

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1715 w/CS

Public Records/Commercial and Consumer Collection Agencies

**SPONSOR(S):** Bilirakis

**TIED BILLS:** HB 1371

**IDEN./SIM. BILLS:** CS/CS/SB 2428

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| REFERENCE                     | ACTION         | ANALYST    | STAFF DIRECTOR |
|-------------------------------|----------------|------------|----------------|
| 1) Banking & Securities (Sub) | 7 Y, 0 N       | Sheheane   | Billmeier      |
| 2) Commerce                   | 15 Y, 0 N w/CS | Sheheane   | Billmeier      |
| 3) State Administration       |                | Williamson | Everhart       |
| 4)                            |                |            |                |
| 5)                            |                |            |                |

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### SUMMARY ANALYSIS

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

According to the office, this bill is not expected to impact state or local government.

This bill requires a two-thirds vote of the members present and voting for passage.

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

**STORAGE NAME:** h1715c.sa.doc

**DATE:** April 12, 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:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Commercial collection agencies and consumer collection agencies are subject to the provisions of parts V and VI of ch. 559, F.S., respectively. Such agencies are required to meet certain registration requirements of the Office of Financial Regulation (office) of the Financial Services Commission. 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.<sup>1</sup> 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.

##### Effect of Bill

The bill creates a public records exemption for information created or received during an investigation or examination by the office, including any consumer complaint. Such information remains confidential and exempt after the investigation or examination is completed or ceases to be active if disclosure would:

- Jeopardize another active investigation;
- Reveal identifying 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.

The office may provide such confidential and exempt information to a law enforcement agency, administrative agency, or regulatory organization in the furtherance of the agency or organization's duties and responsibilities. The receiving agency or organization must maintain the confidential and exempt status of the information.

The bill authorizes the presiding officer in an administrative, civil or criminal procedure to prevent the disclosure of confidential and exempt information offered as evidence.

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<sup>1</sup> See s. 559.725, F.S.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1 creates s. 559.5472, F.S., to create a public records exemption for certain information regarding commercial collection agencies and consumer collection agencies.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

According to 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:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records Law**

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. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the 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 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. Furthermore, the Open Government Sunset Review Act of 1995<sup>2</sup> 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.

**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.

In the meeting on March 31, 2004, the Commerce committee adopted the strike all amendment recommended favorably by the Subcommittee on Banking and Securities.

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<sup>2</sup> Section 119.15, F.S.