

STORAGE NAME: h1939a.go
DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 1939 (PCB FS 00-02)

RELATING TO: Public Records/Money Transmitters

SPONSOR(S): Committee on Financial Services and Representative Crow

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 11 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

During the 1999 Interim the Joint Legislative Task Force on Illicit Money Laundering made several legislative recommendations to address the concerns of Florida's law enforcement and regulatory agencies regarding illicit money laundering in our state. This bill addresses concerns raised by the Task Force regarding the need for a revision of the public records exemptions currently granted to money transmitters under ch. 560, F.S.

Specifically, this bill would repeal the public records and meetings exemptions related to hearings and pleadings conducted for violations of the code. The confidentiality of records collected pursuant to an investigation or examination would be preserved by the proposal, if they are part of an active investigation or examination and the records are adjudged to contain information relating to trade secrets, personal financial information or a consumer complaint. Additionally, if an investigation or examination does not lead to an administrative, civil, or criminal charge, the information collected by the Department of Banking and Finance or any other enforcement agency may remain confidential.

This bill would further revise s. 560.129, F.S., to clarify that exempted information may be given to other enforcement agencies or departmentally approved third parties involved in an investigation or examination if those entities adhere to the confidentiality provisions of the Money Transmitters' Code. An exemption is provided for the quarterly reports the department may require a licensee to file and the current penalty for willfully disclosing confidential information is reduced from a third degree felony to a first degree misdemeanor.

Finally, the bill provides a statement of public necessity, and shall take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

Certain entities now enjoy a blanket protection for information supplied or gathered by the Department of Banking and Finance relative to certain required reports or an examination or investigation under the Money Transmitters' Code. These entities would have to substantiate reasons to have confidentiality continued for personal financial information or information considered a trade secret.

B. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and

may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Meetings Law

Article I, section 24(b), Florida Constitution, expresses Florida's public policy regarding access to public meetings. This section provides that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public....

Article I, section 24(c), Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in section 24(b) if such law states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Trade Secrets

The Florida Statutes also provide for the protection of trade secrets under ch. 688, F.S., and s. 812.081, F.S. Both of these statutes define trade secrets in terms of information relating to formulas, patterns, compilations, programs, devices, methods, techniques, or processes which hold an independent economic value and are therefore an inherent part of

the economic advantage a business has over its competitors. The definition under s. 812.081, F.S., expands upon this basic definition by referring to the whole or any portion of such information. It further references any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Money Transmitters' Code

Under the confidentiality provision of the Money Transmitters' Code, s. 560.129, F.S., hearings and proceedings are confidential and exempt from the public hearings requirements pursuant to s. 286.011, F.S., and documents related to such hearings and proceedings are confidential and exempt from the public records provisions under s. 119.07, F.S. Orders of courts or administrative law judges for production of confidential records provide for an in camera inspection by the court or judge of these records and any ruling allowing the release of such records is subject to immediate review.

Emergency orders issued by the department against money transmitters are confidential until such orders are made permanent. Also, all records and information relating to investigations are confidential and exempt from the public records law, until the investigation is completed and ceases to be "active," however, portions of such records may remain confidential if disclosure would jeopardize another investigation or reveal certain specified information.

Reports of examinations of money transmitters, including working papers, are also confidential, however, such reports may be released to the money transmitter under examination and other specified persons. Money laundering records are also confidential, however, such records may be furnished by the department to federal, state and local law enforcement. All reports and records must further be retained by the department for a period of 10 years. It is a third degree felony for any person to wilfully disclose confidential information.

Illicit Money Laundering Task Force

The Illicit Money Laundering Task Force found that Florida's financial institutions and businesses are conduits for money laundering operations because they provide a variety of services and products that can be used to conceal the source of illicit money. Financial entities and the self-described "non-banking" community, e.g., money transmitters, offer services and instruments (cashiers' checks, travelers' checks, wire transfers, etc.) that may be utilized in laundering activities. Representatives with the Department of Banking and Finance told the Task Force that certain confidentiality provisions relating to money transmitters were confusing and that it was necessary to repeal the exemptions pertaining to closed hearings and meetings, so that such hearings concerning code violators could be open to the public. The Task Force approved repealing these exemptions, but clarified that

investigations and examinations, with certain exceptions, are to remain confidential until they cease to be "active."

During its deliberations, the Task Force heard the testimony of state regulators and representatives of the money transmitter industry. The Task Force recommendations concerning confidentiality provisions were fashioned with consideration being given to balancing the interests of all sides while achieving the goal of providing a stronger framework to combat money laundering in the state.

C. EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 560.129, F.S., relating to money transmitters, to provide that all information concerning investigations or examinations conducted by the Department of Banking and Finance is confidential and exempt from disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, until such investigations or examinations cease to be "active." An investigation or examination is considered "active" so long as the department or any other administrative, regulatory, or law enforcement agency is proceeding with reasonable dispatch and has a reasonable good faith belief that action may be initiated by said department or agency.

The bill provides that information obtained by the department pursuant to its investigation or examination which is a trade secret under s. 688.002, F.S., or which is personal financial information shall remain confidential. However, if an administrative, civil or criminal proceeding is initiated against a money transmitter and the department seeks to use information which the transmitter believes is a trade secret or personal financial information, such information shall be subject to an *in camera review* by the judge, to determine if the matter is a trade secret or personal financial information. If it is determined that the matter is a trade secret, the matter would remain confidential. If it is determined that the matter is personal financial information, the matter shall remain confidential unless the judge determines, in the interests of justice, the matter should become public.

If the proceeding against a money transmitter results in an acquittal or dismissal of allegations, upon the request of any party, the judge may order all or a portion of the record to be sealed, and thus confidential and exempt from disclosure. Except as necessary for the department or any agency to enforce the provisions of ch. 560, F.S., a consumer complaint and other information concerning an investigation or examination are to remain confidential and exempt from the public records law after the investigation ceases to be "active" to the extent disclosure would:

- (1) jeopardize the integrity of another active investigation;
- (2) reveal personal financial information;
- (3) reveal the identify of a confidential source; or
- (4) reveal investigative techniques or procedures.

The bill provides that furnishing records to an independent third party or a certified public accountant (CPA) who conducts an examination is allowed if the third party or CPA adheres to the confidentiality provisions of the code.

The bill also deletes certain restrictions placed on access to hearings and proceedings, and removes confidentiality limitations placed on the disclosure of documents and reports required to be filed with the department under s. 560.125, F.S. An exception is made for quarterly reports which are submitted by a money transmitter to the department. According

to representatives with the money transmitter industry, these reports are confidential because they contain detailed financial information which could be useful to competitors.

Additionally, the bill reduces the current penalty for willfully disclosing confidential information from a third degree felony to a first degree misdemeanor. State agency personnel and court personnel would be most affected by this provision since to the greatest extent these records are maintained in the possession of these branches of government.

Section 2. The Legislative findings provided in the bill state that it is a public necessity that information contained in investigations and examinations be held confidential in order not to compromise the investigation or examination and disclose potentially inaccurate information. Such compromise would impede the effective operation of active investigatory and examination functions. Additionally, it is a public necessity for trade secrets and consumer complaints to be confidential under certain circumstances.

Section 3. Provides that this bill shall take effect upon becoming a law. Although this bill reflects one of the recommendations of the Task Force and complements other bills related to those recommendations, the enactment of the bill is not tied to the passage of those other bills.

D. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES section above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties and municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill relates only to public records and public meetings exemptions and therefore complies with the requirements of s. 24, Art I of the State Constitution. The bill also contains a statement of public necessity which justifies the noted exemptions.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill is one of the recommendations of the Joint Legislative Task Force on Illicit Money Laundering which was established last year by Senate President Jennings and House Speaker Thrasher to address the money laundering problem in Florida. The Task Force heard extensive testimony from criminal justice officials, transportation representatives, banking and business persons, state and local government officers, and community leaders. In November 1999, the Task Force issued its final report, *Money Laundering in Florida: Report of the Legislative Task Force*, which contained numerous proposals impacting the areas of law enforcement and prosecution, transportation and distribution, and financial institutions and businesses.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 7, 2000, the Committee on Financial Services adopted one amendment to the PCB which allows any of the parties involved in an administrative, civil, or criminal proceeding to request that the records be closed in the event of a dismissal or acquittal by changing the term "either party" to "any party," and gives the judge the ultimate authority to make such a decision by changing the term "shall order" to "may order." The amendment was incorporated into the bill as reported out of committee.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Susan F. Cutchins

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Douglas Pile

Staff Director:

Jimmy O. Helms