

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1715 Public Records
SPONSOR(S): Bilirakis
TIED BILLS: HB 1371 **IDEN./SIM. BILLS:** SB 2428

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-------------------------------|----------|----------|----------------|
| 1) Banking & Securities (Sub) | 7 Y, 0 N | Sheheane | Billmeier |
| 2) Commerce | | Sheheane | Billmeier |
| 3) State Administration | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

HB 1715 creates a public records exemption for information obtained by the Office of Financial Regulation (office) of the Financial Services Commission in connection with investigations and examinations of commercial and consumer collection agencies under parts V and VI of ch. 559, F.S. The confidential and exempt status of such information in connection with investigations and examinations of commercial and consumer collection agencies is contingent upon special terms and conditions that limit the right to inspect or copy such information. This bill provides for expiration of the exemption, provides for future review and repeal of the exemption, and provides a statement of public necessity.

This bill requires a two-thirds vote of the members present and voting for passage because it is creating a new public records exemption.

According to a representative with the Office of Financial Regulation, this bill is not expected to impact state or local government.

This bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1715a.com.doc
DATE: March 29, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Investigation and Examination of Commercial and Consumer Collection Agencies

Commercial Collection Agencies and Consumer Collection agencies are subject to the provisions of parts V and VI of ch. 559, F.S., respectively. These collection agencies are required to meet certain registration requirements of the office. Parts V and VI of ch. 559, F.S., provide penalties for noncompliance with certain statutory requirements. Part VI of ch. 559, F.S., authorizes the office to serve as the registry for receiving and investigating complaints from consumers concerning persons who collect debts, including consumer collection agencies.¹ Currently, the office is not specifically authorized to conduct investigations and examinations of persons engaged in the business of commercial collection agencies. However, another bill, HB 1371, would provide greater compliance and enforcement authority for the office to regulate, investigate, and examine commercial and consumer collection agencies. This bill provides public records exemptions relating to HB 1371.

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

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state’s public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the

¹ See s. 559.725, F.S.

² See s. 655.057, F.S.

³ See s. 494.00125, F.S.

⁴ See s. 520.9965, F.S.

⁵ See s. 517.2015, F.S.

⁶ See s. 560.129, F.S.

public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995 provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: (1) allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; (2) protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or (3) protecting trade or business secrets.

Effect of HB 1715

Section 1

The bill provides a public records exemption for documents produced in the course of an investigation or examination of a commercial collection agency by the office. The bill provides that the documents will remain exempt after the investigation or examination is complete if the office submits the documents to a law enforcement agency or an administrative agency for the furtherance of their duties. The bill provides that an investigation or examination is to be considered active as long as the office or a law enforcement agency has good reason to believe that the examination or investigation may lead to an administrative, civil, or criminal proceeding.

Documents compiled during an investigation or examination are to be confidential and exempt after the examination is completed or ceases to be active if disclosure would jeopardize another active investigation, reveal identifying information (name, social security number, address, phone number, or other information) of a complainant, customer or account holder, disclose the identity of a confidential source, disclose investigative techniques or procedures, or reveal a trade secret. If office personnel are involved in an investigation that endangers their physical safety, identifying information of that person or family members (names, addresses, phone numbers, places of work, photos, locations of schools or day care facilities) is confidential. The section does not prohibit providing information to a law enforcement or administrative agency, which in turn must maintain confidentiality. If the office receives confidential information from law enforcement or another agency, then confidentiality must be maintained. The presiding officer in an administrative, civil or criminal procedure may prevent the disclosure of confidential information offered as evidence. The bill grants privilege against civil liability to a person who furnishes information or evidence to the office unless the person acted in bad faith or with malice in providing the evidence.

Section 2

The bill provides a public records exemption for documents produced in the course of an investigation or examination of a consumer collection agency by the office. The bill provides that the documents will remain exempt after the investigation or examination of the consumer collection agency is complete if the office submits the documents to a law enforcement agency or an administrative agency for the furtherance of their duties. The bill provides that an investigation or examination is to be considered active as long as the office or a law enforcement agency has good reason to believe that the examination or investigation may lead to an administrative, civil, or criminal proceeding.

Documents compiled during an investigation or examination of a consumer collection agency are to be confidential and exempt after the examination is completed or ceases to be active if disclosure would jeopardize another active investigation, reveal identifying information (name, social security number,

address, phone number, or other information) of a complainant, customer or account holder, disclose the identity of a confidential source, disclose investigative techniques or procedures, or reveal a trade secret. If department personnel are involved in an investigation or examination that endangers their physical safety, identifying information of that person or family members (names, addresses, phone numbers, places of work, photos, locations of schools or day care facilities) is confidential. The section does not prohibit providing information to a law enforcement or administrative agency, which in turn must maintain confidentiality. If the department receives confidential information from law enforcement or another agency, then confidentiality must be maintained. The presiding officer in an administrative, civil or criminal procedure may prevent the disclosure of confidential information offered as evidence. The bill grants privilege against civil liability to a person who furnishes information or evidence to the department unless the person acted in bad faith or with malice in providing the evidence.

Section 3

Provides for future review and repeal of public records exemptions.

Section 4

The bill provides that the Legislature finds it to be public necessity that information relating to an active investigation or examination of a consumer or commercial collection agency by the office be made exempt from public disclosure if the information may jeopardize the integrity of the examination or investigation. The bill provides that the Legislature further finds that certain information should remain confidential after the investigation ceases to be active if the information would jeopardize the integrity of another active investigation, reveal personal information identifying a complainant, customer, account holder, disclose the identity of a confidential source, or disclose investigative techniques or procedures. The bill provides that the Legislature finds that personal identification information of office employees should be made confidential if the safety of the employee or the employee's family would be endangered. The bill provides that the Legislature finds, unless specified within this exemption, information resulting from an investigation or examination will become public once it ceases to be active.

Section 5

The bill will take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. The bill provides a public records exemption for documents produced in the course of an investigation or examination of a commercial collection agency by the office.

Section 2. The bill provides a public records exemption for documents produced in the course of an investigation or examination of a consumer collection agency by the office.

Section 3. Provides for future review and repeal of public records exemptions.

Section 4. Provides a statement of public necessity.

Section 5. Provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to a representative with the Office of Financial Regulation, this bill is not expected to impact state government.

2. Expenditures:

According to a representative with the Office of Financial Regulation, this bill is not expected to impact state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to a representative with the Office of Financial Regulation, this bill is not expected to impact local governments.

2. Expenditures:

According to a representative with the Office of Financial Regulation, this bill is not expected to impact local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill requires a two-thirds vote of the members present and voting for passage because it is creating a new public records exemption.

Article I, s. 24, of the Florida Constitution provides that if the Legislature should adopt a public records exemption, then the law must relate to one subject. The bill contains provisions granting privilege against civil liability to a person who furnishes information or evidence to the department unless the person acted in bad faith or with malice providing the evidence. These provisions may cause the bill to conflict with Article I, s. 24 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sponsor plans to offer a strike all amendment that will address the constitutional concern discussed above.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

In the meeting on March 24, 2004, the Subcommittee on Banking and Securities recommended one strike all amendment to the bill. The strike all amendment removes provisions relating to civil liability in order to prevent any conflict with Article I, s. 24 of the Florida Constitution. The amendment also makes technical corrections to the original bill and provides clarification that unless otherwise exempt, any information received or created by the Office of Financial Regulation is confidential and exempt from public records.