

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7049      PCB OTM 19-13      OGSR/Florida Consumer Collection Practices Act  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Andrade  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N	Harrington	Harrington
1) Insurance & Banking Subcommittee	9 Y, 0 N	Hinshelwood	Luczynski
2) State Affairs Committee			

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Consumer debt covers non-business debt such as mortgages, credit cards, medical debt, and other debts mainly for personal, family, and household purposes. If a borrower defaults on a consumer debt, the lender will initiate collection efforts, usually through the sale or assignment of the debt to a third-party debt collector. The Florida Consumer Collection Practices Act (act) governs the regulation and registration of consumer collection agencies, and is primarily enforced by the Office of Financial Regulation (OFR). The act protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities.

Current law provides a public record exemption for investigative and examination information relating to consumer collection agencies held by OFR. Such information is no longer confidential and exempt once the investigation or examination is complete or ceases to be active unless disclosure would jeopardize another active investigation or examination; reveal the personal identifying information of a consumer; reveal the identity of a confidential source; reveal investigative techniques or procedures; or reveal a trade secret. OFR may disclose such information to a law enforcement or other administrative agency.

The bill reenacts the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Regulation of Consumer Collection Agencies

Consumer debt covers non-business debt such as mortgages, credit cards, medical debt, and other debts mainly for personal, family, and household purposes. If a borrower defaults on a consumer debt, the lender will initiate collection efforts, usually through the sale or assignment of the debt to a third-party debt collector. The Florida Consumer Collection Practices Act (act)<sup>6</sup> governs the regulation and registration of consumer collection agencies, and is primarily enforced by the Office of Financial Regulation (OFR). The act protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities.<sup>7</sup>

##### Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for certain investigative and examination information relating to consumer collection agencies and held by OFR.<sup>8</sup> Such information is confidential and exempt until the investigation or examination is completed or ceases to be active.<sup>9</sup> However, the

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I of the State Constitution.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>6</sup> Sections 559.55-559.785, F.S., are collectively referred to as the Florida Consumer Collection Practices Act. Section 559.551, F.S.

<sup>7</sup> See s. 559.72, F.S.

<sup>8</sup> Chapter 2014-117, L.O.F.; codified as s. 559.5558, F.S.

<sup>9</sup> Section 559.5558(2), F.S.

information remains confidential and exempt<sup>10</sup> after the investigation or examination is completed or ceases to be active, if disclosure would:<sup>11</sup>

- Jeopardize the integrity of another active investigation or examination;
- Disclose the identity of a confidential source;
- Disclose investigative or examination techniques or procedures;
- Reveal a trade secret, as defined in the Uniform Trade Secrets Act;<sup>12</sup> or
- Reveal personal identifying information of a consumer unless the consumer is also the complainant. In the case of a complainant, the personal identifying information is subject to disclosure after the investigation is completed or ceases to be active, but the complainant's personal financial and health information<sup>13</sup> remains confidential and exempt.

An investigation or examination is considered active if OFR or a law enforcement or administrative agency is proceeding with reasonable dispatch and has a good faith belief that the investigation or examination might lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval required under the act.<sup>14</sup>

The confidential and exempt information may be disclosed by OFR at any time to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.<sup>15</sup>

The 2014 public necessity statement for the exemption provided in relevant part that:

An investigation or examination conducted by [OFR] may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional granting of a registration. The premature release of such information could frustrate or thwart the investigation or examination and impair the ability of the office to effectively and efficiently administer part VI of chapter 559, Florida Statutes. . . Investigations and examination of consumer collection agencies frequently involve the gathering of sensitive personal information, including personal financial information concerning complainants and consumers. [OFR] may not otherwise have access to this sensitive personal information but for the investigation or examination. If the individuals who are the subject of the information are identifiable, the disclosure of the information to the public could cause unwarranted damage to the good nature or reputation of the individuals, especially if the information associated with the individual is inaccurate. Furthermore, if the individuals who are the subject of such information are identifiable, public access to such information could jeopardize the financial safety of such individuals by placing them at risk of becoming victims of identity theft. . . Investigations and examinations of consumer collection agencies frequently involve the gathering of sensitive personal information, including personal health information concerning complainants and consumers. Matters of

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<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>11</sup> Section 559.5558(2)(b), F.S.

<sup>12</sup> Section 668.002(4), F.S.

<sup>13</sup> The term "personal financial and health information" means: information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt; information relating to a consumer's financial transactions of any kind; information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth; a consumer's personal health condition, disease, or injury; or a history of a consumer's personal medical diagnosis or treatment. Section 559.5558(1), F.S.

<sup>14</sup> Section 559.5558(2)(c), F.S.

<sup>15</sup> Section 559.5558(2)(a), F.S.

personal health are traditionally private and confidential concerns between the patient and health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Moreover, public disclosure of personal health information could have a negative effect upon a person's business and personal relationships and a person's financial well-being.<sup>16</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.<sup>17</sup>

During the 2018 interim, subcommittee staff sent a questionnaire to OFR and met with OFR to discuss the public record exemption under review. According to OFR, the exemption has provided protection for the confidential and exempt information during the course of its consumer collection agency investigations, allowing OFR to properly investigate and examine allegations of violations of the act. OFR stated that the information collected during the course of an investigation often contains highly sensitive and personal information about consumers and believes that reenacting the exemption is vital to effectively and efficiently administering the act.

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for investigative and examination information relating to consumer collection agencies held by OFR.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 559.5558, F.S., to save from repeal the public record exemption for investigative and examination information relating to consumer collection agencies held by OFR.

**Section 2.** Provides an effective date of October 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>16</sup> Section 2, ch. 2014-117, L.O.F.

<sup>17</sup> Section 559.5558(3), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.