

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 415	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Insurance & Banking Subcommittee; Santiago	117 Y's	0 N's
COMPANION BILLS:	CS/CS/HB 413; CS/SB 1002	GOVERNOR'S ACTION: Approved	

SUMMARY ANALYSIS

CS/CS/HB 415 was passed by the House on April 11, 2014, and was subsequently passed by the Senate on April 23, 2014.

CS/CS/HB 413 strengthens the Office of Financial Regulation's (OFR) registration, examination, and investigation authority over consumer collection agencies; however, OFR has no authority to withhold from public disclosure any information relating to consumer complaints, investigations, examinations, and registrations. CS/CS/HB 413 also authorizes OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

This bill, which is linked to the passage of CS/CS/HB 413, creates a public records exemption for certain information held by OFR relating to investigations and examinations of consumer collection agencies. Information relative to an investigation or examination by OFR is confidential and exempt from public records requirements while the investigation or examination is active. For purposes of the public record exemption, "active" means OFR or a law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the case may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a registration. Once the investigation or examination is no longer active, certain portions of a consumer complaint and other information relative to an investigation or examination may remain confidential and exempt.

The bill also allows OFR to share confidential and exempt information with law enforcement and administrative agencies.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

This bill and HB 413 were approved by the Governor on June 13, 2014, ch. 2014-117, and ch. 2014-116, L.O.F., and will become effective on October 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Regulation of Consumer Collection Agencies

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 Office of Financial Regulation (OFR). Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

CS/CS/HB 413 (2014) – Consumer Collection Agencies

CS/CS/HB 413 strengthens OFR's registration, examination, and investigation authority over consumer collection agencies; however, OFR currently has no authority to withhold from public 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).¹ CS/CS/HB 413 also authorizes OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

Effect of the Bill

This bill, which is linked to the passage of CS/CS/HB 413, creates a public records exemption for certain investigative and examination information relating to consumer collection agencies and held by the OFR under part VI of ch. 559, F.S. Such information is confidential and exempt from the public records requirements of 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. However, the information remains confidential and exempt after the investigation or examination is completed or ceases to be active, if disclosure would:

- Jeopardize the integrity of another active investigation or examination;
- Disclose the identity of a confidential source;
- Disclose investigative or examination techniques or procedures;
- Reveal a trade secret, as defined in the Uniform Trade Secrets Act;² or
- Reveal personal identifying information of a consumer unless the consumer is also the complainant. In the case of a complainant, the personal identifying information is subject to disclosure after the investigation is completed or ceases to be active, but the complainant's personal financial and health information remains confidential and exempt.

The bill provides that an investigation or examination is considered active if OFR or a law enforcement or administrative agency is proceeding with reasonable dispatch and has a good faith belief that the investigation or examination might 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 required under part VI of ch. 559, F.S. The bill also defines the term "personal financial and health information" to mean:

- Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;

¹ The Public Records Act (ch. 119, F.S.) contains an agency-specific exemption for OFR, in which any information that OFR *receives* from other state or federal regulatory, administrative, or criminal justice agencies that confidential or exempt in accordance with the laws of the other agency. Additionally, this exemption provides confidentiality for any information that OFR *receives or develops* as part of a joint or multiagency examination or investigation with these other agencies and that OFR may obtain and use this information in accordance with a joint or multiagency agreement, except to any information that would otherwise be public if OFR independently conducted an investigation or examination under Florida law. Section 119.0712(3), F.S.

² The Uniform Trade Secrets Act defines the term "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Section 688.002(4), F.S.

- 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 injury; or
- A history of a consumer's personal medical diagnosis or treatment.

The confidential and exempt information may be disclosed by OFR at any time to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's protection of trade secrets within information relating to an investigation or examination may benefit collection agencies, since disclosure of such information could result in a competitive disadvantage in the marketplace. In addition, the bill's protection of specified personal financial and health information of consumers may reduce the risk of identity theft and protect matters of personal health which are traditionally private and confidential concerns between patients and health care providers.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on OFR, because OFR staff would be responsible for complying with public records requests and may require training related to the creation of the public records exemption. In addition, OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of OFR.