or of the managers,
206 if the limited service affiliate is a limited liability company.

207 (c) To an independent auditor, upon written consent of the
208 limited service affiliate's board of directors, if the limited
209 service affiliate is a corporation, or of the managers, if the
210 limited service affiliate is a limited liability company.

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

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

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

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

232 (4) PUBLICATION OF INFORMATION.—This section does not

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233 prevent or restrict the publication of a report required by
234 federal law.

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

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

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

258 (1) An exemption from public records requirements is
259 necessary for personal identifying information of existing and
260 prospective customers of an affiliated international trust
261 entity or shareholders or members of a limited service

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262 affiliate, because if such information is available for public
263 access, such access could defame or jeopardize the personal and
264 financial safety of those individuals. The individuals served by
265 the affiliated international trust entity are often individuals
266 of high net worth. Individuals of high net worth and
267 shareholders or members of financial institutions are frequently
268 the targets of criminal predators seeking access to their
269 assets. It is important that the exposure of such individuals
270 and their family members to threats of extortion, kidnapping,
271 and other crimes not be increased. Placing the personal
272 identifying information of these individuals within the public
273 domain would increase the security risk that those individuals
274 or their families could become the target of criminal activity.

275 (2) An exemption from public records requirements is
276 necessary for information received by the Office of Financial
277 Regulation from a person from another state or country or the
278 Federal Government which is otherwise confidential or exempt
279 pursuant to the laws of that state or country or pursuant to
280 federal law, as public disclosure may deteriorate the office's
281 relationships with other regulatory bodies. The office
282 frequently engages in joint examinations with federal
283 regulators. If such information were subject to disclosure to
284 the public, not only would this disclosure deter other
285 regulatory bodies from communicating vital information to the
286 office, but the office would violate existing information-
287 sharing agreements governing the sharing of confidential
288 supervisory information.

289 Section 5. Subsections (1), (2), (5), and (9) of section
290 655.057, Florida Statutes, are amended, and subsection (15) is

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291 added to that section, to read:

292 655.057 Records; limited restrictions upon public access.—

293 (1) Except as otherwise provided in this section and except
294 for such portions thereof which are otherwise public record, all
295 records and information relating to an investigation by the
296 office are confidential and exempt from s. 119.07(1) and s.
297 24(a), Art. I of the State Constitution until such investigation
298 is completed or ceases to be active. For purposes of this
299 subsection, an investigation is considered "active" while such
300 investigation is being conducted by the office with a
301 reasonable, good faith belief that it may lead to the filing of
302 administrative, civil, or criminal proceedings. An investigation
303 does not cease to be active if the office is proceeding with
304 reasonable dispatch, and there is a good faith belief that
305 action may be initiated by the office or other administrative or
306 law enforcement agency. After an investigation is completed or
307 ceases to be active, portions of the records relating to the
308 investigation are confidential and exempt from s. 119.07(1) and
309 s. 24(a), Art. I of the State Constitution to the extent that
310 disclosure would:

311 (a) Jeopardize the integrity of another active
312 investigation;

313 (b) Impair the safety and soundness of the financial
314 institution;

315 (c) Reveal personal financial information;

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

317 (e) Defame or cause unwarranted damage to the good name or
318 reputation of an individual or jeopardize the safety of an
319 individual; or

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- 320 (f) Reveal investigative techniques or procedures.
- 321 (2) Except as otherwise provided in this section and except
322 for such portions thereof which are public record, reports of
323 examinations, operations, or condition, including working
324 papers, or portions thereof, prepared by, or for the use of, the
325 office or any state or federal agency responsible for the
326 regulation or supervision of financial institutions in this
327 state are confidential and exempt from s. 119.07(1) and s.
328 24(a), Art. I of the State Constitution. However, such reports
329 or papers or portions thereof may be released to:
- 330 (a) The financial institution under examination;
- 331 (b) Any holding company of which the financial institution
332 is a subsidiary;
- 333 (c) Proposed purchasers if necessary to protect the
334 continued financial viability of the financial institution, upon
335 prior approval by the board of directors of such institution;
- 336 (d) Persons proposing in good faith to acquire a
337 controlling interest in or to merge with the financial
338 institution, upon prior approval by the board of directors of
339 such financial institution;
- 340 (e) Any officer, director, committee member, employee,
341 attorney, auditor, or independent auditor officially connected
342 with the financial institution, holding company, proposed
343 purchaser, or person seeking to acquire a controlling interest
344 in or merge with the financial institution; or
- 345 (f) A fidelity insurance company, upon approval of the
346 financial institution's board of directors. However, a fidelity
347 insurance company may receive only that portion of an
348 examination report relating to a claim or investigation being

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349 conducted by such fidelity insurance company.

350 (g) Examination, operation, or condition reports of a
351 financial institution shall be released by the office within 1
352 year after the appointment of a liquidator, receiver, or
353 conservator to the financial institution. However, any portion
354 of such reports which discloses the identities of depositors,
355 bondholders, members, borrowers, or stockholders, other than
356 directors, officers, or controlling stockholders of the
357 institution, shall remain confidential and exempt from s.
358 119.07(1) and s. 24(a), Art. I of the State Constitution.

359
360 Any confidential information or records obtained from the office
361 pursuant to this paragraph shall be maintained as confidential
362 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
363 Constitution.

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

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

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

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

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

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

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

387
388 Any confidential information or records obtained from the office
389 pursuant to this subsection shall be maintained as confidential
390 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
391 Constitution.

392 (9) Materials supplied to the office or to employees of any
393 financial institution by other state or federal governmental
394 agencies remain the property of the submitting agency or the
395 corporation, and any document request must be made to the
396 appropriate agency. Any confidential documents supplied to the
397 office or to employees of any financial institution by other
398 state or federal governmental agencies are confidential and
399 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
400 Constitution. Such information shall be made public only with
401 the consent of such agency or the corporation.

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

406 Section 6. The Legislature finds that it is a public

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407 necessity to make confidential and exempt from s. 119.07(1),
408 Florida Statutes, and s. 24(a), Article I of the State
409 Constitution records and information relating to an
410 investigation by the Office of Financial Regulation; portions of
411 records relating to a completed or inactive investigation by the
412 office which would jeopardize the integrity of another active
413 investigation, impair the safety and soundness of the financial
414 institution, reveal personal financial information, reveal the
415 identity of a confidential source, defame or cause unwarranted
416 damage to the good name or reputation of an individual or
417 jeopardize the safety of an individual, or reveal investigative
418 techniques or procedures; reports of examinations, operations,
419 or condition, including working papers, or portions thereof,
420 prepared by, or for the use of, the office or any state or
421 federal agency responsible for the regulation or supervision of
422 financial institutions in this state; any portion of such
423 reports which discloses the identities of depositors,
424 bondholders, members, borrowers, or stockholders, other than
425 directors, officers, or controlling stockholders of the
426 institution; and materials supplied to the office or to
427 employees of any financial institution by other state or federal
428 governmental agencies.

429 (1) The terms "international trust entity" and "limited
430 service affiliate" referenced in newly created parts III and IV
431 of chapter 663, Florida Statutes, are added to the definition of
432 the term "financial institution" in s. 655.005(1)(i), Florida
433 Statutes, in CS/SB 736. The international trust company
434 representative offices and limited service affiliates servicing
435 international trust entities are thus subject to examination by

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436 the Office of Financial Regulation. As a result, the office may
437 receive sensitive personal and financial information relating to
438 such entities in conjunction with its duties under chapters 655
439 and 663, Florida Statutes. An exemption from public records
440 requirements prevents gaps in the law by providing the same
441 protections to international trust entities and limited service
442 affiliates which are afforded to other financial institutions,
443 thereby preventing any disadvantage to these similarly regulated
444 entities in comparison to other entities currently defined as
445 "financial institutions." An exemption from public records
446 requirements for reports of examinations, operations, or
447 condition, including working papers, is necessary to ensure the
448 office's ability to effectively and efficiently administer its
449 examination and investigation duties. Examination and
450 investigation are essential components of financial institutions
451 regulation. They deter fraud and ensure the safety and soundness
452 of the financial system. Examinations also provide a means of
453 early detection of violations, allowing for corrective action to
454 be taken before any harm can be done.

455 (2) The Legislature finds that it is a public necessity
456 that information and records relating to an examination or
457 investigation by the office be held confidential and exempt from
458 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
459 State Constitution. Public disclosure of records and information
460 relating to an examination or investigation by the office could
461 expose the subject financial institution to unwarranted damage
462 to its good name or reputation and impair its safety and
463 soundness, as well as the safety and soundness of the financial
464 system in the state. Public disclosure of records and

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465 information relating to an investigation by the office which
466 could jeopardize the integrity of another active investigation
467 or reveal investigative techniques or procedures of the office
468 would impair the office's ability to effectively and efficiently
469 administer its duties under ss. 655.032 and 655.045, Florida
470 Statutes. Any portion of a record or information relating to an
471 investigation or examination which reveals personal financial
472 information or the identity of a confidential source may defame,
473 or cause unwarranted damage to the good name or reputation of,
474 those individuals, or jeopardize their safety.

475 Section 7. This act shall take effect on the same date that
476 CS/SB 736 or similar legislation takes effect, if such
477 legislation is adopted in the same legislative session or an
478 extension thereof and becomes a law.