

By the Committee on Criminal Justice

307-607B-00

1 A bill to be entitled

2 An act relating to the confidentiality of

3 information concerning investigations conducted

4 under the Money Transmitters' Code; amending s.

5 560.129, F.S.; providing that information

6 concerning investigations or examinations

7 conducted by the Department of Banking and

8 Finance are confidential and exempt from

9 disclosure under the public records law;

10 deleting certain restrictions placed on access

11 to hearings, proceedings, and related documents

12 of the department; revising certain limitations

13 on the disclosure of consumer complaints and

14 other information concerning an investigation

15 or examination; deleting certain limitations

16 placed on the disclosure of reports prepared

17 by, or for the use of, the Department of

18 Banking and Finance; providing for the

19 disclosure of records or information to certain

20 parties approved by the department to conduct

21 examinations; providing a finding of public

22 necessity; providing an effective date.

23

24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Section 560.129, Florida Statutes, is

27 amended to read:

28 560.129 Confidentiality.--

29 (1) For purposes of this section, the definitions

30 contained in s. 560.103, as created by chapter 94-238, Laws of

31 Florida, and chapter 94-354, Laws of Florida, apply.

1 (2)(a) Except as otherwise provided in this section,
2 all information concerning an investigation or examination
3 conducted by the department pursuant to this chapter,
4 including any consumer complaint, is confidential and exempt
5 from s. 119.07(1) and s. 24(a), Art. I of the State
6 Constitution until the investigation or examination ceases to
7 be active. For purposes of this section, an investigation is
8 considered "active" so long as the department or any other
9 administrative, regulatory, or law enforcement agency of any
10 jurisdiction is proceeding with reasonable dispatch and has a
11 reasonable good faith belief that action may be initiated by
12 the department or other administrative, regulatory, or law
13 enforcement agency. If an investigation or examination by the
14 department does not result in administrative, civil, or
15 criminal charges against the money transmitter or any money
16 transmitter-affiliated party, the information obtained by the
17 department as a result of its investigation shall remain
18 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
19 of the State Constitution. This section does not prohibit the
20 disclosure of information that is required by law to be filed
21 with the department and that, but for the investigation or
22 examination, would otherwise be subject to s. 119.07(1) and s.
23 24(a), Art. I of the State Constitution.

24 (b) Except as necessary for the department or any
25 other administrative, regulatory, or law enforcement agency of
26 any jurisdiction to enforce the provisions of this chapter or
27 the laws of any other state or the United States, all
28 information obtained by the department in the course of its
29 investigation or examination which may be considered to
30 constitute proprietary or trade secrets, as defined in s.
31 688.002, shall remain confidential at all times. If any

1 administrative, civil, or criminal proceeding against the
2 money transmitter or a money transmitter-affiliated party is
3 initiated, such records shall be subject only to an in camera
4 review by the Division of Administrative Hearings or any
5 courts of this state, any other state, or the United States.

6 (c) If any administrative, civil, or criminal
7 proceeding against the money transmitter or a money
8 transmitter-affiliated party results in an acquittal or the
9 dismissal of all of the allegations against the money
10 transmitter or a money transmitter-affiliated party, all
11 records of the proceeding are confidential and exempt from s.
12 119.07(1) and s. 24(a), Art. I of the State Constitution.

13 (d) Except as necessary for the department or any
14 other administrative, regulatory, or law enforcement agency of
15 any jurisdiction to enforce the provisions of this chapter or
16 the laws of any other state or the United States, a consumer
17 complaint and other information concerning an investigation or
18 examination shall remain confidential and exempt from s.
19 119.07(1) and s. 24(a), Art. I of the State Constitution after
20 the investigation ceases to be active to the extent that
21 disclosure would:

22 ~~(2) RESTRICTED ACCESS TO CERTAIN HEARINGS,~~
23 ~~PROCEEDINGS, AND RELATED DOCUMENTS.--~~

24 ~~(a) The hearings and proceedings conducted under the~~
25 ~~code pursuant to this part shall be closed and exempt from the~~
26 ~~provisions of s. 286.011 and s. 24(b), Art. I of the State~~
27 ~~Constitution, and documents related to such hearings and~~
28 ~~proceedings shall be confidential and exempt from the~~
29 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
30 ~~Constitution.~~

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1 ~~(b) Orders of courts or of administrative law judges~~
2 ~~for the production of confidential records or information~~
3 ~~shall provide for inspection in camera by the court or the~~
4 ~~administrative law judge and, after the court or~~
5 ~~administrative law judge has made a determination that the~~
6 ~~documents requested are relevant or would likely lead to the~~
7 ~~discovery of admissible evidence, the documents shall be~~
8 ~~subject to further orders by the court or the administrative~~
9 ~~law judge to protect the confidentiality thereof. Any order~~
10 ~~directing the release of information shall be immediately~~
11 ~~reviewable, and a petition by the department for review of~~
12 ~~such order shall automatically stay further proceedings in the~~
13 ~~trial court or the administrative hearing until the~~
14 ~~disposition of such petition by the reviewing court. If any~~
15 ~~other party files such a petition for review, it will operate~~
16 ~~as a stay of such proceedings only upon order of the reviewing~~
17 ~~court.~~

18 ~~(3) Any emergency order entered under s. 560.112(6) is~~
19 ~~confidential and exempt from the provisions of s. 119.07(1)~~
20 ~~and s. 24(a), Art. I of the State Constitution, until the~~
21 ~~emergency order is made permanent, unless the department finds~~
22 ~~that such confidentiality will result in substantial risk of~~
23 ~~financial loss to the public.~~

24 ~~(4) Except for such portions of this section which are~~
25 ~~otherwise public record, all records and information relating~~
26 ~~to an investigation by the department under the code are~~
27 ~~confidential and exempt from the provisions of s. 119.07(1)~~
28 ~~and s. 24(a), Art. I of the State Constitution, until such~~
29 ~~investigation is completed or ceases to be active. For~~
30 ~~purposes of this subsection, an investigation is considered~~
31 ~~active while such investigation is being conducted by the~~

1 ~~department with a reasonable, good faith belief that it may~~
2 ~~lead to the filing of administrative, civil, or criminal~~
3 ~~proceedings. An investigation does not cease to be active if~~
4 ~~the department is proceeding with reasonable dispatch, and~~
5 ~~there is a good faith belief that action may be initiated by~~
6 ~~the department or other regulatory, administrative, or law~~
7 ~~enforcement agency. After an investigation is completed or~~
8 ~~ceases to be active, portions of such records relating to the~~
9 ~~investigation shall be confidential and exempt from the~~
10 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
11 ~~Constitution, to the extent that disclosure would:~~

12 1.(a) Jeopardize the integrity of another active
13 investigation;

14 ~~(b) Impair the safety and soundness of a money~~
15 ~~transmitter or authorized vendor;~~

16 2.(c) Reveal personal financial information;

17 3.(d) Reveal the identity of a confidential source; or

18 ~~(e) Defame or cause unwarranted damage to the good~~
19 ~~name or reputation, or jeopardize the safety, of a person; or~~

20 4.(f) Reveal investigative techniques or procedures.

21 ~~(5) Except as otherwise provided in s. 560.121, and~~
22 ~~except for such portions that are public record, reports of~~
23 ~~examinations, operations, or conditions, including working~~
24 ~~papers, or portions thereof, prepared by, or for the use of,~~
25 ~~the department or any appropriate regulatory agency are~~
26 ~~confidential and exempt from the provisions of s. 119.07(1)~~
27 ~~and s. 24(a), Art. I of the State Constitution. However, such~~
28 ~~reports or papers or portions thereof may be released to:~~

29 ~~(a) The money transmitter under examination;~~

30 ~~(b) Proposed purchasers if necessary to protect the~~
31 ~~continued financial viability of the money transmitter;~~

1 ~~however, the department shall notify the money transmitter~~
2 ~~prior to releasing such documents;~~

3 ~~(c) Persons proposing in good faith to acquire a~~
4 ~~controlling interest in or to merge with the money~~
5 ~~transmitter; however, the department shall obtain permission~~
6 ~~from the money transmitter prior to releasing such documents;~~

7 ~~(d) Any responsible person, officer, director,~~
8 ~~employee, attorney, auditor, or independent auditor officially~~
9 ~~connected with the money transmitter, proposed purchaser, or~~
10 ~~person seeking to acquire a controlling interest in or merge~~
11 ~~with the money transmitter; however, the department shall~~
12 ~~obtain permission from the money transmitter prior to~~
13 ~~releasing such documents; or~~

14 ~~(e) A bonding company, upon approval of the money~~
15 ~~transmitter.~~

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17 ~~Any confidential information or records obtained from the~~
18 ~~department pursuant to this subsection shall be maintained as~~
19 ~~confidential and exempt from the provisions of s. 119.07(1)~~
20 ~~and s. 24(a), Art. I of the State Constitution.~~

21 ~~(3)(6)~~ This section does shall not prevent or
22 restrict:

23 (a) Furnishing records or information to any
24 appropriate regulatory agency if ~~provided that~~ such agency
25 adheres to the confidentiality provisions of the code;

26 (b) Furnishing records or information to an
27 independent third party or a certified public accountant who
28 has been approved by the department to conduct an examination
29 under s. 560.118(1)(b), if the independent third party or
30 certified public accountant adheres to the confidentiality
31 provisions of the code; or

1 ~~(b) Disclosing or publishing summaries of the~~
2 ~~condition of money transmitters as well as general economic~~
3 ~~and similar statistics or data, provided that the identity of~~
4 ~~a particular money transmitter is not disclosed and may not be~~
5 ~~ascertained; or~~

6 (c) Reporting any suspected criminal activity, with
7 supporting documents and information, to appropriate law
8 enforcement or prosecutorial agencies.

9
10 ~~Any confidential information or records obtained from the~~
11 ~~department pursuant to this subsection shall be maintained as~~
12 ~~confidential and exempt from the provisions of s. 119.07(1)~~
13 ~~and s. 24(a), Art. I of the State Constitution.~~

14 ~~(7) All reports and records filed with the department~~
15 ~~pursuant to s. 560.123 are confidential and exempt from the~~
16 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~
17 ~~Constitution. However, the department shall provide any report~~
18 ~~filed pursuant to such section, or information contained~~
19 ~~therein, to federal, state, and local law enforcement and~~
20 ~~prosecutorial agencies, and to any federal or state agency~~
21 ~~responsible for the regulation or supervision of money~~
22 ~~transmitters.~~

23 ~~(8) Confidential records and information furnished~~
24 ~~pursuant to a legislative subpoena shall be kept confidential~~
25 ~~by the legislative body or committee that receives the records~~
26 ~~or information, except in a case involving investigation of~~
27 ~~charges against a public official subject to impeachment or~~
28 ~~removal, and then disclosure of such information shall be only~~
29 ~~to the extent determined to be necessary by the legislative~~
30 ~~body or committee.~~

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1 (4) All quarterly reports submitted by a money
2 transmitter to the department under s. 560.118(2) are
3 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
4 of the State Constitution.

5 ~~(5)(9)~~ Examination reports, investigatory records,
6 applications, and related information compiled by the
7 department, or photographic copies thereof, shall be retained
8 by the department for a period of at least 10 years.

9 ~~(6)(10)~~ Any person who willfully discloses information
10 made confidential by this section commits a felony of the
11 third degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

13 ~~(7)(11)~~ The exemptions created pursuant to this
14 section subsections (1)-(11) for purposes of the Money
15 Transmitters' Code in this chapter, as created by chapter
16 94-238, Laws of Florida, and chapter 94-354, Laws of Florida,
17 are exempt from the provisions of ss. 119.07(1) and 286.011
18 and s. 24(a) and (b), Art. I of the State Constitution.

19 Section 2. The Legislature finds that it is a public
20 necessity that records of investigations and examinations
21 conducted by the Department of Banking and Finance under
22 chapter 560, Florida Statutes, including records of consumer
23 complaints, be held confidential and exempt in order not to
24 compromise the investigation or examination and disclose
25 potentially inaccurate information. Such compromise would
26 impede the effective and efficient operation of investigatory
27 and examination functions. Additionally, the Legislature finds
28 that it is a public necessity that proprietary or trade
29 secrets remain confidential and exempt at all times because
30 the disclosure of such information would injure the affected
31 party in the marketplace. Further, the Legislature finds that

1 it is a public necessity that consumer complaints be held
2 confidential and exempt after an investigation ceases to be
3 active to the extent that disclosure would jeopardize other
4 investigations or reveal other information that should be
5 confidential. Disclosure of a consumer complaint could lead to
6 discrimination against the complainant by others. The harm
7 caused to such a complainant by the release of this
8 information outweighs any public benefit derived from its
9 release.

10 Section 3. This act shall take effect upon becoming a
11 law.

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14 SENATE SUMMARY

15 Revises certain restrictions placed on access to
16 hearings, proceedings, and related documents of the
17 Department of Banking and Finance which concern
18 investigations or examinations conducted under the Money
19 Transmitters' Code. Provides that information concerning
20 investigations or examinations conducted by the
21 department are confidential and exempt from disclosure
22 under the public records law. Deletes certain
23 restrictions placed on access to hearings, proceedings,
24 and related documents of the department. Deletes certain
25 limitations placed on the disclosure of reports prepared
26 by, or for the use of, the department. (See bill for
27 details.)
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