

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: CS/SB 1982

SPONSOR: Banking and Insurance Committee and Senator Crist

SUBJECT: Public Records Exemption/Office of Financial Regulation

DATE: April 19, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	JU	_____
4.	_____	_____	GO	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute creates a public records exemption for information obtained by the Office of Financial Regulation (OFR) in connection with investigations and examinations of commercial and consumer collection agencies under parts V and VI of ch. 559, F.S. In general, such information would remain confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution until the investigation was completed or ceased to be active. However, such information would remain confidential and exempt after the investigations was completed or ceased to be active to the extent disclosure would:

- Jeopardize the integrity of another active investigation or examination;
- Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder;
- Disclose the identity of a confidential source;
- Disclose investigative techniques or procedures; or
- Reveal a trade secret, as defined in s. 688.002, F.S.

The bill provides that the public records exemption is necessary to protect the integrity of an ongoing investigation or examination, the identity and safety of persons reporting alleged violations to the Office of Financial Regulation, and proprietary business information and trade secrets of a business.

This bill creates section 559.5472 of the Florida Statutes.

II. Present Situation:

Public Records; Exemptions

Section 24(a), Art. I of the Florida Constitution states, “Every person has the right to 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”

Section 24(c), Art. I of the Florida Constitution permits the Legislature to create exemptions from the public records law. However, the bill creating the exemption must contain a statement of public necessity that justifies the exemption, and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.15(3), F.S., provides that on October 2nd of the fifth year after enactment of a new exemption or substantial amendment of an existing exemption the exemption shall repeal, unless the Legislature reviews and reenacts the exemption.

Background

Commercial Collection Agencies and Consumer Collection agencies are subject to the provisions of parts V and VI of ch. 559, F.S., respectively. These collection agencies are required to meet certain registration requirements of the Office of Financial Regulations (OFR). Parts V and VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements. Currently, the OFR is not specifically authorized to conduct investigations and examinations of persons engaged in the business of commercial collection agencies. Part VI of ch. 559, F.S., authorizes the OFR to serve as the registry for receiving and investigating complaints from

consumers concerning persons who collect debts, including consumer collection agencies.¹ However, another bill, Senate Bill 1984, would provide greater compliance and enforcement authority for the Office of Financial Regulation to regulate, investigate, and examine commercial and consumer collection agencies.

Current law does not provide a public records exemption for records relating to such investigations and examinations. In comparison, public records exemptions are provided for office investigations and examinations of financial institutions,² mortgage brokers and mortgage lenders,³ retail installment sales providers,⁴ securities dealers,⁵ and money transmitters (check cashers, deferred presentment providers, and foreign currency exchangers).⁶

III. Effect of Proposed Changes:

Section 1 creates s. 559.5472, F.S., relating to the examination and investigation of commercial collection agencies and consumer collection agencies that are regulated under parts V and VI of ch. 559, F.S., respectively. This section provides that information received or created in the course of an investigation or examination of a commercial collection agency or a consumer collection agency by the Office of Financial Regulation (OFR) is confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution until the investigation or examination is completed or ceases to be active, except as otherwise provided in this section.

An investigation or examination would be considered to be active if the OFR, law enforcement or administrative agency was proceeding with reasonable dispatch and had a good faith belief that the investigation or examination might lead to the filing of an administrative, civil, or criminal proceeding. The OFR is authorized to provide such confidential and exempt information to a law enforcement or administrative agency or regulatory organization in the furtherance of its duties. These entities would be required to maintain the confidentiality and exempt status of information provided by OFR as long as such information would otherwise be confidential or exempt from disclosure.

Documents made or compiled during an investigation or examination would remain confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution after the investigation or examination was completed or ceased to be active if disclosure would:

- Jeopardize the integrity of another active investigation;
- Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder;
- Disclose the identity of a confidential source;
- Disclose investigative techniques or procedures; or
- Reveal a trade secret, as defined in s. 688.002, F.S.

¹ Section 559.725, F.S. (2003)

² Section 655.057, F.S.

³ Section 494.00125, F.S.

⁴ Section 520.9965, F.S.

⁵ Section 517.2015, F.S.

⁶ Section 560.129, F.S.

The section also provides that s. 559.5472, F.S., is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S, and will stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 states the public necessity for exempting from public disclosure certain information relating to an active investigation or examination of a commercial or consumer collection agency by the OFR. The section provides that the release of such information prior to the completion of an examination or investigation could jeopardize the integrity of the investigation or examination. The section also provides that the release of such information relating to an examination or investigation could result in the disclosure of the name, address, telephone number, social security number, or any other identifying information of any complainant that is a confidential source, customer information, or trade secrets of businesses.

Section 3 provides that this act will take effect on July 1, 2004, if House Bill 1133, or substantially similar legislation, is adopted during the 2005 Regular Session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption for information obtained by the Office of Financial Regulation (OFR) of the Financial Services Commission in connection with investigations and examinations of commercial and consumer collection agencies under parts V and VI of ch. 559, F.S.

Article I, s. 24(c) of the State Constitution, also requires a two-thirds vote of the members for passage of a newly created public records or public meetings exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public records exemption would prevent disclosure of sensitive personal information of complainants and customers and the identity of confidential sources. The bill would

also exempt records containing trade secrets from disclosure, protecting businesses under investigation from the unfair practices that could arise if a competitor were able to obtain these records as the result of a public records request.

C. Government Sector Impact:

The public records exemption may provide the Office of Financial Regulation with an effective investigatory tool to assist in the performance of its compliance and enforcement duties relating to part V or VI of ch. 559, F.S., regulation of commercial collection and consumer collection practices, respectively. The exemption may help to protect the integrity of ongoing investigations and examinations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
