

FOR CONSIDERATION By the Committee on Banking and Insurance

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1 A bill to be entitled
2 An act relating to review under the Open Government
3 Sunset Review Act; amending s. 663.416, F.S., which
4 provides an exemption from public records requirements
5 for certain information held by the Office of
6 Insurance Regulation relating to affiliated
7 international trust entities; removing the scheduled
8 repeal of the exemption; amending s. 663.540, F.S.,
9 which provides an exemption from public records
10 requirements for certain information held by the
11 office relating to qualified limited service
12 affiliates; removing the scheduled repeal of the
13 exemption; amending s. 655.057, F.S., which provides
14 exemptions from public records requirements for
15 certain information held by the office relating to
16 active investigations of and the regulation of
17 financial institutions; removing the scheduled repeal
18 of the exemption; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 663.416, Florida Statutes, is amended to
23 read:

24 663.416 Public records exemption.—

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

26 (a) "Reports of examinations, operations, or condition"
27 means records submitted to or prepared by the office as part of
28 the office's duties performed pursuant to s. 655.012 or s.
29 655.045.

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30 (b) "Working papers" means the records of the procedure
31 followed, the tests performed, the information obtained, and the
32 conclusions reached in an investigation or examination performed
33 under s. 655.032 or s. 655.045. The term includes planning
34 documentation, work programs, analyses, memoranda, letters of
35 confirmation and representation, abstracts of the books and
36 records of a financial institution, as defined in s. 655.005,
37 and schedules or commentaries prepared or obtained in the course
38 of such investigation or examination.

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

42 (a) Any personal identifying information of the customers
43 or prospective customers of an affiliated international trust
44 entity which appears in the books and records of an
45 international trust company representative office or in records
46 relating to reports of examinations, operations, or condition of
47 an international trust company representative office, including
48 working papers.

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

51 (c) Information received by the office from a person from
52 another state or country or the Federal Government which is
53 otherwise confidential or exempt pursuant to the laws of that
54 state or country or pursuant to federal law.

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

58 (a) To the authorized representative or representatives of

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59 the international trust company representative office under
60 examination. The authorized representative or representatives
61 must be identified in a resolution or by written consent of the
62 board of directors, or the equivalent, of the international
63 trust entity.

64 (b) To a fidelity insurance company, upon written consent
65 of the board of directors, or the equivalent, of the
66 international trust entity.

67 (c) To an independent auditor, upon written consent of the
68 board of directors, or the equivalent, of the international
69 trust entity.

70 (d) To the liquidator, receiver, or conservator for the
71 international trust entity, if a liquidator, receiver, or
72 conservator is appointed. However, any portion of the
73 information which discloses the identity of a customer or
74 prospective customer of the international trust entity, or a
75 shareholder or member of the international trust entity, must be
76 redacted by the office before releasing such portion to the
77 liquidator, receiver, or conservator.

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

80 (f) To the appropriate law enforcement or prosecutorial
81 agency for the purpose of reporting any suspected criminal
82 activity.

83 (g) Pursuant to a legislative subpoena. A legislative body
84 or committee that receives records or information pursuant to
85 such a subpoena must maintain the confidential status of the
86 records or information, except in a case involving the
87 investigation of charges against a public official subject to

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88 impeachment or removal, in which case the records or information
89 may be disclosed only to the extent necessary as determined by
90 such legislative body or committee.

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

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

98 ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~
99 ~~to the Open Government Sunset Review Act in accordance with s.~~
100 ~~119.15 and is repealed on October 2, 2022, unless reviewed and~~
101 ~~saved from repeal through reenactment by the Legislature.~~

102 Section 2. Section 663.540, Florida Statutes, is amended to
103 read:

104 663.540 Public records exemption.—

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

106 (a) "Reports of examinations, operations, or condition"
107 means records submitted to or prepared by the office as part of
108 the office's duties performed pursuant to s. 655.012 or s.
109 663.537.

110 (b) "Working papers" means the records of the procedure
111 followed, the tests performed, the information obtained, and the
112 conclusions reached in an investigation or examination performed
113 under s. 655.032 or s. 663.537. The term includes planning
114 documentation, work programs, analyses, memoranda, letters of
115 confirmation and representation, abstracts of the books and
116 records of a financial institution, as defined in s. 655.005,

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117 and schedules or commentaries prepared or obtained in the course
118 of such investigation or examination.

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

122 (a) Any personal identifying information of the customers
123 or prospective customers of an affiliated international trust
124 entity which appears in the books and records of a qualified
125 limited service affiliate or in records relating to reports of
126 examinations, operations, or condition of a qualified limited
127 service affiliate, including working papers.

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

130 (c) Information received by the office from a person from
131 another state or country or the Federal Government which is
132 otherwise confidential or exempt pursuant to the laws of that
133 state or country or pursuant to federal law.

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

137 (a) To the authorized representative or representatives of
138 the qualified limited service affiliate under examination. The
139 authorized representative or representatives must be identified
140 in a resolution or by written consent of the board of directors,
141 if the qualified limited service affiliate is a corporation, or
142 of the managers, if the qualified limited service affiliate is a
143 limited liability company.

144 (b) To a fidelity insurance company, upon written consent
145 of the qualified limited service affiliate's board of directors,

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146 if the qualified limited service affiliate is a corporation, or
147 of the managers, if the qualified limited service affiliate is a
148 limited liability company.

149 (c) To an independent auditor, upon written consent of the
150 qualified limited service affiliate's board of directors, if the
151 qualified limited service affiliate is a corporation, or of the
152 managers, if the qualified limited service affiliate is a
153 limited liability company.

154 (d) To the liquidator, receiver, or conservator for a
155 qualified limited service affiliate, if a liquidator, receiver,
156 or conservator is appointed. However, any portion of the
157 information which discloses the identity of a customer of the
158 affiliated international trust entity, or a shareholder or
159 member of the qualified limited service affiliate, must be
160 redacted by the office before releasing such portion to the
161 liquidator, receiver, or conservator.

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

164 (f) To the appropriate law enforcement or prosecutorial
165 agency for the purpose of reporting any suspected criminal
166 activity.

167 (g) Pursuant to a legislative subpoena. A legislative body
168 or committee that receives records or information pursuant to
169 such a subpoena must maintain the confidential status of the
170 records or information, except in a case involving the
171 investigation of charges against a public official subject to
172 impeachment or removal, in which case the records or information
173 may be disclosed only to the extent necessary as determined by
174 such legislative body or committee.

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

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

182 ~~(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject~~
183 ~~to the Open Government Sunset Review Act in accordance with s.~~
184 ~~119.15 and is repealed on October 2, 2022, unless reviewed and~~
185 ~~saved from repeal through reenactment by the Legislature.~~

186 Section 3. Section 655.057, Florida Statutes, is amended to
187 read:

188 655.057 Records; limited restrictions upon public access.—

189 (1) Except as otherwise provided in this section and except
190 for such portions thereof which are otherwise public record, all
191 records and information relating to an investigation by the
192 office are confidential and exempt from s. 119.07(1) and s.
193 24(a), Art. I of the State Constitution until such investigation
194 is completed or ceases to be active. For purposes of this
195 subsection, an investigation is considered "active" while such
196 investigation is being conducted by the office with a
197 reasonable, good faith belief that it may lead to the filing of
198 administrative, civil, or criminal proceedings. An investigation
199 does not cease to be active if the office is proceeding with
200 reasonable dispatch, and there is a good faith belief that
201 action may be initiated by the office or other administrative or
202 law enforcement agency. After an investigation is completed or
203 ceases to be active, portions of the records relating to the

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204 investigation are confidential and exempt from s. 119.07(1) and
205 s. 24(a), Art. I of the State Constitution to the extent that
206 disclosure would:

207 (a) Jeopardize the integrity of another active
208 investigation;

209 (b) Impair the safety and soundness of the financial
210 institution;

211 (c) Reveal personal financial information;

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

213 (e) Defame or cause unwarranted damage to the good name or
214 reputation of an individual or jeopardize the safety of an
215 individual; or

216 (f) Reveal investigative techniques or procedures.

217 (2) Except as otherwise provided in this section and except
218 for such portions thereof which are public record, reports of
219 examinations, operations, or condition, including working
220 papers, or portions thereof, prepared by, or for the use of, the
221 office or any state or federal agency responsible for the
222 regulation or supervision of financial institutions in this
223 state are confidential and exempt from s. 119.07(1) and s.
224 24(a), Art. I of the State Constitution. However, such reports
225 or papers or portions thereof may be released to:

226 (a) The financial institution under examination;

227 (b) Any holding company of which the financial institution
228 is a subsidiary;

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

232 (d) Persons proposing in good faith to acquire a

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233 controlling interest in or to merge with the financial
234 institution, upon prior approval by the board of directors of
235 such financial institution;

236 (e) Any officer, director, committee member, employee,
237 attorney, auditor, or independent auditor officially connected
238 with the financial institution, holding company, proposed
239 purchaser, or person seeking to acquire a controlling interest
240 in or merge with the financial institution; or

241 (f) A fidelity insurance company, upon approval of the
242 financial institution's board of directors. However, a fidelity
243 insurance company may receive only that portion of an
244 examination report relating to a claim or investigation being
245 conducted by such fidelity insurance company.

246 (g) Examination, operation, or condition reports of a
247 financial institution shall be released by the office within 1
248 year after the appointment of a liquidator, receiver, or
249 conservator to the financial institution. However, any portion
250 of such reports which discloses the identities of depositors,
251 bondholders, members, borrowers, or stockholders, other than
252 directors, officers, or controlling stockholders of the
253 institution, shall remain confidential and exempt from s.
254 119.07(1) and s. 24(a), Art. I of the State Constitution.

255
256 Any confidential information or records obtained from the office
257 pursuant to this paragraph shall be maintained as confidential
258 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
259 Constitution.

260 (3) Except as otherwise provided in this section and except
261 for those portions that are otherwise public record, after an

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262 investigation relating to an informal enforcement action is
263 completed or ceases to be active, informal enforcement actions
264 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
265 I of the State Constitution to the extent that disclosure would:

266 (a) Jeopardize the integrity of another active
267 investigation.

268 (b) Impair the safety and soundness of the financial
269 institution.

270 (c) Reveal personal financial information.

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

272 (e) Defame or cause unwarranted damage to the good name or
273 reputation of an individual or jeopardize the safety of an
274 individual.

275 (f) Reveal investigative techniques or procedures.

276 (4) Except as otherwise provided in this section and except
277 for those portions that are otherwise public record, trade
278 secrets as defined in s. 688.002 which comply with s. 655.0591
279 and which are held by the office in accordance with its
280 statutory duties with respect to the financial institutions
281 codes are confidential and exempt from s. 119.07(1) and s.
282 24(a), Art. I of the State Constitution.

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

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

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

290 (c) Disclosing or publishing summaries of the condition of

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291 financial institutions and general economic and similar
292 statistics and data, provided that the identity of a particular
293 financial institution is not disclosed.

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

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

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

306
307 Any confidential information or records obtained from the office
308 pursuant to this subsection shall be maintained as confidential
309 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
310 Constitution.

311 (6) (a) Orders of courts or of administrative law judges for
312 the production of confidential records or information must
313 provide for inspection in camera by the court or the
314 administrative law judge. After the court or administrative law
315 judge determines that the documents requested are relevant or
316 would likely lead to the discovery of admissible evidence and
317 that the information sought is not otherwise reasonably
318 available from other sources, the documents shall be subject to
319 further orders by the court or the administrative law judge to

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320 protect the confidentiality thereof. An order directing the
321 release of information is immediately reviewable, and a petition
322 by the office for review of such order automatically stays
323 further proceedings in the trial court or the administrative
324 hearing until the disposition of such petition by the reviewing
325 court. If any other party files such a petition for review, it
326 operates as a stay of such proceedings only upon order of the
327 reviewing court.

328 (b) Confidential records and information furnished pursuant
329 to a legislative subpoena shall be kept confidential by the
330 legislative body or committee that received the records or
331 information. However, in a case involving investigation of
332 charges against a public official subject to impeachment or
333 removal, disclosure of such information shall be only to the
334 extent necessary as determined by the legislative body or
335 committee.

336 (c) Documents, statements, books, records, and any other
337 information provided to the office by any person pursuant to an
338 investigation, examination, or other supervisory activity by the
339 office are not considered a waiver of any privilege or other
340 legal right in an administrative or legal proceeding in which
341 the office is not a party.

342 (7) Every credit union and mutual association shall
343 maintain full and correct records of the names and residences of
344 all the members of the credit union or mutual association in the
345 principal office where its business is transacted. Such records
346 are subject to inspection by all members of the credit union or
347 mutual association, and the officers authorized to assess taxes
348 under state authority, during normal business hours. No member

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349 or any other person has the right to copy the membership records
350 for any purpose other than in the course of business of the
351 credit union or mutual association, as authorized by the office
352 or the board of directors of the credit union or mutual
353 association. A current list of members shall be made available
354 to the office's examiners for their inspection and, upon the
355 request of the office, shall be submitted to the office. Except
356 as otherwise provided in this subsection, the list of the
357 members of the credit union or mutual association is
358 confidential and exempt from s. 119.07(1).

359 (8) Every bank, trust company, and stock association shall
360 maintain, in the principal office where its business is
361 transacted, full and complete records of the names and
362 residences of all the shareholders of the bank, trust company,
363 or stock association and the number of shares held by each. Such
364 records are subject to the inspection of all the shareholders of
365 the bank, trust company, or stock association, and the officers
366 authorized to assess taxes under state authority, during normal
367 business hours. No shareholder or any other person has the right
368 to copy the shareholder records for any purpose other than in
369 the course of business of the bank, the trust company, or the
370 stock association, as authorized by the office or the board of
371 directors of the bank, the trust company, or the stock
372 association. A current list of shareholders shall be made
373 available to the office's examiners for their inspection and,
374 upon the request of the office, shall be submitted to the
375 office. Except as otherwise provided in this subsection, any
376 portion of this list which reveals the identities of the
377 shareholders is confidential and exempt from s. 119.07(1).

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378 (9) Materials supplied to the office or to employees of any
379 financial institution by other state or federal governmental
380 agencies remain the property of the submitting agency or the
381 corporation, and any document request must be made to the
382 appropriate agency. Any confidential documents supplied to the
383 office or to employees of any financial institution by other
384 state or federal governmental agencies are confidential and
385 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
386 Constitution. Such information shall be made public only with
387 the consent of such agency or the corporation.

388 (10) Examination reports, investigatory records,
389 applications, and related information compiled by the office, or
390 photographic copies thereof, shall be retained by the office for
391 at least 10 years.

392 (11) A copy of any document on file with the office which
393 is certified by the office as being a true copy may be
394 introduced in evidence as if it were the original. The
395 commission shall establish a schedule of fees for preparing true
396 copies of documents.

397 (12) For purposes of this section, the term:

398 (a) "Examination report" means records submitted to or
399 prepared by the office as part of the office's duties performed
400 pursuant to s. 655.012 or s. 655.045(1).

401 (b) "Informal enforcement action" means a board resolution,
402 a document of resolution, or an agreement in writing between the
403 office and a financial institution which:

404 1. The office imposes on an institution when the office
405 considers the administrative enforcement guidelines in s.
406 655.031 and determines that a formal enforcement action is not

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407 an appropriate administrative remedy;

408 2. Sets forth a program of corrective action to address one
409 or more safety and soundness deficiencies and violations of law
410 or rule at the institution; and

411 3. Is not subject to enforcement by imposition of an
412 administrative fine pursuant to s. 655.041.

413 (c) "Personal financial information" means:

414 1. Information relating to the existence, nature, source,
415 or amount of a person's personal income, expenses, or debt.

416 2. Information relating to a person's financial
417 transactions of any kind.

418 3. Information relating to the existence, identification,
419 nature, or value of a person's assets, liabilities, or net
420 worth.

421 (d) "Working papers" means the records of the procedures
422 followed, the tests performed, the information obtained, and the
423 conclusions reached in an examination or investigation performed
424 under s. 655.032 or s. 655.045. Working papers include planning
425 documentation, work programs, analyses, memoranda, letters of
426 confirmation and representation, abstracts of the books and
427 records of a financial institution as defined in s. 655.005(1),
428 and schedules or commentaries prepared or obtained in the course
429 of such examination or investigation.

430 (13) A person who willfully discloses information made
431 confidential by this section commits a felony of the third
432 degree, punishable as provided in s. 775.082, s. 775.083, or s.
433 775.084.

434 ~~(14) Subsections (1), (2), (5), and (9) are subject to the~~
435 ~~Open Government Sunset Review Act in accordance with s. 119.15~~

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436 ~~and are repealed on October 2, 2022, unless reviewed and saved~~
437 ~~from repeal through reenactment by the Legislature.~~

438 Section 4. This act shall take effect October 1, 2022.