

By the Committees on Appropriations; 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 qualified limited service
8 affiliates, respectively, and relating to affiliated
9 international trust entities; authorizing the
10 disclosure of the information by the office to
11 specified persons; providing construction; providing
12 criminal penalties; providing future legislative
13 review and repeal of the exemptions; providing
14 statements of public necessity; amending s. 655.057,
15 F.S.; providing that certain exemptions from public
16 records requirements for information relating to
17 investigations, reports of examinations, operations,
18 or condition, including working papers, and certain
19 materials supplied by governmental agencies are exempt
20 from Section 24(a) of Article I of the State
21 Constitution, as a result of the expansion of such
22 exemptions to include the records of international
23 trust entities and qualified limited service
24 affiliates, as made by CS/CS/SB 736, 2017 Regular
25 Session; providing a statement of public necessity;
26 providing a contingent effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 663.416, Florida Statutes, is created
31 and incorporated into part III of chapter 663, Florida Statutes,
32 as created by CS/CS/SB 736, 2017 Regular Session, to read:

33 663.416 Public records exemption.-

34 (1) DEFINITIONS.-As used in this section, the term:

35 (a) "Reports of examinations, operations, or condition"
36 means records submitted to or prepared by the office as part of
37 the office's duties performed pursuant to s. 655.012 or s.
38 655.045.

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

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

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

58 (b) Any portion of a list of names of the shareholders or

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59 members of an affiliated international trust entity.

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

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

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

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

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

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

87 (e) To a law enforcement agency in furtherance of the

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88 agency's official duties and responsibilities.

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

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

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

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

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

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

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

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

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146 risk that those individuals or their families could become the
147 target of criminal activity.

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

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

164 663.540 Public records exemption.-

165 (1) DEFINITIONS.-As used in this section, the term:

166 (a) "Reports of examinations, operations, or condition"
167 means records submitted to or prepared by the office as part of
168 the office's duties performed pursuant to s. 655.012 or s.
169 663.537.

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

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

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

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

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

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

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

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

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

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

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

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

224 (f) To the appropriate law enforcement or prosecutorial
225 agency for the purpose of reporting any suspected criminal
226 activity.

227 (g) Pursuant to a legislative subpoena. A legislative body
228 or committee that receives records or information pursuant to
229 such a subpoena must maintain the confidential status of the
230 records or information, except in a case involving the
231 investigation of charges against a public official subject to
232 impeachment or removal, in which case the records or information

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233 may be disclosed only to the extent necessary as determined by
234 such legislative body or committee.

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

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

242 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
243 to the Open Government Sunset Review Act in accordance with s.
244 119.15 and is repealed on October 2, 2022, unless reviewed and
245 saved from repeal through reenactment by the Legislature.

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

261 (1) An exemption from public records requirements is

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

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

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291 supervisory information.

292 Section 5. Subsections (1), (2), (5), and (9) of section
293 655.057, Florida Statutes, are amended, and subsection (15) is
294 added to that section, to read:

295 655.057 Records; limited restrictions upon public access.—

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

314 (a) Jeopardize the integrity of another active
315 investigation;

316 (b) Impair the safety and soundness of the financial
317 institution;

318 (c) Reveal personal financial information;

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

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320 (e) Defame or cause unwarranted damage to the good name or
321 reputation of an individual or jeopardize the safety of an
322 individual; or

323 (f) Reveal investigative techniques or procedures.

324 (2) Except as otherwise provided in this section and except
325 for such portions thereof which are public record, reports of
326 examinations, operations, or condition, including working
327 papers, or portions thereof, prepared by, or for the use of, the
328 office or any state or federal agency responsible for the
329 regulation or supervision of financial institutions in this
330 state are confidential and exempt from s. 119.07(1) and s.
331 24(a), Art. I of the State Constitution. However, such reports
332 or papers or portions thereof may be released to:

333 (a) The financial institution under examination;

334 (b) Any holding company of which the financial institution
335 is a subsidiary;

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

339 (d) Persons proposing in good faith to acquire a
340 controlling interest in or to merge with the financial
341 institution, upon prior approval by the board of directors of
342 such financial institution;

343 (e) Any officer, director, committee member, employee,
344 attorney, auditor, or independent auditor officially connected
345 with the financial institution, holding company, proposed
346 purchaser, or person seeking to acquire a controlling interest
347 in or merge with the financial institution; or

348 (f) A fidelity insurance company, upon approval of the

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349 financial institution's board of directors. However, a fidelity
350 insurance company may receive only that portion of an
351 examination report relating to a claim or investigation being
352 conducted by such fidelity insurance company.

353 (g) Examination, operation, or condition reports of a
354 financial institution shall be released by the office within 1
355 year after the appointment of a liquidator, receiver, or
356 conservator to the financial institution. However, any portion
357 of such reports which discloses the identities of depositors,
358 bondholders, members, borrowers, or stockholders, other than
359 directors, officers, or controlling stockholders of the
360 institution, shall remain confidential and exempt from s.
361 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

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

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

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

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

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

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

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

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

405 (15) Subsections (1), (2), (5), and (9) are subject to the
406 Open Government Sunset Review Act in accordance with s. 119.15

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407 and are repealed on October 2, 2022, unless reviewed and saved
408 from repeal through reenactment by the Legislature.

409 Section 6. The Legislature finds that it is a public
410 necessity to make confidential and exempt from s. 119.07(1),
411 Florida Statutes, and s. 24(a), Article I of the State
412 Constitution records and information relating to an
413 investigation by the Office of Financial Regulation; portions of
414 records relating to a completed or inactive investigation by the
415 office which would jeopardize the integrity of another active
416 investigation, impair the safety and soundness of the financial
417 institution, reveal personal financial information, reveal the
418 identity of a confidential source, defame or cause unwarranted
419 damage to the good name or reputation of an individual or
420 jeopardize the safety of an individual, or reveal investigative
421 techniques or procedures; reports of examinations, operations,
422 or condition, including working papers, or portions thereof,
423 prepared by, or for the use of, the office or any state or
424 federal agency responsible for the regulation or supervision of
425 financial institutions in this state; any portion of such
426 reports which discloses the identities of depositors,
427 bondholders, members, borrowers, or stockholders, other than
428 directors, officers, or controlling stockholders of the
429 institution; and materials supplied to the office or to
430 employees of any financial institution by other state or federal
431 governmental agencies.

432 (1) The terms "international trust entity" and "qualified
433 limited service affiliate" referenced in newly created parts III
434 and IV of chapter 663, Florida Statutes, are added to the
435 definition of the term "financial institution" in s.

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436 655.005(1)(i), Florida Statutes, in CS/CS/SB 736. The
437 international trust company representative offices and qualified
438 limited service affiliates servicing international trust
439 entities are thus subject to examination by the Office of
440 Financial Regulation. As a result, the office may receive
441 sensitive personal and financial information relating to such
442 entities in conjunction with its duties under chapters 655 and
443 663, Florida Statutes. An exemption from public records
444 requirements prevents gaps in the law by providing the same
445 protections to international trust entities and qualified
446 limited service affiliates which are afforded to other financial
447 institutions, thereby preventing any disadvantage to these
448 similarly regulated entities in comparison to other entities
449 currently defined as "financial institutions." An exemption from
450 public records requirements for reports of examinations,
451 operations, or condition, including working papers, is necessary
452 to ensure the office's ability to effectively and efficiently
453 administer its examination and investigation duties. Examination
454 and investigation are essential components of financial
455 institutions regulation. They deter fraud and ensure the safety
456 and soundness of the financial system. Examinations also provide
457 a means of early detection of violations, allowing for
458 corrective action to be taken before any harm can be done.

459 (2) The Legislature finds that it is a public necessity
460 that information and records relating to an examination or
461 investigation by the office be held confidential and exempt from
462 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
463 State Constitution. Public disclosure of records and information
464 relating to an examination or investigation by the office could

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

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