

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; defining terms; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is

27 considered "active" while such investigation is being conducted  
28 by the office with a reasonable, good faith belief that it may  
29 lead to the filing of administrative, civil, or criminal  
30 proceedings. An investigation does not cease to be active if the  
31 office is proceeding with reasonable dispatch, and there is a  
32 good faith belief that action may be initiated by the office or  
33 other administrative or law enforcement agency. After an  
34 investigation is completed or ceases to be active, portions of  
35 the such records relating to the investigation are ~~shall be~~  
36 confidential and exempt from ~~the provisions of~~ s. 119.07(1) to  
37 the extent that disclosure would:

- 38 (a) Jeopardize the integrity of another active  
39 investigation;
- 40 (b) Impair the safety and soundness of the financial  
41 institution;
- 42 (c) Reveal personal financial information;
- 43 (d) Reveal the identity of a confidential source;
- 44 (e) Defame or cause unwarranted damage to the good name or  
45 reputation of an individual or jeopardize the safety of an  
46 individual; or
- 47 (f) Reveal investigative techniques or procedures.
- 48 (2) Except as otherwise provided in this section and  
49 except for such portions thereof which are public record,  
50 reports of examinations, operations, or condition, including  
51 working papers, or portions thereof, prepared by, or for the use  
52 of, the office or any state or federal agency responsible for

53 the regulation or supervision of financial institutions in this  
54 state are confidential and exempt from ~~the provisions of s.~~  
55 119.07(1). However, such reports or papers or portions thereof  
56 may be released to:

57 (a) The financial institution under examination;

58 (b) Any holding company of which the financial institution  
59 is a subsidiary;

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

63 (d) Persons proposing in good faith to acquire a  
64 controlling interest in or to merge with the financial  
65 institution, upon prior approval by the board of directors of  
66 such financial institution;

67 (e) Any officer, director, committee member, employee,  
68 attorney, auditor, or independent auditor officially connected  
69 with the financial institution, holding company, proposed  
70 purchaser, or person seeking to acquire a controlling interest  
71 in or merge with the financial institution; or

72 (f) A fidelity insurance company, upon approval of the  
73 financial institution's board of directors. However, a fidelity  
74 insurance company may receive only that portion of an  
75 examination report relating to a claim or investigation being  
76 conducted by such fidelity insurance company.

77 (g) Examination, operation, or condition reports of a  
78 financial institution shall be released by the office within 1

79 year after the appointment of a liquidator, receiver, or  
 80 conservator to the ~~such~~ financial institution. However, any  
 81 portion of such reports which discloses the identities of  
 82 depositors, bondholders, members, borrowers, or stockholders,  
 83 other than directors, officers, or controlling stockholders of  
 84 the institution, shall remain confidential and exempt from ~~the~~  
 85 ~~provisions of~~ s. 119.07(1).

86  
 87 Any confidential information or records obtained from the office  
 88 pursuant to this paragraph shall be maintained as confidential  
 89 and exempt from ~~the provisions of~~ s. 119.07(1).

90 (3) Except as otherwise provided in this section and  
 91 except for those portions that are otherwise public record,  
 92 after an investigation relating to an informal enforcement  
 93 action is completed or ceases to be active, informal enforcement  
 94 actions are confidential and exempt from s. 119.07(1) and s.  
 95 24(a), Art. I of the State Constitution to the extent that  
 96 disclosure would:

97 (a) Jeopardize the integrity of another active  
 98 investigation.

99 (b) Impair the safety and soundness of the financial  
 100 institution.

101 (c) Reveal personal financial information.

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

103 (e) Defame or cause unwarranted damage to the good name or  
 104 reputation of an individual or jeopardize the safety of an

105 individual.

106 (f) Reveal investigative techniques or procedures.

107 (4) Except as otherwise provided in this section and  
 108 except for those portions that are otherwise public record,  
 109 trade secrets as defined in s. 688.002 which comply with s.  
 110 655.0591 and which are held by the office in accordance with its  
 111 statutory duties with respect to the financial institutions  
 112 codes are confidential and exempt from s. 119.07(1) and s.  
 113 24(a), Art. I of the State Constitution.

114 (5) ~~(3)~~ ~~The provisions of This section~~ does ~~de~~ not prevent  
 115 or restrict:

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

119 (b) Furnishing records or information to any other state,  
 120 federal, or foreign agency responsible for the regulation or  
 121 supervision of financial institutions, including Federal Home  
 122 Loan Banks.

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

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

130 (e) Furnishing information upon request to the Chief

131 Financial Officer or the Division of Treasury of the Department  
 132 of Financial Services regarding the financial condition of any  
 133 financial institution that is, or has applied to be, designated  
 134 as a qualified public depository pursuant to chapter 280.

135  
 136 Any confidential information or records obtained from the office  
 137 pursuant to this subsection shall be maintained as confidential  
 138 and exempt from ~~the provisions of~~ s. 119.07(1).

139 (6) (a) ~~(4) (a)~~ Orders of courts or of administrative law  
 140 judges for the production of confidential records or information  
 141 shall provide for inspection in camera by the court or the  
 142 administrative law judge and, after the court or administrative  
 143 law judge has made a determination that the documents requested  
 144 are relevant or would likely lead to the discovery of admissible  
 145 evidence, such ~~said~~ documents shall be subject to further orders  
 146 by the court or the administrative law judge to protect the  
 147 confidentiality thereof. An ~~Any~~ order directing the release of  
 148 information is ~~shall be~~ immediately reviewable, and a petition  
 149 by the office for review of such order ~~shall~~ automatically stays  
 150 ~~stay~~ further proceedings in the trial court or the  
 151 administrative hearing until the disposition of such petition by  
 152 the reviewing court. If any other party files such a petition  
 153 for review, it operates ~~will operate~~ as a stay of such  
 154 proceedings only upon order of the reviewing court.

155 (b) Confidential records and information furnished  
 156 pursuant to a legislative subpoena shall be kept confidential by

157 the legislative body or committee that ~~which~~ received the  
 158 records or information, except in a case involving investigation  
 159 of charges against a public official subject to impeachment or  
 160 removal. ~~and then~~ Disclosure of such information shall be only  
 161 to the extent determined necessary by the legislative body or  
 162 committee ~~to be necessary~~.

163 (7) ~~(5)~~ Every credit union and mutual association shall  
 164 maintain, in the principal office where its business is  
 165 transacted, full and correct records of the names and residences  
 166 of all the members of the credit union or mutual association.  
 167 Such records are ~~shall be~~ subject to the inspection of all the  
 168 members of the credit union or mutual association, and the  
 169 officers authorized to assess taxes under state authority,  
 170 during business hours of each business day. A current list of  
 171 members shall be made available to the office's examiners for  
 172 their inspection and, upon the request of the office, shall be  
 173 submitted to the office. Except as otherwise provided in this  
 174 subsection, the list of the members of the credit union or  
 175 mutual association is confidential and exempt from ~~the~~  
 176 ~~provisions of~~ s. 119.07(1).

177 (8) ~~(6)~~ Every bank, trust company, and stock association  
 178 shall maintain, in the principal office where its business is  
 179 transacted, full and complete records of the names and  
 180 residences of all the shareholders of the bank, trust company,  
 181 or stock association and the number of shares held by each. Such  
 182 records are ~~shall be~~ subject to the inspection of all the

183 shareholders of the bank, trust company, or stock association,  
184 and the officers authorized to assess taxes under state  
185 authority, during business hours of each banking day. A current  
186 list of shareholders shall be made available to the office's  
187 examiners for their inspection and, upon the request of the  
188 office, shall be submitted to the office. Except as otherwise  
189 provided in this subsection, any portion of this list which  
190 reveals the identities of the shareholders is confidential and  
191 exempt from ~~the provisions of~~ s. 119.07(1).

192 (9)~~(7)~~ Materials supplied to the office or to employees of  
193 any financial institution by other state or federal governmental  
194 agencies, ~~federal or state,~~ shall remain the property of the  
195 submitting agency or the corporation, and any document request  
196 must be made to the appropriate agency. Any confidential  
197 documents supplied to the office or to employees of any  
198 financial institution by other state or federal governmental  
199 agencies are, ~~federal or state,~~ shall be confidential and exempt  
200 from ~~the provisions of~~ s. 119.07(1). Such information shall be  
201 made public only with the consent of such agency or the  
202 corporation.

203 (10)~~(8)~~ Examination reports, investigatory records,  
204 applications, and related information compiled by the office, or  
205 photographic copies thereof, shall be retained by the office for  
206 ~~a period of~~ at least 10 years.

207 (11)~~(9)~~ A copy of any document on file with the office  
208 which is certified by the office as being a true copy may be

209 introduced in evidence as if it were the original. The  
 210 commission shall establish a schedule of fees for preparing true  
 211 copies of documents.

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

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

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

219 1. The office imposes on an institution when the office  
 220 considers the administrative enforcement guidelines in s.  
 221 655.031 and determines that a formal enforcement action is not  
 222 an appropriate administrative remedy;

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

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

228 (c) "Personal financial information" means:

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

231 2. Information relating to a person's financial  
 232 transactions of any kind.

233 3. Information relating to the existence, identification,  
 234 nature, or value of a person's assets, liabilities, or net

235 worth.

236 (d) "Working papers" means the records of the procedures  
 237 followed, the tests performed, the information obtained, and the  
 238 conclusions reached in an examination or investigation performed  
 239 under s. 655.032 or s. 655.045. Working papers include planning  
 240 documentation, work programs, analyses, memoranda, letters of  
 241 confirmation and representation, abstracts of the books and  
 242 records of a financial institution as defined in s. 655.005(1),  
 243 and schedules or commentaries prepared or obtained in the course  
 244 of such examination or investigation.

245 (13)-(10) A ~~Any~~ person who willfully discloses information  
 246 made confidential by this section commits ~~is guilty of~~ a felony  
 247 of the third degree, punishable as provided in s. 775.082, s.  
 248 775.083, or s. 775.084.

249 (14) Subsections (3) and (4) are subject to the Open  
 250 Government Sunset Review Act in accordance with s. 119.15 and  
 251 shall stand repealed on October 2, 2019, unless reviewed and  
 252 saved from repeal through reenactment by the Legislature.

253 Section 2. (1) The Legislature finds that it is a public  
 254 necessity that informal enforcement actions and trade secrets,  
 255 as defined in s. 688.002, Florida Statutes, be kept confidential  
 256 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 257 Article I of the State Constitution.

258 (2) Public disclosure of an informal enforcement action  
 259 could further impair the safety and soundness of a financial  
 260 institution that is subject to the action. Furthermore, the

261 public disclosure of this information could erode public  
262 confidence in financial institutions and the financial  
263 institution system in this state and may lead to a reduced level  
264 of protection of the interests of the depositors and creditors  
265 of financial institutions. Maintaining informal enforcement  
266 actions as confidential and exempt from s. 119.07(1), Florida  
267 Statutes, and s. 24(a), Article I of the State Constitution will  
268 provide to the financial institutions that are chartered by this  
269 state the same protections as those already available to  
270 financial institutions chartered under federal law and by other  
271 states, maintain public confidence in financial institutions  
272 subject to the financial institutions codes, protect the safety  
273 and soundness of the financial institution system in this state,  
274 protect the interests of the depositors and creditors of  
275 financial institutions, promote the opportunity for state-  
276 chartered financial institutions to be and remain competitive  
277 with financial institutions chartered by other states or the  
278 United States, and otherwise provide for and promote the  
279 purposes of the financial institutions codes as set forth in s.  
280 655.001, Florida Statutes.

281 (3) A trade secret derives independent economic value,  
282 actual or potential, from not being generally known to, and not  
283 readily ascertainable by, other persons who can obtain economic  
284 value from the disclosure or use of the trade secret. Without an  
285 exemption for a trade secret held by the office, that trade  
286 secret becomes a public record when received and must be

287 divulged upon request. Divulging a trade secret under the public  
288 records law would give business competitors an unfair advantage  
289 and destroy the value of that property, causing a financial loss  
290 to the person or entity submitting the trade secret and  
291 weakening the position of that person or entity in the  
292 marketplace.

293 Section 3. This act shall take effect on the same date  
294 that HB 673 or similar legislation takes effect, if such  
295 legislation is adopted in the same legislative session or an  
296 extension thereof and becomes a law.