

**SB 234** by **Montford**; (Similar to H 4011) Motor Vehicle Insurance

377028 A S RCS BI, Montford Delete L.33 - 50: 02/03 11:41 AM

**SB 202** by **Bradley**; (Similar to H 0273) Insurance Policy Documents

912332 A S RCS BI, Smith Delete L.46 - 60: 02/03 11:41 AM

**SPB 7008** by **BI**; OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

**SPB 7010** by **BI**; OGSR/Examination Techniques or Procedures/Office of Financial Regulation

**SPB 7012** by **BI**; OGSR/Credit History Information and Credit Scores/Office of Financial Regulation

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Benacquisto, Chair**  
**Senator Richter, Vice Chair**

**MEETING DATE:** Tuesday, February 3, 2015  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Benacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, Margolis, Montford, Negron, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 234</b> Montford (Similar H 4011)	Motor Vehicle Insurance; Revising the definition of the term "motor vehicle insurance" to include a policy that insures more than four automobiles; reenacting provisions to incorporate the amendments made to s. 627.041(8), F.S., in a reference thereto, etc.  BI      02/03/2015 Fav/CS JU RC	Fav/CS Yeas 11 Nays 0
2	<b>SB 202</b> Bradley (Similar H 273, Compare H 165, S 258)	Insurance Policy Documents; Authorizing a policyholder of personal lines insurance to elect delivery of policy documents by electronic means; revising the requirements applicable to insurers when providing a notice of change in renewal policy terms to allow such notice to be sent separately from the notice of renewal premium within a specified timeframe, etc.  BI      02/03/2015 Fav/CS CM	Fav/CS Yeas 11 Nays 0
Consideration of proposed bill:			
3	<b>SPB 7008</b>	OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services; Amending provisions relating to an exemption from public meeting requirements for portions of meetings of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services at which licensure examination questions or answers are discussed; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Submitted as Committee Bill Yeas 11 Nays 0
Consideration of proposed bill:			

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, February 3, 2015, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SPB 7010</b>	OGSR/Examination Techniques or Procedures/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for information that would reveal examination techniques or procedures used by the Office of Financial Regulation under the Florida Securities and Investor Protection Act; saving the exemption from repeal under the Open Government Sunshine Act, etc.	Submitted as Committee Bill Yeas 11 Nays 0
Consideration of proposed bill:			
5	<b>SPB 7012</b>	OGSR/Credit History Information and Credit Scores/Office of Financial Regulation; Amending provisions which provide a public records exemption for credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers, and mortgage lenders; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Submitted as Committee Bill Yeas 11 Nays 0

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 234

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Motor Vehicle Insurance

DATE: February 3, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 234 removes the Rating Law prohibition against insuring more than four automobiles per motor vehicle insurance policy.

**II. Present Situation:**

Since the passage of HB 4B in 1971<sup>1</sup>, insurers have been limited to insuring no more than four automobiles per motor vehicle insurance policy.<sup>2</sup> Most insurers write one policy per vehicle or write multiple policies for a single policyholder who seeks to insure more than four automobiles.<sup>3</sup>

Under the Rating Law,<sup>4</sup> a motor vehicle insurance policy is defined by s. 627.041(8), F.S., as a policy that insures a motor vehicle of the private passenger type.<sup>5</sup> Generally, private passenger automobiles include vehicles such as sedans, station-wagons, and jeeps. Also included are trucks and vans that are not used for business purposes. Examples of this classification include

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<sup>1</sup> 71-3B s.4 L.O.F.

<sup>2</sup> There are no historical archive records available on the passage of HB 4B.

<sup>3</sup> The term "automobile" is not defined in the Florida Statutes. The Oxford Dictionary definition for "automobile" is "a road vehicle, typically with four wheels, powered by an internal combustion engine or electric motor and able to carry a small number of people." <http://www.oxforddictionaries.com/us> (Last viewed 2/4/15)

<sup>4</sup> Sections 627.011-627.381, F.S.

<sup>5</sup> The policy must be delivered or issued for delivery by a Florida-authorized insurer. Additionally, the policy must insure a natural person as the named insured or one or more related individuals resident of the same household, or both.

s. 627.732(3), F.S., where for purposes of the Florida Motor Vehicle No-Fault Law, a private passenger motor vehicle is defined as “any motor vehicle which is a sedan, station wagon, or jeep-type vehicle and, if not used primarily for occupational, professional, or business purposes, a motor vehicle of the pickup, panel, van, camper, or motor home type.” A similar definition is used by the Insurance Services Office (ISO), which defines a private passenger automobile as “a four-wheel auto of the private passenger or station wagon type. A pickup, panel truck or van not used for business is rated as a private passenger auto.”<sup>6</sup>

### **III. Effect of Proposed Changes:**

CS/SB 234 deletes the prohibition in s. 627.041(8), F.S., against insuring more than four automobiles in a single motor vehicle insurance policy. Policyholders will no longer need multiple policies to insure more than four private passenger motor vehicles. The CS also conforms this change to the definition of motor vehicle in s. 627.728(1)(a)2., F.S. The Office of Insurance Regulation has indicated they have no concerns on the removal of this restriction.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

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<sup>6</sup> <http://www.faiia.com/core/contentmanager/uploads/FIRL/PDFs/FIRL%20Project%20ISO%20CA%20Rules%2092011.pdf>  
(Last viewed 1/28/15)

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 627.041 and 627.728 of the Florida Statutes.

This bill reenacts sections 626.9541, 627.0651, 627.4133, 627.420, 627.43414, 627.7277, 627.7281 and 627.7295 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 3, 2015:**

The CS conforms the change to the definition of a motor vehicle insurance policy found in s. 627.041(8)(b), F.S., to the definition of a motor vehicle insurance policy found in s. 627.728(1)(a)2., F.S.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2015	.	
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The Committee on Banking and Insurance (Montford) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 33 - 50

and insert:

Section 2. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

(1) As used in this section, the term:

(a) "Policy" means the bodily injury and property damage liability, personal injury protection, medical payments,



377028

11 comprehensive, collision, and uninsured motorist coverage  
12 portions of a policy of motor vehicle insurance delivered or  
13 issued for delivery in this state:

14 1. Insuring a natural person as named insured or one or  
15 more related individuals resident of the same household; and

16 2. Insuring only a motor vehicle of the private passenger  
17 ~~type~~ or station wagon type which is not used as a public or  
18 livery conveyance for passengers or rented to others; or  
19 insuring any other four-wheel motor vehicle having a load  
20 capacity of 1,500 pounds or less which is not used in the  
21 occupation, profession, or business of the insured other than  
22 farming; other than any policy issued under an automobile  
23 insurance assigned risk plan; ~~insuring more than four~~  
24 ~~automobiles~~; or covering garage, automobile sales agency, repair  
25 shop, service station, or public parking place operation  
26 hazards.

27

28 The term "policy" does not include a binder as defined in s.  
29 627.420 unless the duration of the binder period exceeds 60  
30 days.

31 Section 3. Paragraph (b) of subsection (5) of s. 627.0651,  
32 Florida Statutes, is reenacted for the purpose of incorporating  
33 the amendment made by this act to s. 627.041, Florida Statutes,  
34 in a reference thereto.

35 Section 4. Paragraph (o) of subsection (1) of s. 626.9541,  
36 paragraphs (a) and (b) of subsection (1) of s. 627.4133, s.  
37 627.420, subsection (2) of s. 627.43141, subsection (1) of s.  
38 627.7277, s. 627.7281, and subsection (4) of s. 627.7295,  
39 Florida Statutes, are reenacted for the purpose of incorporating





377028

40 the amendment made by this act to s. 627.728, Florida Statutes,  
41 in references thereto.

42  
43

44 ===== T I T L E A M E N D M E N T =====

45 And the title is amended as follows:

46 Delete lines 5 - 7

47 and insert:

48 insures more than four automobiles; amending s.  
49 627.728, F.S.; revising the definition of the term  
50 "policy" to include a policy that insures more than  
51 four automobiles; reenacting s. 627.0651(5)(b), F.S.,  
52 to incorporate the amendment made to s. 627.041, F.S.,  
53 in a reference thereto; reenacting ss. 626.9541(1)(o),  
54 627.4133(1)(a) and (b), 627.420, 627.43141(2),  
55 627.7277(1), 627.7281, and 627.7295(4), to incorporate  
56 the amendment made to s. 627.728, Florida Statutes, in  
57 references thereto;

By Senator Montford

3-00391-15

2015234\_\_

1                                   A bill to be entitled  
 2           An act relating to motor vehicle insurance; amending  
 3           s. 627.041, F.S.; revising the definition of the term  
 4           "motor vehicle insurance" to include a policy that  
 5           insures more than four automobiles; reenacting s.  
 6           627.0651(5)(b), F.S., to incorporate the amendments  
 7           made to s. 627.041(8), F.S., in a reference thereto;  
 8           providing an effective date.  
 9  
 10   Be It Enacted by the Legislature of the State of Florida:  
 11  
 12           Section 1. Subsection (8) of section 627.041, Florida  
 13   Statutes, is amended to read:  
 14           627.041 Definitions.—As used in this part:  
 15           (8) "Motor vehicle insurance" means a policy of motor  
 16   vehicle insurance delivered or issued for delivery in the state  
 17   by an authorized insurer:  
 18           (a) Insuring a natural person as the named insured or one  
 19   or more related individuals resident of the same household, or  
 20   both; and  
 21           (b) Insuring a motor vehicle of the private passenger ~~type~~  
 22   or station wagon type, which ~~motor vehicle~~ is not used as public  
 23   or livery conveyance for passengers or rented to others, or  
 24   insuring any other four-wheeled motor vehicle having a capacity  
 25   of 1,500 pounds or less which is not used in the occupation,  
 26   profession, or business of the insured, other than farming;  
 27  
 28   other than any policy issued under an automobile insurance risk  
 29   apportionment plan; ~~or other than any policy insuring more than~~

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

3-00391-15

2015234\_\_

30 ~~four automobiles, or other than~~ any policy covering garage,  
 31 automobile sales agency, repair shop, service station, or public  
 32 parking place operation hazards.  
 33           Section 2. For the purpose of incorporating the amendment  
 34 made by this act to section 627.041(8), Florida Statutes, in a  
 35 reference thereto, paragraph (b) of subsection (5) of section  
 36 627.0651, Florida Statutes, is reenacted to read:  
 37           627.0651 Making and use of rates for motor vehicle  
 38 insurance.—  
 39           (5)  
 40           (b) The office has the responsibility to ensure that rates  
 41 for private passenger vehicle insurance are adequate. To that  
 42 end, the commission shall adopt rules establishing standards  
 43 defining inadequate rates on private passenger vehicle insurance  
 44 as defined in s. 627.041(8). In the event that the office finds  
 45 that a rate or rate change is inadequate, the office shall order  
 46 that a new rate or rate schedule be thereafter filed by the  
 47 insurer and shall further provide information as to the manner  
 48 in which noncompliance of the standards may be corrected. When a  
 49 violation of this provision occurs, the office shall impose an  
 50 administrative fine pursuant to s. 624.4211.  
 51           Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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**BILL:** CS/SB 202

**INTRODUCER:** Banking and Insurance Committee and Senator Bradley

**SUBJECT:** Insurance Policy Documents

**DATE:** February 3, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			CM	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 202 allows an insurer to use electronic transmission as an acceptable means to meet statutory requirements for delivery of a personal lines insurance policy. The insurer may only deliver personal lines policy documents electronically if the policyholder selects electronic delivery instead of delivery by U.S. mail.

The bill also allows a Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured.

The bill additionally defines "optional coverage." The bill prohibits the use of the Notice of Change in Policy Terms if the new terms add optional coverage that increases premium, unless the policyholder affirmatively approves adding the optional coverage.

**II. Present Situation:**

**The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN)**

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>1</sup> Insurance is specifically included in

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<sup>1</sup> Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

E- SIGN.<sup>2</sup> E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Arguably, the affirmative consent and notification requirements of E- SIGN apply to the delivery of insurance policies in Florida because Florida law currently requires insurance policies to be delivered to the policyholder by mail or other delivery means.

### **Florida's Uniform Electronic Transaction Act (UETA)**

Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to all insurance contracts except for those covering reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance. Under this part, every insurance policy must be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.<sup>3</sup> In June 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. ESIGN provides that contracts formed using electronic signatures on electronic records will not be denied legal effect merely because they are electronic. ESIGN, however, requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under ESIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to the use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. Insurance is specifically included in ESIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), has provisions similar to the federal ESIGN. UETA specifically applies to insurance and provides a requirement that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means.

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<sup>2</sup> *Id.*

<sup>3</sup> Section 627.421(1), F.S.

### **Notice of Change in Policy Terms**

Section 627.43141, F.S., requires that when an insurer makes a change in the terms of an insurance policy upon the renewal of that policy, the insurer must give the named insured written notice of the change, and the notice must be enclosed with the written notice of renewal premium required by ss. 627.4133, F.S., and 627.728, F.S. Generally, 45 days advance written notice of the renewal premium is required for workers' compensation and employer's liability insurance, property, and casualty insurance.<sup>4</sup> Generally, an insurer is prohibited from nonrenewing a private passenger motor vehicle insurance policy unless it provides at least 45 days written notice of its intention not to renew and the reasons why the policy is not being renewed.<sup>5</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 627.421, F.S., allowing insurers to deliver personal lines insurance policies by electronic means in lieu of delivery by mail if the policyholder affirmatively elects electronic delivery. The bill does not likely implicate E-SIGN or UETA because it requires the affirmative consent of the policyholder before the electronic delivery of personal lines insurance policy documents. The electronic transmission of the policy is required under E-SIGN to include notice of the recipient's right to receive the policy by mail rather than by electronic transmission. The insurer must provide a paper copy of the policy by mail if the insured communicates to the insurer electronically or in writing that he or she does not agree to delivery by electronic means.

**Section 2** amends s. 627.43141, F.S., to allow the Notice of Change in Policy Terms to be sent separately from the Notice of Renewal Premium. If a separate notice is used, it must comply with the nonrenewal mailing time requirement for that particular line of business. Insurers must also provide a sample copy of the Notice of Change in Policy Terms to the insured's insurance agent before or at the same time the notice is given to the insured. Additionally, optional coverage is defined as the addition of new insurance not previously approved by the policyholder that does not include any changes to the base policy, deductible or insurance limits. A the Notice of Change in Policy Terms that contains optional coverage that increases the policyholder's premium, may only be used if the policyholder affirmatively indicates to the insurer or agent the policyholder approves of adding the optional coverage.

**Sections 3 and 4** reenacts sections 624.488, 627.4102 and 628.6016, F.S., for the purposes of the changes made in the bill.

**Section 5** this act shall take effect July 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>4</sup> Does not include mortgage guaranty, surety, or marine insurance. See s. 627.4133, F.S.

<sup>5</sup> Section 627.728, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By delivering electronically, insurers may save costs associated with the printing and mailing of insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many policyholders will choose to receive their policy documents electronically rather than by U.S. mail.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.421, 627.43141.

This bill reenacts the following sections of the Florida Statutes: 624.488, 627.4102, 628.6016

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 3, 2015:**

The CS defines optional coverage in s. 627.43141, F.S. A Notice of Change in Policy Terms containing optional coverage that increases the policyholder's premium, may only be used if the policyholder affirmatively indicates to the insurer or agent the policyholder approves of adding the optional coverage.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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912332

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2015	.	
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The Committee on Banking and Insurance (Smith) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 46 - 60

and insert:

Section 2. Present paragraphs (b) and (c) of subsection (1) of section 627.43141, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added to that subsection, subsection (2) of that section is amended, present subsections (3) through (6) of that section are redesignated as subsections (4) through (7), respectively, and a





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11 new subsection (3) is added to that section, to read:

12 627.43141 Notice of change in policy terms.—

13 (1) As used in this section, the term:

14 (b) "Optional coverage" means the addition of new insurance  
15 coverage that has not previously been requested or approved by  
16 the policyholder but that does not include any change to the  
17 base policy or a deductible or an insurance limit.

18 (2) A renewal policy may contain a change in policy terms.  
19 ~~If a renewal policy does contain~~ such change occurs, the insurer  
20 shall must give the named insured advance written notice of the  
21 change, which may must be enclosed ~~along~~ with the written notice  
22 of renewal premium required under by ss. 627.4133 and 627.728 or  
23 sent separately within the timeframe required under the Florida  
24 Insurance Code for the provision of a notice of nonrenewal to  
25 the named insured for that line of insurance. The insurer must  
26 also provide a sample copy of the notice to the named insured's  
27 insurance agent before or at the same time that notice is  
28 provided to the named insured. Such notice shall be entitled  
29 "Notice of Change in Policy Terms."

30 (3) A renewal policy that includes the addition of optional  
31 coverage that increases the premium to a policyholder may not  
32 use the "Notice of Change in Policy Terms" under this section to  
33 add the optional coverage to the policy unless the policyholder  
34 affirmatively indicates to the insurer or agent that the  
35 policyholder approves the addition of the optional coverage.

36 Section 3. Subsection (4) of s. 624.488 and subsection (4)  
37 of s. 628.6016, Florida Statutes, are reenacted for the purpose  
38 of incorporating the amendments made by this act to s. 627.421,  
39 Florida Statutes, in references thereto.



912332

40           Section 4. Subsection (3) of s. 627.4102, Florida Statutes,  
41 is reenacted for the purpose of incorporating the amendments  
42 made by this act to s. 627.43141, Florida Statutes, in a  
43 reference thereto.  
44

45 ===== T I T L E   A M E N D M E N T =====

46 And the title is amended as follows:

47           Delete lines 2 - 13

48 and insert:

49           An act relating to insurer notifications; amending s.  
50           627.421, F.S.; authorizing a policyholder of personal  
51           lines insurance to elect delivery of policy documents  
52           by electronic means; amending s. 627.43141, F.S.;  
53           defining the term "optional coverage"; revising the  
54           requirements applicable to insurers when providing a  
55           notice of change in policy terms for a renewal policy  
56           to include the requirement that the notice be an  
57           advance notice and to allow such notice to be sent  
58           separately from the notice of renewal premium within a  
59           specified timeframe; requiring the insurer to provide  
60           a sample copy of the notice of change in policy terms  
61           to the insurance agent at a specified time;  
62           prohibiting the use of such notice to add optional  
63           coverage that increases the policy's premium unless  
64           the policyholder approves the optional coverage;  
65           reenacting ss. 624.488(4) and 628.6016(4), F.S., to  
66           incorporate the amendments made to s. 627.421, F.S.,  
67           in references thereto; reenacting s. 627.4102(3),  
68           F.S., to incorporate the amendments made to s.



912332

69 | 627.43141, F.S., in a reference thereto; providing an  
70 | effective date.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/3/15

Meeting Date

202

Bill Number (if applicable)

*W/S*

Topic INSURANCE POLICY DOCS

Amendment Barcode (if applicable)

Name KYLE ULRICH

Job Title SVP

Address 3159 SHAMROCK S.

Phone 850-893-4155

Street

TALLAHASSEE FL

32309

Email KULRICH@FAIA.COM

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

W/S

2-3-15

202

Meeting Date

Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Monte STEVENS

Job Title DEP. CHIEF OF STAFF

Address 200 N GAINES ST  
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Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing OIR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

By Senator Bradley

7-00378-15

2015202\_\_

1 A bill to be entitled  
 2 An act relating to insurance policy documents;  
 3 amending s. 627.421, F.S.; authorizing a policyholder  
 4 of personal lines insurance to elect delivery of  
 5 policy documents by electronic means; amending s.  
 6 627.43141, F.S.; revising the requirements applicable  
 7 to insurers when providing a notice of change in  
 8 renewal policy terms to allow such notice to be sent  
 9 separately from the notice of renewal premium within a  
 10 specified timeframe; requiring the insurer to provide  
 11 a sample copy of the notice of change in renewal  
 12 policy terms to the insurance agent at a specified  
 13 time; providing an effective date.  
 14  
 15 Be It Enacted by the Legislature of the State of Florida:  
 16  
 17 Section 1. Subsection (1) of section 627.421, Florida  
 18 Statutes, is amended to read:  
 19 627.421 Delivery of policy.—  
 20 (1) Subject to the insurer's requirement as to payment of  
 21 premium, every policy shall be mailed, delivered, or  
 22 electronically transmitted to the insured or to the person  
 23 entitled thereto ~~within not later than~~ 60 days after the  
 24 effectuation of coverage. Notwithstanding any other provision of  
 25 law, an insurer may allow a policyholder of personal lines  
 26 insurance to affirmatively elect delivery of the policy  
 27 documents, including, but not limited to, policies,  
 28 endorsements, notices, or documents, by electronic means in lieu  
 29 of delivery by mail. Electronic transmission of a policy for

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00378-15

2015202\_\_

30 commercial risks, including, but not limited to, workers'  
 31 compensation and employers' liability, commercial automobile  
 32 liability, commercial automobile physical damage, commercial  
 33 lines residential property, commercial nonresidential property,  
 34 farmowners insurance, and the types of commercial lines risks  
 35 ~~specified set forth~~ in s. 627.062(3)(d), constitutes shall  
 36 ~~constitute~~ delivery to the insured or to the person entitled to  
 37 delivery, unless the insured or the person entitled to delivery  
 38 communicates to the insurer in writing or electronically that he  
 39 or she does not agree to delivery by electronic means.  
 40 Electronic transmission must ~~shall~~ include a notice to the  
 41 insured or to the person entitled to delivery of a policy of his  
 42 or her right to receive the policy via United States mail rather  
 43 than via electronic transmission. A paper copy of the policy  
 44 shall be provided to the insured or to the person entitled to  
 45 delivery at his or her request.  
 46 Section 2. Subsection (2) of section 627.43141, Florida  
 47 Statutes, is amended to read:  
 48 627.43141 Notice of change in policy terms.—  
 49 (2) A renewal policy may contain a change in policy terms.  
 50 ~~If a renewal policy does contain~~ such change occurs, the insurer  
 51 ~~shall~~ must give the named insured advance written notice of the  
 52 change, which ~~may~~ must be enclosed ~~along~~ with the written notice  
 53 of renewal premium required under ~~by~~ ss. 627.4133 and 627.728 or  
 54 sent separately within the timeframe required under the Florida  
 55 Insurance Code for the provision of a notice of nonrenewal to  
 56 the named insured for that line of insurance. The insurer must  
 57 also provide a sample copy of the notice to the named insured's  
 58 insurance agent before or at the same time that notice is

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00378-15

2015202\_\_

59 provided to the named insured. Such notice shall be entitled  
60 "Notice of Change in Policy Terms."  
61 Section 3. This act shall take effect July 1, 2015.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7008

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

DATE: February 3, 2015

REVISED: 2/4/15

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Billmeier</u>	<u>Knudson</u>		<b>BI Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7008 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of the public-meeting exemption for portions of meetings of the Board of Funeral, Cemetery, and Consumer Services (“board”) at which licensure examination questions or answers are discussed. The exemption also includes the recording of the portion of the meeting that is closed for discussion of licensure examination questions or answers.

The board enforces provisions of Chapter 497, F.S., relating to funeral and cemetery services. It also has broad authority over licensure and examination of applicants for various licenses. That authority includes specifying the content of examinations for licensure, striking any examination question determined before or after an examination to be inappropriate, and specifying which national examinations shall or shall not be required or accepted in Florida.

Current law provides that those portions of meetings of the board at which licensure examination questions or answers are discussed are exempt from public meetings requirements. The closed meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the board. The recording of a closed portion of a meeting is exempt from public record requirements. These exemptions will expire on October 2, 2015, unless reenacted. This bill reenacts the exemptions and takes effect on July 1, 2015.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on



their behalf.<sup>1</sup> The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>2</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>5</sup> The Sunshine Law<sup>6</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>7</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>8</sup> An exemption must specifically state the public necessity justifying the exemption<sup>9</sup> and must be tailored to accomplish the stated purpose of the law.<sup>10</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>11</sup> The OGSR provides that an exemption automatically repeals on

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(b).

<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>6</sup> Section 286.011, F.S.

<sup>7</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>8</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>12</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>13</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>14</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>15</sup> or
- It protects trade or business secrets.<sup>16</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>17</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>18</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>20</sup>

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<sup>12</sup> Section 119.15(3), F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> Section 119.15(6)(b)1., F.S.

<sup>15</sup> Section 119.15(6)(b)2., F.S.

<sup>16</sup> Section 119.15(6)(b)3., F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> Section 119.15(7), F.S.

## Board of Funeral, Cemetery, and Consumer Services

Current law creates the Board of Funeral, Cemetery, and Consumer Services.<sup>21</sup> The board enforces provisions of Chapter 497, F.S., relating to funeral and cemetery services. The board has broad authority over licensure and examination of applicants for various licenses including:

- Authority to determine any and all criteria for licensure;
- Authority to specify who may conduct practical examination;
- Authority to specify the content of examinations for licensure, both written and practical, and the relative weighting of areas examined, and grading criteria, and determination of what constitutes a passing grade;
- Authority to strike any examination question determined before or after an examination to be inappropriate for any reason;
- Authority to specify which national examinations or parts thereof shall or shall not be required or accepted regarding Florida licensure;
- Authority to determine time limits and substantive requirements regarding reexamination of applicants who fail any portion of a licensing examination; and
- Authority to determine substantive requirements and conditions relating to apprenticeships and internships, and temporary licensure pending examination.<sup>22</sup>

Current law provides that those portions of meetings of the board at which licensure examination questions or answers are discussed are exempt from the public meetings requirements of s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the board. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. In 2010, the Legislature made the following findings when it created the public record exemption for portions of the meeting that are closed:

The Legislature finds that it is a public necessity to make exempt from public records requirements the recording generated during those portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed. The release of such recordings would compromise those discussions of the board which took place during a closed meeting and would negate the public meeting exemption. Further, current law already provides a public record exemption for licensure examination questions and answers. As such, release of the recording generated during those closed portions of meetings would compromise the current protections already afforded such questions and answers. Thus, the effective and efficient administration of the licensure examination process would be compromised without this exemption.<sup>23</sup>

The Department of Financial Services (Department) reports that it has never closed a meeting to discuss licensure examination questions and answers but recommends that the public meeting and public record exemptions be maintained if it is necessary to close a meeting in the future.

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<sup>21</sup> Section 497.101(1), F.S.

<sup>22</sup> Section 497.103(1)(a)-(g), F.S.

<sup>23</sup> Chapter 2010-76, Laws of Florida, section 2.

The Department suggests that to allow open access to such a meeting or allow the recording to be made public would compromise the examination process.<sup>24</sup>

### **III. Effect of Proposed Changes:**

This bill reenacts the public-meeting exemption for portions of the board meetings at which licensure examination questions or answers are discussed. This bill does not change the requirement that the board record the closed meeting and maintain the recording. This bill also reenacts the public record exemption for the recording of the portion of the meeting that is closed for discussion of licensure examination questions or answers.

Section 119.15(6)(b), F.S., provides that an exemption may only be maintained if it serves an identifiable public purpose and is no broader than necessary to serve that purpose. The exemptions maintained in this bill could be found to allow the state “to effectively and efficiently administer a governmental program” and administration of the program “would be significantly impaired without the exemption.”<sup>25</sup> If the exemptions in this bill are not maintained, meetings of the board where examination questions and answers are discussed would be open to persons who might take the examinations in the future. In addition, recordings of such meetings would be available to persons who may take the examinations. An open meeting or open records relating to examination questions could compromise the examination process.

This bill takes effect October 1, 2015.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

This bill continues a current exemption but does not expand the scope of an existing public records exemption; therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>24</sup> Open Government Sunset Review Questionnaire completed by the Department of Financial Services (on file with Committee).

<sup>25</sup> Section 119.15(6)(b)1., F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 497.172 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00383-15

20157008pb

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 497.172, F.S., relating  
 4 to an exemption from public meeting requirements for  
 5 portions of meetings of the Board of Funeral,  
 6 Cemetery, and Consumer Services within the Department  
 7 of Financial Services at which licensure examination  
 8 questions or answers are discussed; saving the  
 9 exemption from repeal under the Open Government Sunset  
 10 Review Act; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Subsection (1) of section 497.172, Florida  
 15 Statutes, is amended to read:

16 497.172 Public records exemptions; public meetings  
 17 exemptions.—

18 (1) EXAMINATION DEVELOPMENT MEETINGS.—

19 (a) Those portions of meetings of the board at which  
 20 licensure examination questions or answers under this chapter  
 21 are discussed are exempt from s. 286.011 and s. 24(b), Art. I of  
 22 the State Constitution. The closed meeting must be recorded, and  
 23 no portion of the closed meeting may be off the record. The  
 24 recording shall be maintained by the board.

25 (b) The recording of a closed portion of a meeting is  
 26 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 27 Constitution.

28 ~~(c) This subsection is subject to the Open Government~~  
 29 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

Page 1 of 2

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597-00383-15

20157008pb

30 ~~repealed on October 2, 2015, unless reviewed and saved from~~  
 31 ~~repeal through reenactment by the Legislature.~~  
 32 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7010

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Examination Techniques or Procedures/Office of Financial Regulation

DATE: February 3, 2015

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>	_____	<b>BI Submitted as Committee Bill</b>

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**I. Summary:**

SPB 7010 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee staff of a public records exemption in s. 517.2016, F.S., for certain information held by the Office of Financial Regulation (OFR).

In 2010, the Florida legislature passed CS/HB 1059 creating a new public records exemption relating to the regulation of Securities. The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The State's Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act in Florida. The OFR may make investigations and examinations within or outside of Florida as it deems necessary. Section 517.2016, F.S., protects information that would reveal examination techniques or procedures used by the OFR pursuant to the Act. Such Information may be provided by the OFR to another governmental entity having oversight or regulatory or law enforcement authority.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2015, unless reenacted by the Legislature. This bill continues the exemption and does not expand the scope of the public records exemption.

**II. Present Situation:**

**Public-Records Law**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>Public policy regarding access to government records is

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<sup>1</sup> Section 24(c), Art. I, Fla. Const.

addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

The Open Government Sunset Review Act<sup>2</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it must be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.<sup>3</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>4</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>5</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>6</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>7</sup>

## Regulation of Securities

The securities industry is subject to both federal and state laws and regulations. The primary federal regulator is the Securities and Exchange Commission (SEC), which oversees the key participants in the securities industry such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.<sup>8</sup> The SEC is concerned primarily with promoting the

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<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> Section 119.15(6)(a), F.S. The questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>6</sup> FLA. CONST., art. I, s. 24(c).

<sup>7</sup> Section 119.15(7), F.S.

<sup>8</sup> See <http://www.sec.gov/about/whatwedo.shtml> (Accessed January 22, 2015).



disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The state's Office of Financial Regulation (OFR), through the Division of Securities, regulates the sale of securities in, to, or from Florida by firms, branch offices and individuals affiliated with these firms to determine compliance with Florida law. A securities dealer or investment adviser is prohibited from conducting business from a branch office in Florida unless the branch office is registered with the OFR.<sup>9</sup> A "branch office" is "any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security."<sup>10</sup> It also includes any location that is held out as a place where such actions occur is also a branch office.

The Financial Industry Regulatory Authority (FINRA), an independent, not-for-profit organization, also is an important regulatory body.<sup>11</sup> FINRA performs a number of functions, including registering and educating securities industry participants. FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registering, reporting, and disclosing information within the securities industry.

### **Florida Securities and Investor Protection Act<sup>12</sup>**

The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. The OFR may make investigations and examinations within or outside of Florida as it deems necessary to:

- determine whether a person has violated or is about to violate any provision of the Act or a rule or order under the Act; or
- aid in the enforcement of the Act.<sup>13</sup>

### **Investigations and Examinations**

Current law provides a public records exemption for information related to investigations and examinations conducted by the OFR pursuant to the Act.<sup>14</sup> Information relative to an investigation or examination by the OFR, including any consumer complaint, is confidential and exempt<sup>15</sup> from public records requirements until the investigation or examination is completed or

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<sup>9</sup> S. 517.12(5), F.S.

<sup>10</sup> S. 517.021(4), F.S.

<sup>11</sup> See <http://www.finra.org/AboutFINRA/P125239> (Accessed January 22, 2015).

<sup>12</sup> The act is codified in chapter 517, F.S.

<sup>13</sup> Section 517.201(1)(a), F.S.

<sup>14</sup> Section 517.2016, F.S.

<sup>15</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62, August 1, 1985.

ceases to be active. However, the information remains confidential and exempt if the OFR submits it to any law enforcement or administrative agency or regulatory organization for further investigation.<sup>16</sup> In addition, certain information remains confidential and exempt after the investigation or examination is completed or ceases to be active,<sup>17</sup> including information that would disclose investigative techniques or procedures.

### **III. Effect of Proposed Changes:**

This bill removes the scheduled repeal date of October 2, 2015, for s. 517.2016, F.S., the public records exemption for examination techniques and procedures used by the OFR pursuant to the Florida Securities and Investor Protection Act.

According to the OFR, maintaining the confidentiality of examination techniques and procedures is essential for protecting the integrity of the examination programs that they use to regulate the securities industry. If these investigative tools are made public through an open records requests or other means, the securities industry could use them to thwart effective examinations, cover up illegal conduct, and circumvent the law.<sup>18</sup> Additionally, the OFR is a member of the North American Securities Administrators Association (NASAA). NASAA is a multi-state association of regulators that coordinates sweeps and pools information, examinations and techniques. If Florida's confidentiality of the modules used by NASAA is not preserved, there is great concern other member states who utilize the NASSA modules would be significantly impaired as well.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

This bill continues a current exemption but does not expand the scope of an existing public records exemption; therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

#### **C. Trust Funds Restrictions:**

None.

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<sup>16</sup> Section 517.2015(1)(a), F.S.

<sup>17</sup> For purposes of the exemption, an investigation or examination is considered "active" so long as OFR or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. Section 517.2015(1)(a), F.S.

<sup>18</sup> Email from OFR staff received September 2, 2014 on file with Banking and Insurance staff.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the OFR<sup>19</sup>, being a member state of NASAA allows the OFR the ability to leverage its limited resources and save on regulatory costs. In order for the OFR to remain a member of NASSA the public record exemption on examinations and techniques of securities may not be permitted to sunset.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 517.2016 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>19</sup> Email from OFR staff received September 2, 2014 on file with Banking and Insurance staff.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00371-15

20157010pb

1 A bill to be entitled  
2 An act relating to a review under the Open Government  
3 Sunshine Act; amending s. 517.2016, F.S., relating to  
4 an exemption from public records requirements for  
5 information that would reveal examination techniques  
6 or procedures used by the Office of Financial  
7 Regulation under the Florida Securities and Investor  
8 Protection Act; saving the exemption from repeal under  
9 the Open Government Sunshine Act; making technical  
10 changes; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Section 517.2016, Florida Statutes, is amended  
15 to read:

16 517.2016 Public records exemption; examination techniques  
17 or and procedures.—

18 (1) As used in ~~For purposes of~~ this section, the term  
19 "examination techniques or and procedures" means are the  
20 methods, processes, and guidelines used to evaluate regulatory  
21 compliance and to collect and analyze data, records, and  
22 testimony for the purpose of documenting violations of this  
23 chapter and the rules adopted promulgated thereunder.

24 (2) Information that would reveal examination techniques or  
25 procedures used by the office pursuant to this chapter is  
26 confidential and exempt from s. 119.07(1) and s. 24(a), Art.I  
27 of the State Constitution. This exemption applies to such  
28 information held by the office before, on, or after the  
29 effective date of this exemption.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00371-15

20157010pb

30 (3) Confidential and exempt information that would reveal  
31 examination techniques or procedures may be provided by the  
32 office to another governmental entity having oversight or  
33 regulatory or law enforcement authority.

34 ~~(4) This section is subject to the Open Government Sunset~~  
35 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
36 ~~on October 2, 2015, unless reviewed and saved from repeal~~  
37 ~~through reenactment by the Legislature.~~

38 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7012  
INTRODUCER: Banking and Insurance Committee  
SUBJECT: OGSR/Credit History Information and Credit Scores/Office of Financial Regulation  
DATE: February 3, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson		<b>BI Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7012 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption that makes credit history information and credit scores held by the Office of Financial Regulation (OFR) confidential and exempt from public-records requirements.<sup>1</sup> The OFR licenses and regulates loan originators (non-depository mortgage brokers and mortgage lenders).<sup>2</sup> Applicants for initial licensure or renewal of a license must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness, as required by the federal SAFE Mortgage Licensure Act of 2008.<sup>3</sup> As part of this licensure process, an applicant must authorize the release of an independent credit report and credit score to the OFR.<sup>4</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2015, unless reenacted by the Legislature. This SPB continues the exemption and does not expand the scope of the public records exemption. The reenactment of the exemption would continue to protect sensitive personal financial information of applicants from being disclosed. The release of such sensitive personal information would be defamatory and make those persons vulnerable to identity theft and other crimes.

**II. Present Situation:**

**Public Records and Open Meetings Requirements**

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on

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<sup>1</sup> Section 494.00125, F.S.

<sup>2</sup> Chapter 494, F.S.

<sup>3</sup> Parts II and III of chapter 494, F.S.

<sup>4</sup> Sections 494.00312, 494.00313, 494.00611, and 494.00612, F.S.

their behalf.<sup>5</sup> The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>6</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>7</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>8</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>9</sup> The Sunshine Law<sup>10</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.<sup>11</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>12</sup> An exemption must specifically state the public necessity justifying the exemption<sup>13</sup> and must be tailored to accomplish the stated purpose of the law.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October

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<sup>5</sup> FLA. CONST., art. I, s. 24(a).

<sup>6</sup> FLA. CONST., art. I, s. 24(b).

<sup>7</sup> FLA. CONST., art. I, s. 24(b).

<sup>8</sup> Chapter 119, F.S.

<sup>9</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>10</sup> Section 286.011, F.S.

<sup>11</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>12</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> FLA. CONST., art. I, s. 24(c).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following criteria: It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup> Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or it protects trade or business secrets.<sup>20</sup> In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>21</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>22</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>23</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>24</sup>

## **Regulation of Loan Originators**

### ***Federal SAFE Mortgage Licensing Act***

The federal Housing and Economic Recovery Act was enacted on July 30, 2008,<sup>25</sup> Title V of this act is titled "The Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE

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<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(b), F.S.

<sup>22</sup> Section 119.15(6)(a), F.S. The questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>23</sup> FLA. CONST., art. I, s. 24(c).

<sup>24</sup> Section 119.15(7), F.S.

<sup>25</sup> Public Law 110-289.

Act or SAFE). The intent of SAFE is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements for loan originators.<sup>26</sup> Loan originators must undergo state licensure and annual renewal, provide fingerprints to the regulator for submission to any state or registry authorized to conduct a criminal background check, and allow the regulator to access a credit report through the registry.

The act directs the establishment of a nationwide mortgage licensing system and registry (NMLS or registry). The SAFE Act requires states to comply with these minimum standards<sup>27</sup> and participate in the registry to facilitate states' compliance with the requirements of SAFE.<sup>28</sup> The registry collects and maintains specified information on loan originators. The purpose of the registry is to create a common database on loan originators among federal and state regulators, provide information to the public about the employment history of loan originators, and maintain a history of disciplinary and enforcement actions against loan originators.

The SAFE Act creates confidentiality standards for the federal and state regulators who participate in the registry, which collects a common pool of information from each participant. For example, only state regulators have access to review credit information, including credit scores, on licensees and must comply with certain terms and conditions.<sup>29</sup> For example, only authorized recipients may have access to or view the services and consumer report information. Authorized recipients may not redisseminate or provide third party access to the services or consumer report information.<sup>30</sup>

Except as otherwise provided, SAFE applies federal or state privacy or confidentiality laws, and any privilege arising under federal or state law, after information has been disclosed to the NMLS. Such information may be shared with all state and federal regulatory officials with mortgage regulatory authority without loss of privilege or loss of confidentiality protections provided by such laws.<sup>31</sup> Any state law in conflict with this standard is superseded to the extent it provides less confidentiality or privilege.<sup>32</sup> These requirements do not apply to information that is in the registry regarding a loan originator's employment history, or publicly adjudicated disciplinary and enforcement history.<sup>33</sup>

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<sup>26</sup> H.R. 3221, Public Law 110-289, Title V, s. 1502.

<sup>27</sup> The SAFE Act provides that, if a state does not enact minimum regulatory standards that comply with the SAFE after the enactment, the U.S. Department of Housing and Urban Development (HUD) will enforce the minimum standards for loan originators operating in Florida as state-licensed loan originators.

<sup>28</sup> NLMS Resource Center, available at <http://mortgage.nationwidelicencingsystem.org/safe/Pages/default.aspx> 9last visited January 30, 2015).

<sup>29</sup> Frequently Asked Questions, NMLS, available at <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 30, 2015).

<sup>30</sup> Correspondence from the Office of Financial Regulation (January 27, 2015) (on file with Senate Banking and Insurance Committee).

<sup>31</sup> H.R. 3221, Public Law 110-289, Title V, s. 1512.

<sup>32</sup> Title V, sec. 1512(a)-(c).

<sup>33</sup> Title V, sec. 1512(d).



### *Florida Regulation of Loan Originators*

In Florida, the OFR regulates non-depository loan originators and other specified financial entities.<sup>34</sup> In 2009, the Legislature enacted and the Governor approved legislation<sup>35</sup> bringing the state into compliance with the SAFE Mortgage Licensing Act of 2008. Effective October 1, 2010, the OFR began accepting and processing applications for loan originator licenses.

The licensure and renewal process includes a review of the applicant's credit report and credit information by the state regulator, which OFR accesses through the registry. Every individual applying for state licensure as a mortgage loan originator is required to complete the credit authorization process through the NMLS.<sup>36</sup> The credit report obtained through NMLS is a TransUnion Credit Report with a Vantage Score. The OFR is required to comply with terms and conditions relating to the confidentiality of this information.

Once the OFR accesses a credit report, the OFR evaluates any adverse information contained in an applicant's credit report in the context of the "totality of the circumstances."<sup>37</sup> For example, an adverse item may result from inaccuracies in the credit report or factors that do not necessarily reflect negatively upon the applicant's character, general fitness, or financial responsibility.<sup>38</sup> The OFR must notify applicants of specific items of concern and provide the applicant with an opportunity to explain the circumstances surrounding the specific items and provide additional relevant information or documentation relating to the OFR's determination. During this process, the OFR must consider the following information for determining whether a person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OFR's determination that the person will operate honestly, fairly, and efficiently:

1. The relevant person's entire credit history as reflected in the credit report.
2. The information provided by the relevant person.
3. The responses contained in the license application.
4. The previous licensing history with the OFR including whether the relevant person was named in any regulatory action by the OFR.
5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.
6. The time and context of the information available and any pattern of behavior the information may demonstrate.<sup>39</sup>

In considering the totality of circumstances, the fact that an applicant has been a debtor in a bankruptcy or has been the control person of a bankrupt company cannot be the sole basis of the

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<sup>34</sup> The OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

<sup>35</sup> Chapter 2009-241, Laws of Florida.

<sup>36</sup> See Frequently Asked Questions at <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 29, 2015).

<sup>37</sup> Rule 69V-40.0113, F.A.C.

<sup>38</sup> A 2013 Federal Trade Commission report found that one in five consumers had an error on at least one of their three credit reports. The report can be viewed at <http://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports> (last visited January 29, 2015).

<sup>39</sup> Rule 69V-40.0113, F.A.C.

OFR’s determination to deny the issuance of a license.<sup>40</sup> The OFR may not use a credit score or the absence or insufficiency of credit history information to determine charter, general fitness, or financial responsibility. If the OFR uses information contained in a credit report as the basis for denying a license, the OFR is required to provide particularity for the grounds or basis for denial.<sup>41</sup>

The OFR<sup>42</sup> provided the following data<sup>43</sup> concerning denials and withdrawals in recent years:

<b>Loan Originator Application Denials &amp; Withdrawals</b>			
	FY2011-12	FY2012-13	FY2013-14
Denials	1958	134	165
Withdrawals	340	93	97
Total	2298	227	262
<b>Loan Originator Renewal Denials &amp; Withdrawals</b>			
	FY2011-12	FY2012-13	FY2013-14
Denials	76	31	58
Withdrawals	28	18	16
Total	104	49	74

**Public Records under Review**

Section 494.00125(3), F.S., provides that credit history information and credit scores held by the OFR related to the licensure under ch. 494, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, this public records exemption does not apply to information that is otherwise publicly available. The OFR is authorized to provide such credit history information and credit scores to other governmental entities having regulatory or law enforcement authority.

Credit reports can include credit history information regarding credit card usage and limits, loans, outstanding tax liens, uncollectible debt, bankruptcies, and foreclosures. Chapter 494, F.S., defines the term, “credit report,” to mean any written, oral, or other information obtained from a consumer-reporting agency as described in the federal Fair Credit Reporting Act, which bears on an individual’s credit worthiness, credit standing, or credit capacity. A credit score alone, as calculated by the reporting agency, is not considered a credit report.<sup>44</sup> The term, “credit score,” is defined in s. 494.001(8), F.S.

<sup>40</sup> Sections 494.00611, 494.00321, and 494.067, F.S.

<sup>41</sup> *Id.*

<sup>42</sup> Correspondence from the Office of Financial Regulation (January 26, 2015) (on file with the Senate Committee on Banking and Insurance).

<sup>43</sup> If an applicant has been denied licensure in any state, the applicant must disclose this reportable event in future application submission in any state. Because of this requirement, many applicants will withdraw their application rather than having a record of a licensure denial that would be available on the registry. The OFR does not track on their internal licensing system the reasons for denials.

<sup>44</sup> Section 494.001(7), F.S.

**III. Effect of Proposed Changes:**

The bill removes the repeal date, thereby continuing the public records exemption for credit history information and credit scores held by the Office of Financial Regulation pursuant to s. 494.00125, F.S. The effective date of the bill is October 1, 2015.

The reenactment of the exemption would protect sensitive personal financial information of applicants from being subject to disclosure. The release of such information would make those persons vulnerable to identity theft and other crimes and could adversely affect the name or reputation of an applicant.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

This bill continues a current exemption but does not expand the scope of an existing public records exemption; therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The reenactment of the exemption would continue to protect an applicant's sensitive, personal financial information held by the OFR. The disclosure of such information would make those persons vulnerable to identity theft and other crimes. In addition, the release of such exempted information contained in a credit report or a credit score, could adversely affect the name or reputation of an applicant.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 494.00321, Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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FOR CONSIDERATION By the Committee on Banking and Insurance

597-00084-15

20157012pb

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 494.00125, F.S., which  
 4 provides a public records exemption for credit history  
 5 information and credit scores held by the Office of  
 6 Financial Regulation for purposes of licensing loan  
 7 originators, mortgage brokers, and mortgage lenders;  
 8 saving the exemption from repeal under the Open  
 9 Government Sunset Review Act; providing an effective  
 10 date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Subsection (3) of section 494.00125, Florida  
 15 Statutes, is amended to read:  
 16 494.00125 Public records exemptions.—  
 17 (3) CREDIT INFORMATION.—  
 18 (a) Credit history information and credit scores held by  
 19 the office and related to licensing under ss. 494.001-494.0077  
 20 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 21 I of the State Constitution.  
 22 (b) Credit history information and credit scores made  
 23 confidential and exempt pursuant to paragraph (a) may be  
 24 provided by the office to another governmental entity having  
 25 oversight or regulatory or law enforcement authority.  
 26 (c) This subsection does not apply to information that is  
 27 otherwise publicly available.  
 28 ~~(d) This subsection is subject to the Open Government~~  
 29 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

Page 1 of 2

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597-00084-15

20157012pb

30 ~~repealed on October 2, 2015, unless reviewed and saved from~~  
 31 ~~repeal through reenactment by the Legislature.~~  
 32 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

