

**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 Governmental Oversight and Accountability

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BILL: CS/SB 1002

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 25, 2014      REVISED:

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1002 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR). The bill provides that information held by the OFR pursuant to an investigation or examination under the Consumer Collection Practices Act is confidential and exempt from disclosure. Such information may, however, be disclosed to law enforcement or other administrative agencies. This bill provides that such information is no longer confidential and exempt once the investigation or examination is complete or ceases to be active unless disclosure would jeopardize another active investigation or examination, reveal the personal identifying information of a consumer, reveal the identity of a confidential source, reveal investigative techniques or procedures, or reveal trade secrets.

This bill provides that the public records exemption is repealed on October 2, 2019, unless reenacted by the Legislature.

This bill contains a statement of public necessity required by article I, s. 24, Fla. Const.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

## II. Present Situation:

Article I, s. 24(a) of the Florida Constitution provides:

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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states:

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

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>1</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>2</sup> All such materials are open for public inspection unless made exempt.<sup>3</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>4</sup> If a record is simply made exempt from

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<sup>1</sup> Section 119.011(12), F.S.

<sup>2</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>3</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>5</sup>

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>6</sup> The exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>7</sup> A bill enacting an exemption may not contain other substantive provisions.<sup>8</sup>

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

The Open Government Sunset Review Act<sup>9</sup> provides for the systematic review, through a five year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>10</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.<sup>11</sup>

The Act also requires specified questions to be considered during the review process.<sup>12</sup>

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.<sup>13</sup> A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

<sup>5</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>6</sup> See Fla. Const., art. I, s. 24(c).

<sup>7</sup> See Fla. Const., art. I, s. 24(c).

<sup>8</sup> See Fla. Const., art. I, s. 24(c).

<sup>9</sup> See section 119.15, F.S.

<sup>10</sup> See section 119.15(6)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</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>13</sup> An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception<sup>14</sup> to the exemption is created.<sup>15</sup>

### **Regulation of Consumer Collection Agencies and Debt Collectors**

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the OFR. Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

Under current law, the OFR has no authority to withhold from disclosure any information relating to consumer complaints, investigations, examinations, and registrations except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).<sup>16</sup> SB 1006, the substantive bill linked to CS/SB 1002, provides the OFR with greater power to examine and investigate consumer collection agencies. SB 1006 also authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

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

CS/SB 1002 provides that information held by the OFR pursuant to an investigation or examination of a violation of the Florida Consumer Collection Practices Act is confidential and exempt from s. 119.07(1), F.S. and article I, section 24 of the Florida Constitution. This bill provides that information made confidential and exempt may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

This bill provides that such information is no longer confidential and exempt once the investigation or examination is completed or ceases to be active<sup>17</sup> unless disclosure of the information would:

- Jeopardize the integrity of another active investigation or examination.
- Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. The complainant's personal identifying information is subject to disclosure

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<sup>14</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>15</sup> *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

<sup>16</sup> Section 119.0712(3), F.S., contains an agency-specific exemption for the OFR, in which any information that the OFR receives from other state or federal regulatory, administrative, or criminal justice agencies that is confidential or exempt in accordance with the laws of the other agency.

<sup>17</sup> This bill provides that an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the OFR has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval.

after the investigation or examination is completed or ceases to be active but the complainant's personal financial and health information remains confidential and exempt.<sup>18</sup>

- Reveal the identity of a confidential source.
- Reveal investigative or examination techniques or procedures.
- Reveal trade secrets, as defined in s. 688.002, F.S.

This bill provides that it is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

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

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

None.

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

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill requires a two-thirds vote.

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill contains a public necessity statement.

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

None.

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

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

None.

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

None.

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<sup>18</sup> This bill defines "personal financial and health information" as information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt, information relating to a consumer's financial transactions of any kind, information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth, a consumer's personal health condition, disease, or a history of a consumer's personal medical diagnosis or treatment.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 559.5558 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 March 5, 2014:**

The committee adopted an amendment to show that this bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

B. Amendments:

None.