

# 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.)

BILL: CS/CS/SB 2428

SPONSOR: Governmental Oversight & Productivity Committee, Banking and Insurance Committee and Senator Crist

SUBJECT: Public Records Exemption (Collection Agencies)

DATE: March 31, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for CS/SB 2428 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. 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.
- Reveal a trade secret, as defined in s. 688.002, F.S.
- Reveal proprietary business obtained by the OFR which is only made available to the OFR on a confidential basis.

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.

A related bill, Senate Bill 2430, provides greater compliance and enforcement authority for the Office of Financial Regulation to regulate commercial and consumer collection agencies, including examinations and investigations of such agencies.

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, 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.*

Section 24(c), Art. I of the Florida Constitution, permits the Legislature to create exemptions to the right to inspect and copy a public record. A bill creating an 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 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, that exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

## Investigation and Examination of Commercial and Consumer Collection Agencies

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.<sup>1</sup> However, another bill, Senate Bill 2430, would provide greater compliance and enforcement authority for the Office of Financial Regulation to regulate, investigate, and examine commercial and consumer collection agencies.

In comparison, limited public records exemptions are provided in current law for OFR investigations and examinations of financial institutions,<sup>2</sup> mortgage brokers and mortgage lenders,<sup>3</sup> retail installment sales providers,<sup>4</sup> securities dealers,<sup>5</sup> and money transmitters (check cashers, deferred presentment providers, and foreign currency exchangers).<sup>6</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 559.5472, 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 documents 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) are 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 enter into an agreement with any law enforcement or administrative agency to keep confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I, State Constitution any information furnished to the OFR under the agreement. 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.

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<sup>1</sup> Section 559.725, F.S. (2003)

<sup>2</sup> Section 655.057, F.S. (2003)

<sup>3</sup> Section 494.00125, F.S. (2003)

<sup>4</sup> Section 520.9965, F.S. (2003)

<sup>5</sup> Section 517.2015, F.S. (2003)

<sup>6</sup> Section 560.129, F.S. (2003)

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 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.
- Reveal a trade secret, as defined in s. 688.002, F.S.
- Reveal proprietary business obtained by the OFR which is only made available to the OFR on a confidential basis.

This section expressly provides that this public records exemption may not be construed to prohibit disclosure of information that is required to be filed with OFR and would be subject to s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution.

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, 2009, 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 Senate Bill 2430, or substantially similar legislation, is adopted in the same legislative 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 provides on page 2, lines 4-7, that if confidential and exempt information is offered into evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in her or his discretion, prevent the disclosure of such information. This provision is unnecessary and potentially confusing. The rules of evidence control what

the presiding officer may or may not permit to be admitted into evidence. Further, the presiding officer may protect confidential and exempt information by hearing it in camera. Finally, providing a statement in this exemption regarding admissibility of confidential and exempt information could call into question the applicable standard in other exemptions as those exemptions do not contain this provision.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The public records exemption protects the identity and safety of persons reporting alleged violations of the law to the OFR. The bill also protects business and financial information of employers and personnel identifying information concerning customers. The disclosure of the financial and tax records of a business entity could place such an entity at a competitive disadvantage with competitors.

**C. Government Sector Impact:**

The public records exemption provides the OFR with an effective investigatory tool to assist in the performance of its compliance and enforcement duties relating to parts V and VI of ch. 559, F.S., relating to the regulation of commercial and consumer collection agencies. The exemption protects the integrity and effectiveness of ongoing investigations and examinations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.