

Tab 1	SB 548 by Richter; (Similar to H 0413) Title Insurance						
629580	A	S	RCS	BI, Richter	Delete L.29 - 36:	11/17 01:53 PM	

Tab 2	SB 592 by Hutson; (Similar to H 0463) Public Records/Department of Financial Services						
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Tab 3	SB 626 by Gaetz; Consumer Credit						
180360	A	S	RCS	BI, Negron	Delete L.62 - 85:	11/17 01:53 PM	

Tab 4	SPB 7032 by BI; OGSR/Office of Financial Regulation						
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, November 17, 2015
TIME: 1:00—3:00 p.m.
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	SB 548 Richter (Similar H 413)	Title Insurance; Increasing a title insurer's limit of risk from one-half of its surplus as to policyholders to the entirety of its surplus; providing that title insurers may obtain reinsurance from an assuming insurer with a specified financial strength rating from A.M. Best Company, Inc., or an alternative rating from another organization approved by the Commissioner of the Office of Insurance Regulation, etc. BI 11/17/2015 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
2	SB 592 Hutson (Similar H 463)	Public Records/Department of Financial Services; Providing an exemption from public records requirements for the personal identifying and location information of certain nonsworn investigative personnel of the Department of Financial Services and the names and personal identifying and location information of the spouses and children of such personnel; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 11/17/2015 Favorable GO RC	Favorable Yeas 9 Nays 0
3	SB 626 Gaetz	Consumer Credit; Authorizing the Office of Financial Regulation to deny a license or take disciplinary action against a person who violates the Military Lending Act or the regulations adopted under that act in connection with a consumer finance loan under the Florida Consumer Finance Act, etc. BI 11/17/2015 Fav/CS MS FP	Fav/CS Yeas 9 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, November 17, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7032	OGSR/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for confidential information received by the Office of Financial Regulation from certain state or federal agencies and information received or developed by the office in a joint or multiagency examination or investigation; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill Yeas 9 Nays 0

Other Related Meeting Documents

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.)

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

BILL: CS/SB 548

INTRODUCER: Senator Richter

SUBJECT: Title Insurance

DATE: November 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier/Knudson	Knudson	BI	Fav/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 548 increases the limit of risk a title insurer may assume on a single contract to not greater than its surplus as to policyholders. This bill also requires a title insurer to reinsure any excess above the surplus as to policyholders from authorized insurers or reinsurers that may provide reinsurance under s. 624.610, F.S. Currently the limit of risk is one-half of the company's surplus as to policyholders and title insurers that are required to reinsure any excess may only obtain reinsurance from "approved" insurers.

This bill takes effect July 1, 2016.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.² Title insurance agents and agencies are

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 797 (Fla. 4th DCA 2003).

licensed and regulated by the Department of Financial Services (“DFS”) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (“OIR”).

Limit of Risk

Florida law limits the amount of the risk that a title insurer can assume when providing coverage for a single risk, such as a large commercial real estate project. Section 627.778, F.S., provides that a title insurer may not issue a contract of title insurance if the dollar amount of the risk exceeds one-half of its surplus as to policyholders³ unless the excess is reinsured by one or more approved insurers.⁴ Different states have different rules relating to the amount of risk a title insurer can assume for a single risk. Some states have no single risk limit.⁵ A justification for a state having no single risk limit for title insurers is that the risk of a complete loss in a title insurance claim is very low.⁶ Claims in title cases occur in approximately one of every 700 to 1,000 policies and only 1-3 percent of those claims exceed policy limits.⁷ Most companies have additional review before issuing policies for large commercial transactions so losses on such transactions are expected to be lower.⁸ Florida has recently had two title insurer insolvencies. According to the DFS, the insolvencies were not related to the single risk limit.⁹ The insolvency of K.E.L. Title Insurance Group, for example, was related to theft of funds from real estate transactions and not related to insurance of a large commercial risk.¹⁰

Authorized Insurers

Section 627.778, F.S., references “approved” insurers. However, “approved” is not defined in the statutes. Section 624.09, F.S., defines an authorized insurer as an insurer with a certificate of authority to transact insurance issued by the OIR.

Section 624.610, F.S., sets forth requirements for reinsurance. An insurer can only receive credit for reinsurance as an asset or a deduction from liability if the reinsurer meets statutory requirements.¹¹ Section 624.610(3)(a), F.S., requires that credit be allowed for reinsurance when the reinsurance is ceded to an authorized insurer. Credit is also allowed for reinsurance when

³ The capital and surplus of an insurance company are sometimes referred to as surplus as regards policyholders or policyholders' surplus. Policyholders' surplus is equal to net admitted assets, or admitted assets minus liabilities. Surplus as to policyholders is determined from the last annual statement filed by the insurer. *See* s. 627.778(2), F.S.

⁴ *See* s. 627.778(1), F.S.

⁵ According to one commenter, twenty states have no single risk limit for title insurance. *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, pp. 458-60 (2007)

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 12, 2015).

⁶ *See* James L. Gosdin, Title Insurance: A Comprehensive Overview, p. 101 (2007)(

https://books.google.com/books?id=QwIG8waPOXcC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last visited on November 10, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ Email from the Department of Financial Services to Staff of the Banking and Insurance Committee (on file with the Banking and Insurance Committee).

¹⁰ *See* http://www.myfloridacfo.com/Division/Receiver/company_pdf/541/motion.pdf (last visited on November 12, 2015).

¹¹ *See* s. 624.310(2), F.S.

reinsurance is ceded to an “accredited” reinsurer¹² or when reinsurance is ceded to an insurer who maintains a sufficient trust fund for payment of claims.¹³

Reinsurance

Reinsurance is insurance by another insurer of all or part of a risk previously assumed by an insurance company.¹⁴ Section 624.610, F.S., sets forth when the OIR must credit a ceding insurer¹⁵ for reinsurance. Credit for reinsurance results in the insurer being credited with an asset or a deduction from liability.¹⁶ Reinsurance credit is given when the reinsurance is ceded to an assuming insurer that:

- Is a Florida-authorized insurer or reinsurer;
- An accredited reinsurer;¹⁷ or
- A reinsurer that maintains a trust fund¹⁸ in a qualified United States financial institution.

Credit for reinsurance must also be provided if the assuming reinsurer does not meet the above requirements but is reinsuring risks located in jurisdiction in which the reinsurance is required to be purchased by a particular entity by applicable law or regulation of that jurisdiction.¹⁹ The OIR commissioner may also allow credit if the assuming insurer holds a surplus in excess of \$250 million, has a secure financial strength rating from at least two statistical rating organizations, and agrees to meet conditions set forth in statute related to the failure to perform duties under the reinsurance agreement and insolvency.²⁰

III. Effect of Proposed Changes:

This bill increases the limit-of-risk a title insurer may incur on a single contract by allowing a title insurer to issue a contract of title insurance if the dollar amount of the risk assumed does not exceed its surplus as to policyholders. Currently the limit-of-risk is one-half of the company’s surplus as to policyholders.

If the limit-of-risk is exceeded, the bill requires that the excess must be reinsured by one or more authorized insurers or one or more reinsurers that may provide reinsurance under s. 624.610, F.S. Current law requires that any risk assumed in excess of one-half of the company’s surplus as to policyholders must be reinsured by “approved” insurers but does not define the term “approved.” This bill provides that reinsurance must be provided by “authorized” insurers, which are defined

¹² See s. 624.310(3)(b), F.S.

¹³ See s. 624.310(3)(c), F.S.

¹⁴ “Reinsurance,” *Merriam-Webster.com*, <http://www.merriam-webster.com/dictionary/reinsurance> (last accessed Nov. 17, 2015).

¹⁵ The insurer purchasing reinsurance and thus ceding risk to the other insurer.

¹⁶ See s. 624.610(2), F.S.

¹⁷ See s. 624.610(2)(b), F.S. An accredited reinsurer must submit to the jurisdiction of Florida, submit to this state’s authority to examine its books and records, be licensed or authorized to transact insurance or reinsurance in at least one state, and annually file with the OIR its annual and any quarterly statements required in its state of domicile, and maintain a surplus as to policyholders of not less than \$20 million.

¹⁸ See s. 624.610(2)(c), F.S. The trust fund must maintain minimum surplus requirements and be approved by the insurance regulator where the trust is domiciled or that has accepted principal regulatory oversight of the trust.

¹⁹ See s. 624.610(2)(d), F.S.

²⁰ See s. 624.610(2)(e)-(g), F.S.

in statute as insurers that have been issued a certificate of authority to transact insurance in Florida by the Office of Insurance Regulation.²¹

This bill takes effect on July 1, 2016.

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:

Proponents of this bill argue that increasing the limit of risk will allow title insurers to insure larger commercial risks.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.778 of the Florida Statutes.

²¹ See s. 624.09, F.S.

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 November 17, 2015:

The CS allows a title insurer to obtain reinsurance from reinsurers that may provide reinsurance under s. 624.610, F.S. The filed version of the bill allowed title insurers to purchase reinsurance from any assuming insurer that has a financial strength rating of “A” or higher from A.M. Best or another rating organization approved by the Insurance Commissioner.

- B. **Amendments:**

None.



629580

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 29 - 36
and insert:
insurers or one or more reinsurers that may provide reinsurance
under s. 624.610.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete lines 17 - 18



629580

11 and insert:
12 627.778, Florida Statutes, is amended to read:
13
14 ===== T I T L E A M E N D M E N T =====
15 And the title is amended as follows:
16 Delete lines 5 - 12
17 and insert:
18 to the entirety of its surplus; revising an exception
19 to the limit; providing an effective date.

By Senator Richter

23-00503-16

2016548__

1 A bill to be entitled
 2 An act relating to title insurance; amending s.
 3 627.778, F.S.; increasing a title insurer's limit of
 4 risk from one-half of its surplus as to policyholders
 5 to the entirety of its surplus; changing a reference
 6 to "approved insurers" to "authorized insurers";
 7 providing that title insurers may obtain reinsurance
 8 from an assuming insurer with a specified financial
 9 strength rating from A.M. Best Company, Inc., or an
 10 alternative rating from another organization approved
 11 by the Commissioner of the Office of Insurance
 12 Regulation; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Paragraph (a) of subsection (1) of section
 17 627.778, Florida Statutes, is amended, and subsection (4) is
 18 added to that section, to read:

19 627.778 Limit of risk.—

20 (1)(a) A title insurer may not issue any contract of title
 21 insurance, either as a primary insurer or as a coinsurer or
 22 reinsurer, upon an estate, lien, or interest in property located
 23 in this state unless:

24 1. The contract shows on its face the dollar amount of the
 25 risk assumed; and

26 2. The dollar amount of the risk assumed does not exceed
 27 ~~one-half of~~ its surplus as to policyholders, unless the excess
 28 is simultaneously reinsured in one or more authorized ~~approved~~
 29 insurers.

Page 1 of 2

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

23-00503-16

2016548__

30 (4) Notwithstanding any other provision of this part, a
 31 title insurer may obtain reinsurance by a reinsurance treaty or
 32 other reinsurance agreement from an assuming insurer that has a
 33 financial strength rating of "A" or higher from A.M. Best
 34 Company, Inc., or that has an alternative rating from another
 35 recognized rating organization which is approved and determined
 36 by the commissioner to be an equivalent rating.

37 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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

W

THE FLORIDA SENATE APPEARANCE RECORD

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

11/17/15
Meeting Date

548
Bill Number (if applicable)

629580
Amendment Barcode (if applicable)

Topic Title Insurance Amendment

Name Caitlin Murray

Job Title Director of Government Affairs

Address _____
Street

Phone ~~491-8424~~ 491-8424

City State Zip

Email Caitlin.murray@flair.com

Speaking: For Against Information

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

Representing The Office of Insurance Regulation

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

S

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

11/17/15

Meeting Date

548

Bill Number (if applicable)

629580

Amendment Barcode (if applicable)

Topic Title Insurance

Name Margaret E. Redman

Job Title Senior Corporate Counsel

Address 1 First American Way

Street

Phone 714-250-8619

Santa Ana CA 92707

City

State

Zip

Email mredman@firstam.com

Speaking: For Against Information

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

Representing First American Title Insurance Company

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)

5

THE FLORIDA SENATE APPEARANCE RECORD

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

11/17/15
Meeting Date

SB 548
Bill Number (if applicable)

Topic TITLE ISS

629580
Amendment Barcode (if applicable)

Name DOUGLAS MANG

Job Title _____

Address 1424 PIEDMONT AVE
Street

Phone 822-7710

TALLAH FL 32308
City State Zip

Email DMANG@MANG

Speaking: For Against Information

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

Representing FIRST AMERICANS TITLE

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

5

11-17-15

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

548

Meeting Date

Bill Number (if applicable)

629580

Topic

Title Insurance

Amendment Barcode (if applicable)

Name

Beth A. Vecchioli

Job Title

Sr. Policy Advisor

Address

315 S. Calhoun St., Ste 600

Phone

850-545-7991

Street

Tallahassee, FL

32301

Email

beth.vecchioli@stewarttitle.com

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Stewart Title Guaranty Co.

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

October 28, 2015

The Honorable Lizbeth Benacquisto, Chair
Senate Committee on Banking and Insurance
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Benacquisto:

Senate Bill 548, relating to Title Insurance, has been referred to the Committee on Banking and Insurance. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: James Knudson, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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.)

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

BILL: SB 592

INTRODUCER: Senator Hutson

SUBJECT: Public Records/Department of Financial Services

DATE: November 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Favorable
2.			GO	
3.			RC	

I. Summary:

SB 592 expands the public records exemption for agency personnel information to include the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of nonsworn investigative personnel of the Department of Financial Services. The bill also exempts the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment, locations of schools and child care facilities of the spouses and children of such personnel.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions.

This bill creates a new exemption and is subject to a two-thirds vote in both the Senate and the House, pursuant to Article I, s. 24(c) of the State Constitution.

This bill amends section 119.071, Florida Statutes.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ 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).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on 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.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁷

- 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

Department of Financial Services

In 2002 the Florida Legislature merged the Department of Insurance, Treasury and State Fire Marshal and the Department of Banking and Finance into the Department of Financial Services (DFS). The Chief Financial Officer (CFO) is a statewide elected official who is a member of the

¹⁴ 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).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

Cabinet²⁰ and serves as the agency head of the DFS.²¹ The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.²²

According to the DFS a total of 206 positions within 5 divisions would currently be protected under this exemption.

- 5 positions in the Division of Accounting & Auditing who investigate suspicion of theft, attempted theft, or the misappropriation of state funds.
- 59 positions in the Division of Agent & Agency Services who investigate misconduct of licensees. Investigators often go into the offices and homes of licensees and consumers to gather evidence and take sworn statements.
- 74 positions in the Division of Workers Compensation who investigate enforce workers compensation requirements of employers. Investigators often visit employer worksites and have the power to issue Stop-Work Orders that immediately cease all the business operations of the employer.
- 15 positions in the Division of Funeral, Cemetery, & Consumer Services who investigate fraudulent activities of licensees as well as improper handling of human remains. Investigators often go to the business address of the license to conduct much of their investigation.
- 53 positions in the Division of Public Assistance Fraud who investigate suspected fraud within the various public assistant programs administered by the state. Such investigations can result in prosecution by the state attorney's office.

III. Effect of Proposed Changes:

The bill expands the public records exemption in s. 119.071(4), F.S., for agency personnel information to include the home addresses, telephone numbers, and photographs of current

²⁰ See Art. IV, s. 4, Fla. Const.

²¹ See s. 20.121(1), F.S.

²² See s. 20.121(2), F.S.

nonsworn investigative personnel of the Department of Financial Services. The bill also exempts the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel, as well as the names and locations of schools and day care facilities attended by their children.

The bill provides that the amendments made by the act are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that the public-records exemptions will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Justification of public necessity for the exemptions is also provided, stating that release of the information might place the investigators or the family members of these investigators in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or professional practices have come under the scrutiny of such personnel, therefore, the harm that would result from the release of the information outweighs any public benefit that might result from the disclosure.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Pursuant to Article I, s. 24(c) of the State Constitution all public records exemptions requires a two-thirds vote by both the Senate and the House.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would protect nonsworn investigative personnel and their families from potential harassment or harm when fulfilling their duties while working for the Department of Financial Services.

VI. Technical Deficiencies:

Social security numbers of all state employees are already exempt from public records, including them in this exemption is not needed.

The inclusion of former employees was inadvertently left out of the Senate bill and is included in the House companion. Many other current exemptions for investigators of other state agencies includes the protection of former employees and their families.

Similar exemptions that have passed to protect employees of other state agencies only apply if “the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.

By Senator Hutson

6-00524-16

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of certain nonsworn investigative
 6 personnel of the Department of Financial Services and
 7 the names and personal identifying and location
 8 information of the spouses and children of such
 9 personnel; providing for future review and repeal of
 10 the exemption; providing a statement of public
 11 necessity; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term “telephone
 21 numbers” includes home telephone numbers, personal cellular
 22 telephone numbers, personal pager telephone numbers, and
 23 telephone numbers associated with personal communications
 24 devices.
 25 2.a.(I) The home addresses, telephone numbers, social
 26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the

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30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).
 41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.
 46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.
 50 (IV) The home addresses, telephone numbers, social security
 51 numbers, dates of birth, and photographs of nonsworn
 52 investigative personnel of the Department of Financial Services
 53 whose duties include the investigation of fraud, theft, workers'
 54 compensation coverage requirements and compliance, other
 55 criminal activities, or state regulatory requirement violations;
 56 the names, home addresses, telephone numbers, social security
 57 numbers, photographs, dates of birth, and places of employment
 58 of the spouses and children of such personnel; and the names and

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 59 locations of schools and child care facilities attended by the
 60 children of such personnel are exempt from s. 119.07(1) and s.
 61 24(a), Art. I of the State Constitution. This sub-sub-
 62 subparagraph is subject to the Open Government Sunset Review Act
 63 in accordance with s. 119.15 and shall stand repealed on October
 64 2, 2021, unless reviewed and saved from repeal through
 65 reenactment by the Legislature.

66 b. The home addresses, telephone numbers, dates of birth,
 67 and photographs of firefighters certified in compliance with s.
 68 633.408; the home addresses, telephone numbers, photographs,
 69 dates of birth, and places of employment of the spouses and
 70 children of such firefighters; and the names and locations of
 71 schools and day care facilities attended by the children of such
 72 firefighters are exempt from s. 119.07(1).

73 c. The home addresses, dates of birth, and telephone
 74 numbers of current or former justices of the Supreme Court,
 75 district court of appeal judges, circuit court judges, and
 76 county court judges; the home addresses, telephone numbers,
 77 dates of birth, and places of employment of the spouses and
 78 children of current or former justices and judges; and the names
 79 and locations of schools and day care facilities attended by the
 80 children of current or former justices and judges are exempt
 81 from s. 119.07(1).

82 d.(I) The home addresses, telephone numbers, social
 83 security numbers, dates of birth, and photographs of current or
 84 former state attorneys, assistant state attorneys, statewide
 85 prosecutors, or assistant statewide prosecutors; the home
 86 addresses, telephone numbers, social security numbers,
 87 photographs, dates of birth, and places of employment of the

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 88 spouses and children of current or former state attorneys,
 89 assistant state attorneys, statewide prosecutors, or assistant
 90 statewide prosecutors; and the names and locations of schools
 91 and day care facilities attended by the children of current or
 92 former state attorneys, assistant state attorneys, statewide
 93 prosecutors, or assistant statewide prosecutors are exempt from
 94 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

95 (II) The names of the spouses and children of current or
 96 former state attorneys, assistant state attorneys, statewide
 97 prosecutors, or assistant statewide prosecutors are exempt from
 98 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

99 (III) Sub-sub-subparagraph (II) is subject to the Open
 100 Government Sunset Review Act in accordance with s. 119.15, and
 101 shall stand repealed on October 2, 2018, unless reviewed and
 102 saved from repeal through reenactment by the Legislature.

103 e. The home addresses, dates of birth, and telephone
 104 numbers of general magistrates, special magistrates, judges of
 105 compensation claims, administrative law judges of the Division
 106 of Administrative Hearings, and child support enforcement
 107 hearing officers; the home addresses, telephone numbers, dates
 108 of birth, and places of employment of the spouses and children
 109 of general magistrates, special magistrates, judges of
 110 compensation claims, administrative law judges of the Division
 111 of Administrative Hearings, and child support enforcement
 112 hearing officers; and the names and locations of schools and day
 113 care facilities attended by the children of general magistrates,
 114 special magistrates, judges of compensation claims,
 115 administrative law judges of the Division of Administrative
 116 Hearings, and child support enforcement hearing officers are

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117 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 118 Constitution if the general magistrate, special magistrate,
 119 judge of compensation claims, administrative law judge of the
 120 Division of Administrative Hearings, or child support hearing
 121 officer provides a written statement that the general
 122 magistrate, special magistrate, judge of compensation claims,
 123 administrative law judge of the Division of Administrative
 124 Hearings, or child support hearing officer has made reasonable
 125 efforts to protect such information from being accessible
 126 through other means available to the public.

127 f. The home addresses, telephone numbers, dates of birth,
 128 and photographs of current or former human resource, labor
 129 relations, or employee relations directors, assistant directors,
 130 managers, or assistant managers of any local government agency
 131 or water management district whose duties include hiring and
 132 firing employees, labor contract negotiation, administration, or
 133 other personnel-related duties; the names, home addresses,
 134 telephone numbers, dates of birth, and places of employment of
 135 the spouses and children of such personnel; and the names and
 136 locations of schools and day care facilities attended by the
 137 children of such personnel are exempt from s. 119.07(1) and s.
 138 24(a), Art. I of the State Constitution.

139 g. The home addresses, telephone numbers, dates of birth,
 140 and photographs of current or former code enforcement officers;
 141 the names, home addresses, telephone numbers, dates of birth,
 142 and places of employment of the spouses and children of such
 143 personnel; and the names and locations of schools and day care
 144 facilities attended by the children of such personnel are exempt
 145 from s. 119.07(1) and s. 24(a), Art. I of the State

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146 Constitution.

147 h. The home addresses, telephone numbers, places of
 148 employment, dates of birth, and photographs of current or former
 149 guardians ad litem, as defined in s. 39.820; the names, home
 150 addresses, telephone numbers, dates of birth, and places of
 151 employment of the spouses and children of such persons; and the
 152 names and locations of schools and day care facilities attended
 153 by the children of such persons are exempt from s. 119.07(1) and
 154 s. 24(a), Art. I of the State Constitution, if the guardian ad
 155 litem provides a written statement that the guardian ad litem
 156 has made reasonable efforts to protect such information from
 157 being accessible through other means available to the public.

158 i. The home addresses, telephone numbers, dates of birth,
 159 and photographs of current or former juvenile probation
 160 officers, juvenile probation supervisors, detention
 161 superintendents, assistant detention superintendents, juvenile
 162 justice detention officers I and II, juvenile justice detention
 163 officer supervisors, juvenile justice residential officers,
 164 juvenile justice residential officer supervisors I and II,
 165 juvenile justice counselors, juvenile justice counselor
 166 supervisors, human services counselor administrators, senior
 167 human services counselor administrators, rehabilitation
 168 therapists, and social services counselors of the Department of
 169 Juvenile Justice; the names, home addresses, telephone numbers,
 170 dates of birth, and places of employment of spouses and children
 171 of such personnel; and the names and locations of schools and
 172 day care facilities attended by the children of such personnel
 173 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 174 Constitution.

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175 j.(I) The home addresses, telephone numbers, dates of
 176 birth, and photographs of current or former public defenders,
 177 assistant public defenders, criminal conflict and civil regional
 178 counsel, and assistant criminal conflict and civil regional
 179 counsel; the home addresses, telephone numbers, dates of birth,
 180 and places of employment of the spouses and children of such
 181 defenders or counsel; and the names and locations of schools and
 182 day care facilities attended by the children of such defenders
 183 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 184 the State Constitution.

185 (II) The names of the spouses and children of the specified
 186 agency personnel identified in sub-sub-subparagraph (I) are
 187 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 188 Constitution. This sub-sub-subparagraph is subject to the Open
 189 Government Sunset Review Act in accordance with s. 119.15 and
 190 shall stand repealed on October 2, 2019, unless reviewed and
 191 saved from repeal through reenactment by the Legislature.

192 k. The home addresses, telephone numbers, and photographs
 193 of current or former investigators or inspectors of the
 194 Department of Business and Professional Regulation; the names,
 195 home addresses, telephone numbers, and places of employment of
 196 the spouses and children of such current or former investigators
 197 and inspectors; and the names and locations of schools and day
 198 care facilities attended by the children of such current or
 199 former investigators and inspectors are exempt from s. 119.07(1)
 200 and s. 24(a), Art. I of the State Constitution if the
 201 investigator or inspector has made reasonable efforts to protect
 202 such information from being accessible through other means
 203 available to the public. This sub-subparagraph is subject to the

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204 Open Government Sunset Review Act in accordance with s. 119.15
 205 and shall stand repealed on October 2, 2017, unless reviewed and
 206 saved from repeal through reenactment by the Legislature.

207 l. The home addresses and telephone numbers of county tax
 208 collectors; the names, home addresses, telephone numbers, and
 209 places of employment of the spouses and children of such tax
 210 collectors; and the names and locations of schools and day care
 211 facilities attended by the children of such tax collectors are
 212 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 213 Constitution if the county tax collector has made reasonable
 214 efforts to protect such information from being accessible
 215 through other means available to the public. This sub-
 216 subparagraph is subject to the Open Government Sunset Review Act
 217 in accordance with s. 119.15 and shall stand repealed on October
 218 2, 2017, unless reviewed and saved from repeal through
 219 reenactment by the Legislature.

220 m. The home addresses, telephone numbers, dates of birth,
 221 and photographs of current or former personnel of the Department
 222 of Health whose duties include, or result in, the determination
 223 or adjudication of eligibility for social security disability
 224 benefits, the investigation or prosecution of complaints filed
 225 against health care practitioners, or the inspection of health
 226 care practitioners or health care facilities licensed by the
 227 Department of Health; the names, home addresses, telephone
 228 numbers, dates of birth, and places of employment of the spouses
 229 and children of such personnel; and the names and locations of
 230 schools and day care facilities attended by the children of such
 231 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 232 the State Constitution if the personnel have made reasonable

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233 efforts to protect such information from being accessible
 234 through other means available to the public. This sub-
 235 subparagraph is subject to the Open Government Sunset Review Act
 236 in accordance with s. 119.15 and shall stand repealed on October
 237 2, 2019, unless reviewed and saved from repeal through
 238 reenactment by the Legislature.

239 n. The home addresses, telephone numbers, dates of birth,
 240 and photographs of current or former impaired practitioner
 241 consultants who are retained by an agency or current or former
 242 employees of an impaired practitioner consultant whose duties
 243 result in a determination of a person's skill and safety to
 244 practice a licensed profession; the names, home addresses,
 245 telephone numbers, dates of birth, and places of employment of
 246 the spouses and children of such consultants or their employees;
 247 and the names and locations of schools and day care facilities
 248 attended by the children of such consultants or employees are
 249 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 250 Constitution if a consultant or employee has made reasonable
 251 efforts to protect such information from being accessible
 252 through other means available to the public. This sub-
 253 subparagraph is subject to the Open Government Sunset Review Act
 254 in accordance with s. 119.15 and shall stand repealed on October
 255 2, 2020, unless reviewed and saved from repeal through
 256 reenactment by the Legislature.

257 3. An agency that is the custodian of the information
 258 specified in subparagraph 2. and that is not the employer of the
 259 officer, employee, justice, judge, or other person specified in
 260 subparagraph 2. shall maintain the exempt status of that
 261 information only if the officer, employee, justice, judge, other

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262 person, or employing agency of the designated employee submits a
 263 written request for maintenance of the exemption to the
 264 custodial agency.

265 4. The exemptions in this paragraph apply to information
 266 held by an agency before, on, or after the effective date of the
 267 exemption.

268 5. Except as otherwise expressly provided in this
 269 paragraph, this paragraph is subject to the Open Government
 270 Sunset Review Act in accordance with s. 119.15, and shall stand
 271 repealed on October 2, 2017, unless reviewed and saved from
 272 repeal through reenactment by the Legislature.

273 Section 2. The Legislature finds that it is a public
 274 necessity to exempt from public records requirements the home
 275 addresses, telephone numbers, social security numbers, dates of
 276 birth, and photographs of nonsworn investigative personnel of
 277 the Department of Financial Services whose duties include, or
 278 result in, a determination or adjudication of public assistance
 279 fraud, insurance fraud, failure to comply with workers'
 280 compensation law requirements, failure to comply with licensure
 281 or registration requirements for industries regulated by the
 282 department, and other instances of administrative and criminal
 283 misconduct; the names, home addresses, telephone numbers, social
 284 security numbers, photographs, dates of birth, and places of
 285 employment of the spouses and children of such personnel; and
 286 the names and locations of schools and child care facilities
 287 attended by the children of such personnel. The Legislature
 288 finds that the release of such personal identifying and location
 289 information might place these nonsworn investigative personnel
 290 of the department and their family members in danger of physical

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291 and emotional harm from disgruntled individuals who have
292 contentious reactions to actions taken by such personnel, or
293 whose business or professional practices have come under the
294 scrutiny of such personnel. The Legislature further finds that
295 the harm that may result from the release of such personal
296 identifying and location information outweighs any public
297 benefit that may be derived from the disclosure of the
298 information.

299 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-17
Meeting Date

SB 592
Bill Number (if applicable)

Topic SB 592

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 900 N Monroe St
Street

Phone 850-413-2829

Tallahassee FL 32303
City State Zip

Email elizabeth.boyd@myflorida.gov.com

Speaking: For Against Information

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

Representing CFO Atwater

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 626

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Consumer Credit

DATE: November 17, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			MS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 626 authorizes the Office of Financial Regulation to enforce the provisions of the federal Military Lending Act (MLA), which provides greater consumer protections for servicemembers and their dependents in connection with a broad range of closed-end and unsecured, open-end types of consumer credit transactions. These consumer credit transactions include consumer finance loans, payday loans, title loans, overdraft lines of credit, small dollar loans, and credit cards accounts. The MLA caps the Military Annual Percentage Rate (MAPR) on these credit transactions at 36 percent, requires oral and written disclosures for the consumer, and prohibits certain terms and conditions on the loan, such as mandatory arbitration and prepayment penalties.

II. Present Situation:

Consumer Debt and the Military

Military personnel who have trouble handling their personal finances can quickly find their duty status, potential promotions, and even military careers in jeopardy. The Department of Defense (DoD) makes a significant investment in recruiting, training and retaining highly qualified service members. The DoD expects these servicemembers to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial

needs of their families.¹ Losing qualified servicemembers due to personal issues, such as financial instability, causes loss of mission capability and drives significant replacement costs. The DoD estimates that each separation costs the DoD \$58,250.²

Prior to entering the military, a 2014 DoD report³ notes that many servicemembers, particularly younger members, have limited money management skills, and are generally unprepared for their financial responsibilities. Surveys cited by the report indicate that 11 percent of enlisted servicemembers reported using payday loans, title loans, bank deposit advances, pawn shops, or installment loans with interest rates over 36 APR. Further, the report states that a substantial minority of servicemembers continue to report difficulty managing their finances, and have little access to safe, low-cost credit. The DoD concludes, “Limiting high-cost options assists the DoD in making the point clear to servicemembers...that high-cost loans are not fiscally prudent and that they are to resolve their financial problems through counseling and alternatives, rather than perpetuate them through predatory high-cost loans.”

In 2014, the Consumer Financial Protection Bureau, (CFPB) analyzed high-cost credit that was not subject to the MLA regulations, such as deposit advances structured as open-end lines of credit.⁴ Deposit advances are lines of credit offered by some depository institutions as a feature of an existing depository account. The CFPB findings indicate that some depository institutions extended millions of dollars in deposit advances to servicemembers with APRs that typically exceeded 300 percent. Credit limits were generally set as a percentage of the account holder’s monthly direct deposits. The cost of the deposit advances studied was disclosed as a fixed fee per amount borrowed, with a typical fee being \$10 per \$100 borrowed. Lenders generally required that deposit advances be repaid automatically when the next qualifying deposit was made into the consumer’s account; in the event that an outstanding balance was not fully repaid by incoming deposits within 35 days, the consumer’s account was debited for the amount due, even if this resulted in the associated deposit account being overdrawn.

Federal Consumer Protection Laws

Federal Truth in Lending Act (TILA)

The purpose of TILA,⁵ is to promote the informed use of credit through “a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available.”⁶ Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.⁷ Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident

¹ U.S. Department of Defense, Instruction 1344.09, Indebtedness of Military Personnel (2008). “Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner [to include alimony and child support. A service member’s failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice [10 U.S.C. 801–940] or a claim pursuant to Article 139 of [10 U.S.C. 801–940].

² 80 FR 43564.

³ Department of Defense, Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents (2014).

⁴ Consumer Financial Protection Bureau, The Extension of High-Cost Credit to Servicemembers and Their Families (2014).

⁵ 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.

⁶ 15 U.S.C. s. 1601(a).

⁷ 15 U.S.C. s. 1604-1606.

to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.⁸ For example, the calculation of APR does not include premiums for credit life, accident, or health insurance when calculating the loan's finance charge, as long as the insurance products are voluntary, the lender tells borrower in writing that these products are voluntary, and the borrower consents in writing.⁹

Federal Military Lending Act

In 2006, Congress enacted the Military Lending Act (MLA),¹⁰ which provides covered members and dependents¹¹ with specific protections for their "consumer credit" transactions. These provisions include, but are not limited to, capping the annual percentage rate of interest that a creditor may extend consumer credit to such persons at no more than 36 percent; requiring disclosures for covered members; and prohibiting creditors from requiring a servicemember or dependent to submit to arbitration in the event of a dispute. The MLA also provides remedies for a covered borrower to recover damages from a creditor who violates a requirement of the MLA. The MLA is enforced by specified federal agencies.¹²

In the 2007 regulations implementing the MLA, the Department of Defense (DoD) applied the MLA provisions to the following "consumer credit" products of covered borrowers:¹³

- closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer;
- closed-end auto title loans with a term of 181 days or fewer; and
- closed-end tax refund anticipation loans.¹⁴

For covered borrowers, the cost of such consumer credit is capped at the military annual percentage rate (MAPR) of 36 percent. The MAPR is calculated based on Regulation Z; however, for purposes of MAPR, it also includes other costs, such as credit insurance premiums, and other specified fees.¹⁵

Under the 2007 regulations, any loan that does not fall into one of the three categories is not subject to the MLA's protections under the existing regulations. For example, lenders can avoid the MLA limitations when they offer open-end lines of credit, contract for an initial duration of greater than 91 days for payday loans or 181 days for auto title loans, or finance an initial amount of more than \$2,000 for payday loans. As a result, the DoD advocated that a wider range

⁸ 12 C.F.R. s. 1026.4.

⁹ 15 U.S.C. s. 1605(b).

¹⁰ Public Law 109-364, 120 Stat 2266.

¹¹ A covered member is a member of the armed forces who is on active duty under a call or order that does not specify a period of 30 days or less or on active Guard and Reserve Duty. A dependent with respect to a covered member is a spouse, child, or other specified dependent. [10 U.S.C. s. 987(i)]

¹² In 2013, the MLA was amended. [Public Law 112-239, 126 Stat. 1785]The MLA is implemented by the Department of Defense and, is enforced by the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Consumer Financial Protection Bureau (CFPB), Federal Trade Commission, and other specified agencies.

¹³ The 2007 final rule provides a safe harbor under which the creditor may require an applicant to sign a statement declaring whether or not he or she is a covered borrower. A covered borrower must meet the criteria as a covered member or the dependent of a covered member at the time of the consumer credit transaction. [32 C.F.R. 232.3 and 232.5]

¹⁴ 32 C.F.R. 232.3.

¹⁵ 32 C.F.R. 232.3(h).

of credit products offered or extended to servicemembers be subject to the protections of the MLA. The DoD opined that the extremely narrow definition of “consumer credit” permits creditors to structure credit products in order to reduce or avoid altogether the obligations of the MLA.¹⁶

In 2015, the DOD significantly amended the regulations¹⁷ to provide that consumer credit covered under the MLA includes “credit offered or extended to a covered borrower to a covered borrower primarily for personal, family, or household purposes, and that is subject to a finance charge or payable by a written agreement in more than four installments.”¹⁸ As a result, the definition of “consumer credit” applies to wider range of credit regardless of the duration or amount of the loan. This includes closed-end credit and unsecured, open-end credit products, such as, refund anticipation loans,¹⁹ credit cards accounts, deposit advance loans, consumer loans with banks or credit unions, and all forms of title loans and payday loans. The regulations continue the 36 percent MAPR cap²⁰ in connection with an extension of consumer credit to a covered borrower.²¹ The MAPR, or the cost of the consumer credit as an annual rate or APR, is calculated following Regulation Z with the inclusion of additional cost elements required under the MLA, such as fees and premiums for credit insurance and other fees.²²

Consistent with the 2007 regulation, a creditor is not required to check the status of a consumer to determine whether a consumer is a covered borrower. A creditor may use its own assessment method. However, creditors are provided a safe harbor if they use either or both of two specified methods provided in the final rule, namely, the DoD MLA database²³ or consumer reports from a nationwide consumer credit reporting agency to verify covered borrower status and comply with recordkeeping requirements.²⁴ Creditors are allowed to rely on the initial covered borrower check for up to 60 days after a firm offer of credit is extended to the borrower.

Further, the regulation provides the following terms and conditions relating to the extension of consumer credit to a covered member:

- Mandates certain disclosures (*e.g.*, a statement of the MAPR and disclosures consistent with TILA) before a loan is made.
- Prohibits prepayment penalty fees if a covered borrower prepays all or part of the consumer credit.

¹⁶ 79 FR 58603.

¹⁷ The effective date of the final rule is October 1, 2015. Generally, compliance is required by October 3, 2016, for credit established on or after that date. The rule provides a temporary exemption for credit card accounts under an open-end consumer credit plan until October 3, 2017. [32 C.F.R. part 232]

¹⁸ The scope of credit products covered under the MLA regulations are consistent with credit that is subject to TILA. [80 FR 43563] In accordance with the MLA, the MLA regulation continues to exclude residential mortgages and credit extended to finance the purchase of, and secured by, personal property, such as vehicle purchase loans. [10 U.S.C. 987]

¹⁹ A tax refund anticipation loan is a closed-end, short-term loan to a consumer that is based on the amount of the consumer’s tax refund. The consumer receives an amount up to the refund amount less the loan fee, tax preparation, and other fees. Generally, the proceeds of the tax refund are used to repay the loan and fees.

²⁰ 32 C.F.R. 232.4(b).

²¹ 32 C.F.R. 232.3(g).

²² 32 C.F.R. 232.4(c). The charges for MAPR must include any credit insurance premium or fee, fees for a credit-related ancillary product sold in connection with the credit transaction, finance charge, application fee, and other specified fees.

²³ 80 FR 43609. According to the final rule, the database is accessible at <https://www.dmdc.osd.mil/mla/welcome.xhtml>.

²⁴ 32 C.F.R. 232.5.

- Prohibits a creditor from “rolling-over” or refinancing the same loan with exceptions for depository institutions.
- Prohibits a creditor from requiring the covered borrower to submit to arbitration.
- Prohibits a creditor from requiring a covered borrower to waive his or her rights under the Servicemembers Civil Relief Act.²⁵
- Prohibits mandatory allotments to repay the loan as a condition for receiving the loan.
- Prohibits a creditor from using the title of a vehicle as security for the obligation involving the consumer credit with exceptions for depository institutions.
- Prohibits a creditor from using a check to access a financial account of covered borrower except in connection with a consumer credit transaction with an MAPR consistent with federal regulations.²⁶

The final rule provides penalties and remedies for covered borrowers and implements enforcement provisions that permit covered borrowers to recover damages from a creditor who violates a requirement of the MLA.²⁷ Any credit agreement that fails to comply with the MLA regulations or contains one or more prohibited provisions under the regulations is void from the inception of the contract.²⁸

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities.

Consumer Finance Loans

The Florida Consumer Finance Act (Chapter 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are “loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.²⁹” The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first \$3,000 of the principal amount;
- 24 percent a year on that part of principal between \$3,001 to \$4,000; and
- 18 percent per year on that part of principal between \$4,001 to \$25,000.³⁰

²⁵ The act provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service. 50 U.S.C. App. 501 *et. seq.*

²⁶ 32 C.F.R. 232.8.

²⁷ 32 C.F.R. 232.9.

²⁸ *Id.*

²⁹ Section 516.01(2), F.S.

³⁰ Section 516.031(1), F.S.

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.³¹ The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.³² Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:³³

- Up to \$25 for investigating the credit and character of the borrower;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to \$20.

Title Loans

The Florida Title Loan Act (Chapter 537, F.S.) sets forth licensing requirements for title loan lenders and the terms and conditions under which a title loan is authorized in Florida. A title loan is secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest rates, based on the principal amount, calculated and disclosed pursuant to Regulation Z.³⁴ The maturity date of a title loan is 30 days after the agreement date, but the loan can be extended for one or more 30-day periods by mutual consent of the lender and the borrower.³⁵ Title lenders are prohibited from selling or charging for any type of insurance in connection with the loan.³⁶

Payday Loans or Deferred Presentment Transactions

Part IV of ch. 560, F.S., regulates deferred presentment providers³⁷ and deferred presentment transactions, which are loans that offer currency or a payment instrument (e.g., electronic funds transfer, check, or money order) in exchange for a person's paycheck up to \$500 and agree to hold it for a specified period. Repayment terms range from a minimum of 7 days to a maximum of 31 days. The maximum allowable fees are 10 percent of the currency or payment instrument provided, as well as a verification fee of up to \$5.00 per transaction. For each transaction, the deferred presentment provider must comply with the disclosure requirements of Regulation Z.

³¹ Section 516.031(2), F.S.

³² *Id.*

³³ Section 516.031(3), F.S.

³⁴ 30 percent of interest on the first \$2,000 of the principal amount, 24 percent on the principal exceeding \$2,000 and not exceeding \$3,000, and 18 percent on the principal amount exceeding \$3,000. [s. 537.011(1), F.S.]

³⁵ Section 537.011(3), F.S.

³⁶ Section 537.013(1)(h), F.S.

³⁷ A deferred presentment provider must be licensed under part II or part III, ch. 560, F.S., as a money services business, and meet other requirements.

Borrowers may have only one active payday loan at a time, but may secure a new loan 24 hours after paying off the original loan.³⁸

Regulation of State Financial Institutions

The Division of Financial Institutions of the OFR charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes).³⁹ The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.⁴⁰

III. Effect of Proposed Changes:

Section 1 authorizes the OFR to deny an application for a consumer finance license or take disciplinary action against a consumer finance lender for violating any provision of the MLA or the federal regulations implementing the MLA in connection with a consumer finance loan made under ch. 516, F.S. Currently, ch. 516 prescribes the calculation of the APR or interest cap pursuant to Regulation Z. The rate cap for loans made to the servicemembers and their dependents would be capped at 36 percent MAPR. The MAPR rate is calculated pursuant to the MLA, which requires the inclusion of additional fees and insurance products that are not included under Regulation Z.

Section 2 provides that a violation of any provision of the MLA or implementing regulations in connection with a title loan made under ch. 537, F.S., is a prohibited act, which would authorize the OFR to take disciplinary action against a title loan lender, or any agent or employee of a title loan lender.

Section 3 authorizes the OFR to take disciplinary action against a money services business, authorized vendor, or affiliated party that violates any provision of the MLA or the implementing regulations in connection with a deferred presentment transaction conducted under part IV of ch. 560, F.S.

Section 4 authorizes the OFR to conduct investigation to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging in or has engaged in conduct that is a violation of any provision of the MLA or implementing regulations. If the OFR has reason to believe that a person has violated any such provision or regulation, the OFR may initiate a proceeding against such person in accordance s. 655.033 (cease and desist orders), s. 655.034 (injunctive relief), 655.037 (removal of a financial institution affiliated party), or 655.041 (administrative fines and enforcement), F.S.

Section 5 provides that this act applies to a consumer credit transaction or account for consumer credit established on or after October 3, 2016, except it does not apply to a credit card account exempted under 32 C.F.R. s. 232.13(c) until the exemption expires.

³⁸ Section 560.404, F.S.

³⁹ Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

⁴⁰ These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.

Section 6 provides this act takes effect October 3, 2016.

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:

By authorizing the state regulator, the OFR, to enforce the federal Military Lending Act and regulations, servicemembers and their dependents will be provided greater consumer protections in connection with consumer credit transactions in Florida.

C. Government Sector Impact:

According to the OFR, the Division of Consumer Finance would incur additional duties and responsibilities to enforce the MLA and would need two additional FTEs to absorb the added duties. Salaries and benefits for the two positions (Financial Specialists) would total \$126,132.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 537.013, and 560.114.

This bill creates section 655.035 of the Florida Statutes.

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 November 17, 2015:

In addition to issuing a cease and desist order, the CS also authorizes the OFR to seek injunctive relief, to remove a financial-institution-affiliated party, and to impose administrative fines against any financial institution, a subsidiary, a service corporation, an affiliate, or other person subject to the Financial Institutions Code that violates the MLA or the implementing regulations.

- B. **Amendments:**

None.



180360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete lines 62 - 85

and insert:

Section 4. Section 655.035, Florida Statutes, is created to read:

655.035 Military lending.—Pursuant to s. 655.032, the office may conduct an investigation that it deems necessary to determine whether a financial institution, a subsidiary, a service corporation, an affiliate, or other person is engaging



180360

11 in or has engaged in conduct that is a violation of any
12 provision of the Military Lending Act, 10 U.S.C. s. 987, or the
13 regulations adopted under that act in 32 C.F.R. part 232. If the
14 office has reason to believe that a person has violated any such
15 provision or regulation, the office may initiate a proceeding
16 against such person in accordance with s. 655.033, s. 655.034,
17 s. 655.037, or s. 655.041.

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete lines 17 - 23

22 and insert:

23 the regulations adopted under that act; creating s.
24 655.035, F.S.; authorizing the office to conduct an
25 investigation to determine whether a person is
26 violating the Military Lending Act or the regulations
27 adopted under that act; authorizing the office to seek
28 specified remedies for such violations; providing

By Senator Gaetz

1-00602A-16

2016626__

1 A bill to be entitled
 2 An act relating to consumer credit; amending s.
 3 516.07, F.S.; authorizing the Office of Financial
 4 Regulation to deny a license or take disciplinary
 5 action against a person who violates the Military
 6 Lending Act or the regulations adopted under that act
 7 in connection with a consumer finance loan under the
 8 Florida Consumer Finance Act; amending s. 537.013,
 9 F.S.; prohibiting a title loan lender or its agent or
 10 employee from violating the Military Lending Act or
 11 the regulations adopted under that act; amending s.
 12 560.114, F.S.; authorizing the office to take
 13 disciplinary action or deny a license of a money
 14 services business, authorized vendor, or affiliated
 15 party in connection with a deferred presentment
 16 transaction for violating the Military Lending Act or
 17 the regulations adopted under that act; amending s.
 18 655.033, F.S.; authorizing the office to issue a cease
 19 and desist order against a state financial
 20 institution, subsidiary, service corporation,
 21 financial institution-affiliated party, or individual
 22 for violating the Military Lending Act or the
 23 regulations adopted under that act; providing
 24 applicability; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Paragraph (q) is added to subsection (1) of
 29 section 516.07, Florida Statutes, to read:

Page 1 of 4

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

1-00602A-16

2016626__

30 516.07 Grounds for denial of license or for disciplinary
 31 action.—
 32 (1) The following acts are violations of this chapter and
 33 constitute grounds for denial of an application for a license to
 34 make consumer finance loans and grounds for any of the
 35 disciplinary actions specified in subsection (2):
 36 (q) Violating any provision of the Military Lending Act, 10
 37 U.S.C. s. 987, or the regulations adopted under that act in 32
 38 C.F.R. part 232, in connection with a consumer finance loan made
 39 under this chapter.
 40 Section 2. Paragraph (o) is added to subsection (1) of
 41 section 537.013, Florida Statutes, to read:
 42 537.013 Prohibited acts.—
 43 (1) A title loan lender, or any agent or employee of a
 44 title loan lender, shall not:
 45 (o) Violate any provision of the Military Lending Act, 10
 46 U.S.C. s. 987, or the regulations adopted under that act in 32
 47 C.F.R. part 232, in connection with a title loan made under this
 48 chapter.
 49 Section 3. Paragraph (cc) is added to subsection (1) of
 50 section 560.114, Florida Statutes, to read:
 51 560.114 Disciplinary actions; penalties.—
 52 (1) The following actions by a money services business,
 53 authorized vendor, or affiliated party constitute grounds for
 54 the issuance of a cease and desist order; the issuance of a
 55 removal order; the denial, suspension, or revocation of a
 56 license; or taking any other action within the authority of the
 57 office pursuant to this chapter:
 58 (cc) Violating any provision of the Military Lending Act,

Page 2 of 4

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

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59 10 U.S.C. s. 987, or the regulations adopted under that act in
 60 32 C.F.R. part 232, in connection with a deferred presentment
 61 transaction conducted under part IV of this chapter.

62 Section 4. Subsection (1) of section 655.033, Florida
 63 Statutes, is amended to read:

64 655.033 Cease and desist orders.—

65 (1) The office may issue and serve upon any state financial
 66 institution, subsidiary, or service corporation, or upon any
 67 financial institution-affiliated party, a complaint stating
 68 charges whenever the office has reason to believe that such
 69 state financial institution, subsidiary, service corporation,
 70 financial institution-affiliated party, or individual named
 71 therein is engaging in or has engaged in conduct that is:

72 (a) An unsafe or unsound practice;

73 (b) A violation of any law relating to the operation of a
 74 financial institution;

75 (c) A violation of any rule of the commission;

76 (d) A violation of any order of the office;

77 (e) A breach of any written agreement with the office;

78 (f) A prohibited act or practice pursuant to s. 655.0322;

79 ~~or~~

80 (g) A willful failure to provide information or documents
 81 to the office or any appropriate federal agency, or any of its
 82 representatives, upon written request; ~~or-~~

83 (h) A violation of any provision of the Military Lending
 84 Act, 10 U.S.C. s. 987, or the regulations adopted under that act
 85 in 32 C.F.R. part 232.

86 Section 5. This act applies to a consumer credit
 87 transaction or account for consumer credit established on or

1-00602A-16 2016626__

88 after October 3, 2016, except it does not apply to a credit card
 89 account exempted under 32 C.F.R. s. 232.13(c) until the
 90 exemption expires.

91 Section 6. This act shall take effect October 3, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

W

11/17/15
Meeting Date

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

SB 626
Bill Number (if applicable)

Topic Consumer Credit

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Street

Tallahassee, FL

32303

City

State

Zip

Email alievickers@flacp.org

Speaking: For Against Information

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

Representing FLORIDA ALLIANCE For Consumer Protection

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7032

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: OGSR/Office of Financial Regulation

DATE: November 17, 2015 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson		BI Submitted as Committee Bill

I. Summary:

SPB 7032 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption¹ that makes the following information held by the Office of Financial Regulation (OFR) before, on, or after July 1, 2011, confidential and exempt from public-records requirements:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

II. Present Situation:

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.³

¹ Section 119.0712(3), F.S.

² FLA. CONST., art. I, s. 24(a).

³ FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁴ Chapter 119, F.S., constitutes the main body of public records laws known as the Public Records Act.⁵ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁶

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may create an exemption to public records requirements.¹⁰ An exemption must pass by a two-thirds vote of the House and the Senate.¹¹ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹² A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹³

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may

⁴ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁵ Public records laws are found throughout the Florida Statutes.

⁶ Section 119.01(1), F.S.

⁷ 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.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² FLA. CONST., art. I, s. 24(c).

¹³ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁴ 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).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁵

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁶ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁷ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Office of Financial Regulation

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, money services businesses, consumer finance companies, debt collectors, and other financial service entities. The OFR has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight. The OFR interacts with the following federal agencies:

- Financial Crimes Enforcement Network (FinCEN)
- Federal Trade Commission
- Florida Fusion Center (a collaboration of state and federal agencies led by the Florida Department of Law Enforcement)
- Commodities Futures Trading Commission
- Federal Deposit Insurance Corporation
- National Credit Union Association
- Securities Exchange Commission
- Internal Revenue Service

¹⁵ 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).

¹⁶ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁷ Section 119.15(3), F.S.

Exemption under Review

Section 119.0712(3), F.S., provides a public record exemption for the following information held by the OFR before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The OFR is authorized to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.

Professional staff communicated with OFR staff as part of the Open Government Sunset Review process. The OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

III. Effect of Proposed Changes:

The bill reenacts the public records exemption for specified information held by the OFR, which will repeal on October 2, 2016, if this bill does not become law. The following information held by the OFR would remain exempt from the public records exemption:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

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

None.

B. Public Records/Open Meetings Issues:

Since this bill reenacts a current exemption and does not expand the scope of the exemption, 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:

None.

C. Government Sector Impact:

The continuation of this exemption will allow the OFR to obtain information that could assist it in pursuing violations of law under its jurisdiction and to participate in joint or multiagency investigations and examinations. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0712 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

597-00931-16

20167032pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.0712, F.S.,
 4 relating to an exemption from public records
 5 requirements for confidential information received by
 6 the Office of Financial Regulation from certain state
 7 or federal agencies and information received or
 8 developed by the office in a joint or multiagency
 9 examination or investigation; removing the scheduled
 10 repeal of the exemption; providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Subsection (3) of section 119.0712, Florida
 15 Statutes, is amended to read:
 16 119.0712 Executive branch agency-specific exemptions from
 17 inspection or copying of public records.—
 18 (3) OFFICE OF FINANCIAL REGULATION.—
 19 ~~(a)~~ The following information held by the Office of
 20 Financial Regulation before, on, or after July 1, 2011, is
 21 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 22 of the State Constitution:
 23 (a)1- Any information received from another state or
 24 federal regulatory, administrative, or criminal justice agency
 25 that is otherwise confidential or exempt pursuant to the laws of
 26 that state or pursuant to federal law.
 27 (b)2- Any information that is received or developed by the
 28 office as part of a joint or multiagency examination or
 29 investigation with another state or federal regulatory,

Page 1 of 2

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

597-00931-16

20167032pb

30 administrative, or criminal justice agency. The office may
 31 obtain and use the information in accordance with the conditions
 32 imposed by the joint or multiagency agreement. This exemption
 33 does not apply to information obtained or developed by the
 34 office that would otherwise be available for public inspection
 35 if the office had conducted an independent examination or
 36 investigation under Florida law.
 37 ~~(b) This subsection is subject to the Open Government~~
 38 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 39 ~~repealed on October 2, 2016, unless reviewed and saved from~~
 40 ~~repeal through reenactment by the Legislature.~~
 41 Section 2. This act shall take effect October 1, 2016.

Page 2 of 2

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

W

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15

Meeting Date

SB 7032

Bill Number (if applicable)

Topic SB 7032 OGSR/ Office of Financial Regulation - Waive in Support

Amendment Barcode (if applicable)

Name Ms. Jamie Mongiovi (Mon-Gi-oh-vi)

Job Title Director of Communications & Government Affairs

Address Office of Financial Regulation, 101 East Gaines Street

Phone 850-410-9601

Street

Tallahassee

Florida

32399

Email jamie.mongiovi@flofr.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Office of Financial Regulation

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

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

November 9, 2015

The Honorable Lizbeth Benacquisto
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Request for Excused Absence

Dear Chair Benacquisto:

I request to be excused from the Banking and Insurance Committee scheduled to meet on Tuesday, November 17, 2015. I will be attending a conference and will not be present for committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 8

CC: James Knudson, Staff Director of Committee on Banking and Insurance
Sheri Green, Administrative Assistant of Committee on Banking and Insurance

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on
General Government
Banking and Insurance
Reapportionment
Rules
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE

Deputy Majority Leader
24th District

November 16, 2015

The Honorable Senator Lizbeth Benacquisto, Chair
Senate Banking and Insurance Committee
404 South Monroe Street
320 Knott Building
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request to be excused from tomorrow's meeting of the Senate Committee on Banking and Insurance.

Sincerely,



Tom Lee
Florida State Senator
24th District

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Banking and Insurance Committee

Judge:

Started: 11/17/2015 1:02:20 PM

Ends: 11/17/2015 1:24:41 PM

Length: 00:22:22

1:02:25 PM Meeting called to order by Chairman - quorum present
1:04:19 PM TAB 3 - SB 626 -Consumer Credit --Senator Gaetz
1:05:58 PM Amd. 180360 by Sen. Negron - fwo/adopted
1:07:18 PM Motion for CS--adopted
1:07:32 PM Vote on CS/SB 626 -- Favorable
1:08:03 PM TAB 1 - SB 548 - Title Insurance - Senator Richter
1:08:18 PM Senator Richter recognized to explain the bill.
1:09:02 PM AMD 629580 technical amendment by Senator Richter-fwo/adopted
1:15:00 PM Roll call vote on CS/SB 548--Favorable
1:16:11 PM TAB 4 - SPB 7032 - OGSR/Office of Financial Regulation
1:16:45 PM Explanation of bill by Sen. Benacquisto
1:18:40 PM Roll call vote on SPB 7032 -- Favorable to submit as Committee Bill
1:20:06 PM TAB 2 - SB 592 - Public Records/Dept. of Financial Services - Sen. Hutson
1:23:04 PM Roll call vote on SB 592 -- Favorable
1:24:08 PM Meeting adjourned