



---

# **Insurance & Banking Subcommittee**

**Tuesday, February 4, 2014  
4:00 PM  
Sumner Hall (404 HOB)**

**MEETING PACKET**

# **Committee Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

### **Insurance & Banking Subcommittee**

**Start Date and Time:** Tuesday, February 04, 2014 04:00 pm  
**End Date and Time:** Tuesday, February 04, 2014 06:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

CS/HB 151 Security of Protected Consumer's Information by Business & Professional Regulation Subcommittee, Fitzenhagen  
HB 255 Insurance/Discriminatory Practices Relating to Firearm Ownership or Possession by Gaetz  
HB 401 Underwriting, Cancellation Period, & Other Terms of Motor Vehicle Insurance Policies by Goodson  
HB 413 Office of Financial Regulation by Santiago  
HB 415 Pub. Rec./Investigations and Examinations by the Office of Financial Regulation by Santiago

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, February 3, 2014.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 3, 2014.

**NOTICE FINALIZED on 01/28/2014 16:12 by McCloskey.Michele**



# **The Florida House of Representatives**

**Regulatory Affairs Committee**

**Insurance & Banking Subcommittee**

**Will Weatherford**  
**Speaker**

**Bryan Nelson**  
**Chair**

## **AGENDA**

**Tuesday, February 4, 2014**

**404 HOB**

**4:00 pm – 6:00 pm**

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
  - a. CS/HB 151 Security of Protected Consumer's Information by Business & Professional Regulation Subcommittee, Fitzenhagen
  - b. HB 255 Insurance/Discriminatory Practices Relating to Firearm Ownership or Possession by Gaetz
  - c. HB 401 Underwriting, Cancellation Period, & Other Terms of Motor Vehicle Insurance Policies by Goodson
  - d. HB 413 Office of Financial Regulation by Santiago
  - e. HB 415 Pub. Rec./Investigations and Examinations by the Office of Financial Regulation by Santiago
- IV. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 151 Security of a Protected Consumer Information  
**SPONSOR(S):** Business & Professional Regulation Subcommittee; Fitzenhagen and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 242

| REFERENCE   | ACTION              | ANALYST         | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|---------------------|-----------------|--|
| 1) Business & Professional Regulation<br>Subcommittee | 11 Y, 0 N, As<br>CS | Brown-Blake     | Luczynski                                |
| 2) Insurance & Banking Subcommittee                   |                     | Bauer <i>gb</i> | Cooper <i>PK</i>                         |
| 3) Regulatory Affairs Committee                       |                     |                 |  |

### SUMMARY ANALYSIS

Current law provides consumers with procedures to request "security freezes" on consumer records that may have been compromised as a result of identity theft. Security freezes prohibit consumer reporting agencies (Equifax, Experian, and TransUnion) from releasing a credit report, subject to specified exemptions. This procedure presumes that the consumer has an existing credit file and history, and may not address the issue of identity theft committed against minors and other persons who may be represented by a guardian, and who do not have a credit history or are unable to request security freezes on their own.

While parents typically apply for a Social Security number for their child shortly after birth, a credit reporting agency does not create a credit report or history until an application for credit is received. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years. A recent study conducted by ID Analytics estimated that more than 140,000 instances of identity fraud are perpetrated on minors in the United States each year.

The bill creates a mechanism to protect the personal information of protected consumers, which is an individual less than sixteen years of age or a person represented by a guardian or other advocate which includes but is not limited to:

- minors with court appointed guardians in child abuse, abandonment, or neglect judicial proceedings;
- persons of any age with developmental disabilities who have been appointed a guardian advocate;
- minors with court appointed guardians;
- minors in a criminal proceeding if the minor is a victim of or witness to certain offenses;
- persons of any age with an intellectual disability who have a court appointed advocate in certain criminal proceedings; and
- certain other protected individuals of any age who are court appointed a guardian.

The newly-created section provides definitions, procedures, requirements, damages, and limitations regarding security freezes on a protected consumer's credit record. The bill also requires consumer reporting agencies to provide consumers with a written summary of rights.

The bill has no fiscal impact on state or local funds. The bill may have a positive impact on the private sector by providing additional safeguards for minors under age sixteen and other persons represented by a guardian or advocate.

The bill has an effective date of September 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### *Credit reports and credit reporting agencies*

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian.

##### *Current federal law and security freezes*

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA), which regulates the collection, dissemination, and use of consumer credit information, is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.

Consumer reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

In 2003, Congress passed the Fair and Accurate Credit Transactions Act (FACTA) to enhance FCRA and to require credit bureaus to provide one free report every 12 months. FACTA added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.

FCRA (as amended by FACTA) states that a consumer, or any individual acting on behalf of or as a personal representative of a consumer, may assert a good-faith suspicion that he or she has been a victim of identity theft. This requires the credit bureau to place an "initial fraud alert" on the consumer's credit file for at least 90 days at no charge.<sup>1</sup> According to the FTC, this initial fraud alert makes it harder for identity thieves to open more accounts in a consumer's name, since the existence of a fraud alert requires businesses to verify a consumer's identity before issuing credit.<sup>2</sup> In addition, FCRA requires credit bureaus to block the reporting of information contained in a credit file resulting from an alleged identity theft.<sup>3</sup> Consumers can also file an identity theft report (which consists of an affidavit and a police report) to the three credit bureaus in order to obtain an extended fraud alert placed on the credit report.

Both FCRA and FACTA provide that states may enact laws with respect to the collection, distribution, or use of any information on a consumer, or for the prevention or mitigation of identity theft, so long as these state laws are not inconsistent with the federal acts.<sup>4</sup> Security freeze legislation is one example of allowable state laws.

---

<sup>1</sup> 15 U.S.C. § 1681c-1.

<sup>2</sup> FTC Consumer Information: Place a Fraud Alert, <http://www.consumer.ftc.gov/articles/0275-place-fraud-alert> (last accessed on December 10, 2013).

<sup>3</sup> 15 U.S.C. § 1681c-2.

<sup>4</sup> 15 U.S.C. § 1681t(1).

Forty-nine states (including Florida) and the District of Columbia have enacted laws allowing any consumer to freeze their credit reports, and four states that have laws that will grant security freezes to identify theft victims.<sup>5</sup> A security freeze restricts a consumer-reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a credit report until the consumer removes it. Generally, a person can "thaw" or temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer provides the consumer-reporting agency with special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

### Current Florida law

Florida consumers have a statutory right to have security freeze placed on their consumer reports by sending a written request by certified mail to a credit reporting agency.<sup>6</sup> A "security freeze" is a notice placed in a consumer report that prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained in the report to a third party without the express authorization of the consumer.<sup>7</sup> Any disclosure by a consumer reporting agency to a resident of the state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.<sup>8</sup> A credit reporting agency may charge a fee, not to exceed \$10, when a consumer elects to place, temporarily lift, or remove a security freeze on his or her credit report. However, the law prohibits a consumer-reporting agency from charging a fee to a consumer age 65 or older or to a victim of identity theft for the placement or removal of a security freeze.

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as authorized by s. 501.005(16), F.S., as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than \$100 and not more than \$1,000, plus the cost of the action together with reasonable attorney's fees.
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer, is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than \$100 and not more than \$1,000.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for actual damages sustained by the consumer or damages of not less than \$100 and not more than \$1,000, whichever is greater, and 2) the consumer reporting agency for actual damages or \$1,000, whichever is greater.

---

<sup>5</sup> Consumers Union, *Consumers Union's Guide to Security Freeze Protection*, available at <http://defendyourdollars.org/document/guide-to-security-freeze-protection> (last visited December 12, 2013).

<sup>6</sup> Section 501.005, F.S.

<sup>7</sup> Section 501.005(1), F.S. Additionally, s. 501.005(12), F.S., allows for the release of information that would otherwise be protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide credit reports to consumers on their request, to persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

<sup>8</sup> Section 501.005(17), F.S.

- Section 501.005(16), F.S., allows for the assessment of punitive damages for willful violations of s. 501.005, F.S.
- Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under s. 501.005, F.S., was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

### Identity Theft & Children

A recent study by AllClear ID, based on 27,000 American children, found that more than 10% of children are victims of identity theft, mostly among children ages 5 and younger.<sup>9</sup> While the current statutory security freeze process is commonly used by adults, it is often not able to be utilized by minor consumers and consumers who are represented by a guardian or other advocate. Unlike the average adult, most minors and consumers represented by a guardian or other advocate do not have existing credit files. While parents typically apply for a Social Security number for their child shortly after birth, credit bureaus do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time. When a credit file is created for a first-time credit applicant, the credit bureaus will verify the Social Security number, but not the name and date of birth assigned to it when issued. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years.<sup>10</sup> In addition, even when parents do detect that their child's identity has been compromised, consumer reporting agencies generally do not administer security freezes for consumers who do not have existing credit files. As a spokesman for TransUnion and Equifax explained, a security freeze "applies to a credit file, not a social security number."<sup>11</sup>

In addition, s. 817.568, F.S., addresses criminal use of personal identification and includes a provision specifically addressing minors:

(6) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

### **Effect of Proposed Changes**

The bill creates s. 501.0051, F.S., as the "Keeping I.D. Safe (KIDS) Act" to authorize a representative of a minor consumer younger than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, 744, or 914, F.S.,<sup>12</sup> to place a security freeze on that consumer's credit report. The bill also directs credit reporting agencies to create a credit record for the protected consumer in the event that the consumer does not yet have a credit report file. The security freeze prohibits consumer reporting agencies from releasing the consumer report or record or any information contained within the

<sup>9</sup> AllClear ID Alert Network, Child Identity Theft: Report 2012, available on <https://www.allclearid.com/child/child-id-theft-statistics-2012> (last accessed December 10, 2013).

<sup>10</sup> *Id.*

<sup>11</sup> <http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/> (Last accessed on December 10, 2013).

<sup>12</sup> Chapter 39, F.S., relates to proceedings relating to children; ch. 393, F.S., relates to developmental disabilities; ch. 744, F.S., relates to guardianships; and ch. 914, F.S., relates to witnesses and criminal proceedings, including guardian ad litem.



report or record without the authorized consent of the protected consumer's representative, except in certain specific circumstances.

### Definitions

The bill defines the terms: "consumer reporting," "consumer reporting agency," "protected consumer," "record," "representative," "security freeze," "sufficient proof of authority," and "sufficient proof of identification." Except as noted below, the following definitions are identical to the current definitions in s. 501.005, F.S.

- "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d), which is defined as any written, oral or other communication by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit or insurance, employment, or any other purpose authorized under 15 U.S.C. 1681(b).
- "Consumer reporting agency" has the same meaning as provided in 15 U.S.C. 1681a(f), which is defined as any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- "Protected consumer" is defined as a person less than sixteen years of age at the time a security freeze request is made, or a person represented by a guardian or other advocate pursuant to chs. 39, 393, 744, or 914, F.S.
- "Record" is defined as a compilation of information that 1) identifies a protected consumer, and 2) is created by a consumer reporting agency for the purpose of complying with requirements set forth in the bill.
- "Representative" is defined as the parent or legal guardian of a protected consumer, including a guardian ad litem.
- "Security freeze" is defined as a notice placed on either 1) the protected consumer's consumer report, which prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the representative, or 2) the protected consumer's record, which prohibits the consumer reporting agency from releasing the protected consumer's record, in the event that a consumer reporting agency does not have an existing consumer report pertaining to the protected consumer.
- "Sufficient proof of authority" is defined as documentation that shows that a representative has authority to act on behalf of a protected consumer, such as a court order, valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer, or for proof of authority for a representative who is a parent, a certified or official copy of a birth certificate of the protected consumer.
- "Sufficient proof of identification" is defined as documentation that identifies a protected consumer or a representative of a protected consumer, such as a social security card, a certified or official copy of a birth certificate, a copy of a valid driver license, or government-issued photo identification.

### Creating a Security Freeze

The bill provides the procedure to be used in the event that a representative, guardian or other advocate wants to place a security freeze on a protected consumer's consumer report or record. Specifically, to place a security freeze on a consumer report or record, the representative must:

- Submit a request to the consumer reporting agency in the manner prescribed by that agency;

- Provide the agency with sufficient proof of authority and identification; and
- Pay the agency a fee.

If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when it receives the security freeze request, the agency must create a record for the protected consumer and place a security freeze on that newly-created record. The record may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

The security freeze must be placed within thirty days after the consumer reporting agency confirms the authenticity of the security freeze request.

Moreover, within ten business days of the consumer reporting agency placing the security freeze, it is required to send the representative written confirmation of the implementation of the security freeze. It must also provide the representative with a unique personal identifier and instructions for removing the security freeze.

#### Effects on Credit Score, Credit History, and Credit Rating

The bill provides that a consumer reporting agency may not state or otherwise imply that a security freeze reflects a negative credit score, history, or rating.

#### Removing a Security Freeze

The bill also provides procedures to be used in the event that a representative wants to remove the security freeze. A consumer reporting agency may only remove a security freeze:

- Upon request of a representative;
- Upon request of a protected consumer; or
- If the security freeze was instituted due to a material misrepresentation of fact; however, the consumer reporting agency must first notify the representative and protected consumer in writing before removing the security freeze.

If the removal of a security freeze is requested by the representative, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification and authority;
- The unique personal identifier; and
- Payment of a fee.

If the removal of a security freeze is requested by the protected consumer, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification; and
- Documentation that the authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.
- Payment of a fee.

The security freeze must be removed within thirty days after receiving the request for removal.<sup>13</sup>

<sup>13</sup> Unlike the bill, s. 501.005(6), F.S., allows for temporary lifts of a security freeze and requires consumer reporting agencies to remove a security freeze within 3 business days of receiving a written request for a temporary lift.

### Exemptions from Section

The bill provides that the provisions of s. 501.0051, F.S., do not apply to the use of consumer credit information by:

- A state agency acting within its lawful investigative or regulatory authority;
- A state or local law enforcement agency investigating a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription, to which the protected consumer or representative, on behalf of the protected consumer, has subscribed;
- Any person, for the purpose of providing the protected consumer's consumer report upon the consumer's or representative's request;
- Any person with a court order for the release of consumer credit information;
- An insurance company, for the purpose of settling or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;
- A consumer reporting agency's database or file which consists entirely of information concerning, and is used exclusively for: 1) criminal record information, 2) personal loss history information, 3) fraud prevention or detection, 4) tenant screening, 5) employment screening, 6) personal insurance policy information, or 7) noncredit information used for insurance purposes;
- A check services company that issues authorizations, for the purpose of approving or processing checks, electronic funds transfers, or similar methods of payment;
- A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or other negative information regarding a protected consumer to an inquiring financial institution, for limited purposes;
- A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple agencies, and that does not maintain a permanent database of credit information from which new reports are produced; or
- A fraud prevention services company issuing reports to prevent or investigate fraud.
- A person or entity, its affiliates, or a collection agency acting on behalf of the person or entity and with which the protected consumer has an existing account, requesting information on the protected consumer's consumer report for the purposes of reviewing or collecting the account.

### Fees

The bill authorizes consumer reporting agencies to charge a representative who elects to place or remove a security freeze a "reasonable fee," which may not exceed ten dollars. The bill also authorizes consumer reporting agencies to charge a protected consumer who elects to remove a security freeze a "reasonable fee," which may not exceed ten dollars.

Additionally, consumer reporting agencies are granted the ability to charge a representative a "reasonable fee," not to exceed ten dollars, to be imposed if the representative fails to retain the original personal identifier granted when the security freeze was placed, and the agency has to reissue that original personal identifier.

However, the bill does not allow for a consumer reporting agency to charge the representative any fee if the representative submits, at the time the security freeze is requested, a copy of an investigative report, incident report, or other complaint with a law enforcement agency indicating the protected consumer is a victim of identity theft.

### Changes to a Protected Consumer's Consumer Record

If a security freeze is in effect, the bill requires a consumer reporting agency to send written confirmation to a protected consumer's representative of a change to the protected consumer's name, address, date of birth, or social security number in his or her consumer record, within thirty days after the change is posted to the consumer record.

However, written confirmation is not required to be made regarding technical corrections of a protected consumer's information. Technical corrections include name and street abbreviations, complete spellings, or transposition of numbers or letters.

In the case of an address change, the written confirmation must be sent to the representative and to the protected consumer's new and former addresses.

### Violations of the Security Freeze

In the event that a consumer reporting agency violates the security freeze by releasing credit information without proper authorization, the bill provides that the consumer reporting agency is required to notify the representative, in writing, within five business days after discovering or being notified of the release of information.

Moreover, the bill provides for fines and damages, in certain circumstances. Specifically:

- A credit reporting agency that willfully fails to comply with the security freeze provisions is subject to a \$500 administrative fine, issued pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for the greater of \$1,000 or the actual damages sustained by the protected consumer as a result of the failure, and 2) the consumer reporting agency for actual damages or \$1,000, whichever is greater.

### Written Summary of Rights

The bill requires consumer reporting agencies to provide consumers with written summary of rights, including the right to sue under the new statute. Additionally, the bill amends the terms of the summary of rights to include that a representative has a right to place a security freeze on the consumer report of person that he or she is legally authorized to care for, pursuant to the provisions in s. 501.0051, F.S. Moreover, the summary of rights must indicate that if no consumer report exists for the protected consumer, that the representative has a right to request that a record be created and that a security freeze be placed on that consumer record.

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

**Section 1:** identifies the bill as the "Keeping I.D. Safe (KIDS) Act."

**Section 2:** creates s. 501.0051, F.S., to provide definitions, procedures, requirements, exemptions, enforcement and damages, and limitations regarding security freezes on a protected consumer's credit record; creates written disclosure requirements for consumer reporting agencies pertaining to consumer rights associated with a security freeze, and includes a disclaimer involving protected consumer security freezes.

**Section 3:** provides an effective date of September 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None. The Department of Agriculture and Consumer Services anticipates using existing resources to investigate alleged violations of the provisions of this bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will expand consumer protections to individuals under the age of sixteen and certain protected adults and minors as set forth in chs. 39, 393, 744, or 914, F.S., and will help protect these specific groups from identity theft and fraudulent credit use.

### 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

On January 9, 2014, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following changes to the filed version of the bill:

- Identified the act as the "Keeping I.D. Safe (KIDS) Act";

- Removed the word “custodial” from the definition of “representative”;
- Added a certified or official copy of a birth certificate of the protected consumer to the definition of “sufficient proof of authority” for a representative who is a parent of the protected consumer;
- Removed language that allowed a consumer report to be created after a security freeze was initiated;
- Removed language requiring a consumer reporting agency to provide a copy of a protected consumer’s consumer report to the protected consumer or representative and the ability to charge a fee for the copy. Further removes language detailing what a representative or a protected consumer needed to submit in order to get the copy of the report;
- Clarified that when a protected consumer requests to remove a security freeze, he or she must pay a fee not to exceed \$10 to the consumer reporting agency;
- Added clarifying language indicating that a consumer reporting agency shall notify the representative and protected consumer in writing before removing a security freeze that was instituted due to a material misrepresentation of fact;
- Removed the word “custodial” from the term “custodial parent” in the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the act; and
- Clarified the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the act.

The staff analysis is drafted to reflect the committee substitute.

1                                   A bill to be entitled  
 2           An act relating to the security of a protected  
 3           consumer's information; providing a short title;  
 4           creating s. 501.0051, F.S.; providing definitions;  
 5           authorizing the representative of a protected consumer  
 6           to place a security freeze on a protected consumer's  
 7           consumer report or record; specifying the procedure to  
 8           request a security freeze; requiring a consumer  
 9           reporting agency to establish a record if the  
 10          protected consumer does not have an existing consumer  
 11          report; prohibiting the use of a consumer record for  
 12          certain purposes; providing that a security freeze on  
 13          a consumer record applies to a subsequently created  
 14          consumer report; requiring a consumer reporting agency  
 15          to place, and to provide written confirmation of, a  
 16          security freeze within a specified period; prohibiting  
 17          a consumer reporting agency from stating or implying  
 18          that a security freeze reflects a negative credit  
 19          history or rating; requiring a consumer reporting  
 20          agency to provide a copy of a consumer report or  
 21          record to a protected consumer or his or her  
 22          representative upon request; authorizing a consumer  
 23          reporting agency to charge a fee for a copy of a  
 24          protected consumer's consumer report or record;  
 25          specifying the procedure to request a copy of a  
 26          protected consumer's consumer report or record;

27 requiring a consumer reporting agency to remove a  
 28 security freeze under specified conditions; specifying  
 29 the procedure to remove a security freeze; providing  
 30 applicability; authorizing a consumer reporting agency  
 31 to charge a fee for placing or removing a security  
 32 freeze and for reissuing a unique personal identifier;  
 33 prohibiting a fee under certain circumstances;  
 34 requiring written notification upon the change of  
 35 specified information in a protected consumer's  
 36 consumer report or record; providing exceptions;  
 37 requiring a consumer reporting agency to notify a  
 38 representative and provide specified information if  
 39 the consumer reporting agency violates a security  
 40 freeze; providing penalties and civil remedies;  
 41 providing written disclosure requirements for consumer  
 42 reporting agencies relating to a protected consumer's  
 43 security freeze; providing an effective date.

44  
 45 Be It Enacted by the Legislature of the State of Florida:

46  
 47 Section 1. This act may be cited as the "Keeping I.D. Safe  
 48 (KIDS) Act."

49 Section 2. Section 501.0051, Florida Statutes, is created  
 50 to read:

51 501.0051 Protected consumer report security freeze.-

52 (1) As used in this section, the term:



53 (a) "Consumer report" has the same meaning as provided in  
 54 15 U.S.C. s. 1681a(d).

55 (b) "Consumer reporting agency" has the same meaning as  
 56 provided in 15 U.S.C. s. 1681a(f).

57 (c) "Protected consumer" means a person younger than 16  
 58 years of age at the time a security freeze request is made or a  
 59 person represented by a guardian or other advocate pursuant to  
 60 chapter 39, chapter 393, chapter 744, or chapter 914.

61 (d) "Record" means a compilation of information that:

- 62 1. Identifies a protected consumer; and  
 63 2. Is created by a consumer reporting agency exclusively  
 64 for the purpose of complying with this section.

65 (e) "Representative" means the custodial parent or legal  
 66 guardian of a protected consumer, including a guardian appointed  
 67 pursuant to s. 914.17.

68 (f) "Security freeze" means:

- 69 1. A notice placed on a protected consumer's consumer  
 70 report which prohibits a consumer reporting agency from  
 71 releasing the consumer report, the credit score, or any  
 72 information contained within the consumer report to a third  
 73 party without the express authorization of the representative;  
 74 or  
 75 2. If a consumer reporting agency does not have a consumer  
 76 report pertaining to the protected consumer, a notice placed on  
 77 the protected consumer's record which prohibits the consumer  
 78 reporting agency from releasing the protected consumer's record

79 except as provided in this section.

80 (g) "Sufficient proof of authority" means documentation  
 81 showing that a representative has authority to act on behalf of  
 82 a protected consumer. The term includes, but is not limited to,  
 83 a court order, a copy of a valid power of attorney, or a written  
 84 notarized statement signed by a representative which expressly  
 85 describes the authority of the representative to act on behalf  
 86 of the protected consumer.

87 (h) "Sufficient proof of identification" means  
 88 documentation identifying a protected consumer or a  
 89 representative of a protected consumer. The term includes, but  
 90 is not limited to, a copy of a social security card, a certified  
 91 or official copy of a birth certificate, a copy of a valid  
 92 driver license, or a copy of a government-issued photo  
 93 identification.

94 (2) A representative may place a security freeze on a  
 95 protected consumer's consumer report by:

96 (a) Submitting a request to a consumer reporting agency in  
 97 the manner prescribed by that agency;

98 (b) Providing the agency with sufficient proof of  
 99 authority and sufficient proof of identification of the  
 100 representative; and

101 (c) Paying the agency a fee as authorized under this  
 102 section.

103 (3) If a consumer reporting agency does not have a  
 104 consumer report pertaining to a protected consumer when the

105 consumer reporting agency receives a request for a security  
 106 freeze under subsection (2), the consumer reporting agency shall  
 107 create a record for the protected consumer and place a security  
 108 freeze on the record. A record may not be created or used to  
 109 consider the protected consumer's credit worthiness, credit  
 110 standing, credit capacity, character, general reputation,  
 111 personal characteristics, or eligibility for other financial  
 112 services. If a consumer report is subsequently created for a  
 113 protected consumer with a security freeze on his or her consumer  
 114 record, the consumer report is also subject to a security freeze  
 115 until the security freeze is removed from the consumer report  
 116 pursuant to subsection (8).

117 (4) A consumer reporting agency shall place a security  
 118 freeze on a consumer report or record within 30 days after  
 119 confirming the authenticity of a security freeze request made in  
 120 accordance with this section.

121 (5) The consumer reporting agency shall send a written  
 122 confirmation of the security freeze to the representative within  
 123 10 business days after instituting the security freeze on the  
 124 consumer report or record and shall provide the representative  
 125 with instructions for removing the security freeze and a unique  
 126 personal identifier to be used by the representative when  
 127 providing authorization for removal of the security freeze.

128 (6) A consumer reporting agency may not state or imply to  
 129 any person that a security freeze reflects a negative credit  
 130 score, a negative credit history, or a negative credit rating.

131 (7) During any period that a security freeze is in effect,  
 132 a consumer reporting agency shall provide a copy of a protected  
 133 consumer's consumer report or record to the protected consumer  
 134 or his or her representative upon request. A consumer reporting  
 135 agency may charge the representative or protected consumer a fee  
 136 for the copy, not to exceed the amount normally charged by such  
 137 agency to provide a copy of a consumer report.

138 (a) A representative submitting a request for a copy of a  
 139 protected consumer's consumer report or record must provide all  
 140 of the following:

141 1. Sufficient proof of identification of the  
 142 representative and sufficient proof of authority as determined  
 143 by the consumer reporting agency.

144 2. The unique personal identifier provided by the consumer  
 145 reporting agency pursuant to subsection (5).

146 3. A fee as authorized under this section.

147 (b) A protected consumer submitting a request for a copy  
 148 of his or her consumer report or record must provide sufficient  
 149 proof of identification of the protected consumer as determined  
 150 by the consumer reporting agency and pay a fee as authorized  
 151 under this section.

152 (8) A consumer reporting agency shall remove a security  
 153 freeze from a protected consumer's consumer report or record  
 154 only under either of the following circumstances:

155 (a) Upon the request of a representative or a protected  
 156 consumer. A consumer reporting agency shall remove a security

157 freeze within 30 days after receiving such a request for removal  
 158 from a protected consumer or his or her representative.

159 1. A representative submitting a request for removal must  
 160 provide all of the following:

161 a. Sufficient proof of identification of the  
 162 representative and sufficient proof of authority as determined  
 163 by the consumer reporting agency.

164 b. The unique personal identifier provided by the consumer  
 165 reporting agency pursuant to subsection (5).

166 c. A fee as authorized under this section.

167 2. A protected consumer submitting a request for removal  
 168 must provide all of the following:

169 a. Sufficient proof of identification of the protected  
 170 consumer as determined by the consumer reporting agency.

171 b. Documentation that the sufficient proof of authority of  
 172 the protected consumer's representative to act on behalf of the  
 173 protected consumer is no longer valid.

174 (b) If the security freeze was instituted due to a  
 175 material misrepresentation of fact. If a consumer reporting  
 176 agency intends to remove a security freeze under this paragraph,  
 177 the consumer reporting agency must notify the representative and  
 178 protected consumer in writing before removing the security  
 179 freeze.

180 (9) This section does not apply to the use of a protected  
 181 consumer's consumer report or record by the following persons or  
 182 for the following reasons:

183 (a) A state agency acting within its lawful investigative  
 184 or regulatory authority.

185 (b) A state or local law enforcement agency investigating  
 186 a crime or conducting a criminal background check.

187 (c) A person administering a credit file monitoring  
 188 subscription service to which the protected consumer or the  
 189 representative, on behalf of the protected consumer, has  
 190 subscribed.

191 (d) A person providing the protected consumer's consumer  
 192 report or record to the protected consumer or the representative  
 193 upon the request of the protected consumer or representative.

194 (e) Pursuant to a court order lawfully entered.

195 (f) An insurance company for use in setting or adjusting a  
 196 rate, adjusting a claim, or underwriting for insurance purposes.

197 (g) A consumer reporting agency's database or file that  
 198 consists entirely of information concerning, and used  
 199 exclusively for, one or more of the following:

- 200 1. Criminal record information.
- 201 2. Personal loss history information.
- 202 3. Fraud prevention or detection.
- 203 4. Tenant screening.
- 204 5. Employment screening.
- 205 6. Personal insurance policy information.
- 206 7. Noncredit information used for insurance purposes.

207 (h) A check services company issuing authorizations for  
 208 the purpose of approving or processing negotiable instruments,

209 electronic funds transfers, or similar methods of payment.

210 (i) A deposit account information service company issuing  
 211 reports regarding account closures due to fraud, substantial  
 212 overdrafts, automatic teller machine abuse, or similar negative  
 213 information regarding a protected consumer to an inquiring  
 214 financial institution, as defined in s. 655.005 or in federal  
 215 law, for use only in reviewing a representative's request for a  
 216 deposit account for the protected consumer at the inquiring  
 217 financial institution.

218 (j) A consumer reporting agency that acts only as a  
 219 reseller of credit information by assembling and merging  
 220 information contained in the database of another consumer  
 221 reporting agency or multiple consumer reporting agencies and  
 222 that does not maintain a permanent database of credit  
 223 information from which new consumer reports are produced.  
 224 However, such consumer reporting agency shall honor any security  
 225 freeze placed or removed by another consumer reporting agency.

226 (k) A fraud prevention services company issuing reports to  
 227 prevent or investigate fraud.

228 (l) A person or entity, or its affiliates, or a collection  
 229 agency acting on behalf of the person or entity and with which  
 230 the protected consumer has an existing account, requesting  
 231 information in the protected consumer's consumer report or  
 232 record for the purposes of reviewing or collecting the account.  
 233 Reviewing the account includes activities related to account  
 234 maintenance, monitoring, credit line increases, and account

235 upgrades and enhancements.

236 (10) (a) A consumer reporting agency may charge a  
 237 reasonable fee, not to exceed \$10, to a representative who  
 238 elects to place or remove a security freeze.

239 (b) A consumer reporting agency may charge a reasonable  
 240 fee, not to exceed \$10, if the representative fails to retain  
 241 the original unique personal identifier provided by the consumer  
 242 reporting agency and the agency must reissue the unique personal  
 243 identifier or provide a new unique personal identifier to the  
 244 representative.

245 (c) A consumer reporting agency may not charge a fee under  
 246 this section to the representative of a protected consumer who  
 247 is a victim of identity theft if the representative submits, at  
 248 the time the security freeze is requested, a copy of a valid  
 249 investigative report, an incident report, or a complaint with a  
 250 law enforcement agency about the unlawful use of the protected  
 251 consumer's identifying information by another person.

252 (11) If a security freeze is in effect, a consumer  
 253 reporting agency must send written confirmation to a protected  
 254 consumer's representative of a change to any of the following  
 255 official information in the protected consumer's consumer report  
 256 or record within 30 days after the change is posted:

- 257 (a) The protected consumer's name.
- 258 (b) The protected consumer's address.
- 259 (c) The protected consumer's date of birth.
- 260 (d) The protected consumer's social security number.



261  
 262 Written confirmation is not required for technical corrections  
 263 of a protected consumer's official information, including name  
 264 and street abbreviations, complete spellings, or transposition  
 265 of numbers or letters. In the case of an address change, the  
 266 written confirmation must be sent to the representative and to  
 267 the protected consumer's new address and former address.

268 (12) If a consumer reporting agency violates a security  
 269 freeze placed in accordance with this section by releasing  
 270 information subject to a security freeze without proper  
 271 authorization, the consumer reporting agency shall, within 5  
 272 business days after discovering or being notified of the release  
 273 of information, notify the representative of the protected  
 274 consumer in writing. The notice shall state the specific  
 275 information released and provide the name, address, and other  
 276 contact information of the recipient of the information.

277 (13) A consumer reporting agency that willfully fails to  
 278 comply with any requirement imposed under this section is  
 279 subject to an administrative fine in the amount of \$500, imposed  
 280 by the Department of Agriculture and Consumer Services pursuant  
 281 to the administrative procedures established in chapter 120.

282 (14) In addition to any other penalties or remedies  
 283 provided under law, the following persons who are aggrieved by a  
 284 violation of this section may bring a civil action as follows:

285 (a) A person who obtains a protected consumer's consumer  
 286 report or record from a consumer reporting agency under false

287 pretenses or who knowingly obtains a protected consumer's  
 288 consumer report or record without a permissible purpose is  
 289 liable to the representative and protected consumer for actual  
 290 damages sustained by the protected consumer or \$1,000, whichever  
 291 is greater.

292 (b) A person who obtains a protected consumer's consumer  
 293 report or record from a consumer reporting agency under false  
 294 pretenses or who knowingly obtains a protected consumer's  
 295 consumer report or record without a permissible purpose is  
 296 liable to the consumer reporting agency for actual damages  
 297 sustained by the consumer reporting agency or \$1,000, whichever  
 298 is greater.

299 (15) A written disclosure by a consumer reporting agency,  
 300 pursuant to 15 U.S.C. s. 1681g, to a representative and  
 301 protected consumer residing in this state must include a written  
 302 summary of all rights that the representative and protected  
 303 consumer have under this section and, in the case of a consumer  
 304 reporting agency that compiles and maintains records on a  
 305 nationwide basis, a toll-free telephone number that the  
 306 representative can use to communicate with the consumer  
 307 reporting agency. The information provided in paragraph (b) must  
 308 be in at least 12-point boldfaced type. The written summary of  
 309 rights required under this section is sufficient if it is  
 310 substantially in the following form:

311 (a) If you are the custodial parent or legal guardian of a  
 312 minor younger than 16 years of age or a guardian or advocate of

313 an incapacitated, disabled, or protected person under chapter  
 314 39, chapter 393, chapter 744, or chapter 914, Florida Statutes,  
 315 you have the right to place a security freeze on the consumer  
 316 report of the person you are legally authorized to care for. If  
 317 no consumer report exists, you have the right to request that a  
 318 record be created and a security freeze be placed on the record.  
 319 A record with a security freeze is intended to prevent the  
 320 opening of credit accounts until the security freeze is removed.

321 (b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO  
 322 CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN A  
 323 CONSUMER REPORT OR RECORD MAY DELAY, INTERFERE WITH, OR PROHIBIT  
 324 THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION  
 325 REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT  
 326 SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT,  
 327 LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET  
 328 CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN  
 329 EXTENSION OF CREDIT AT POINT OF SALE.

330 (c) To remove the security freeze on the protected  
 331 consumer's record or report, you must contact the consumer  
 332 reporting agency and provide all of the following:

333 1. Proof of identification as required by the consumer  
 334 reporting agency.

335 2. Proof of authority over the protected consumer as  
 336 required by the consumer reporting agency.

337 3. The unique personal identifier provided by the consumer  
 338 reporting agency.

339 4. Payment of a fee.

340 (d) A consumer reporting agency must, within 30 days after  
 341 receiving the above information, authorize the removal of the  
 342 security freeze.

343 (e) A security freeze does not apply to a person or  
 344 entity, or its affiliates, or a collection agency acting on  
 345 behalf of the person or entity and with which the protected  
 346 consumer has an existing account, which requests information in  
 347 the protected consumer's consumer report or record for the  
 348 purposes of reviewing or collecting the account. Reviewing the  
 349 account includes activities related to account maintenance,  
 350 monitoring, credit line increases, and account upgrades and  
 351 enhancements.



352 (f) You have the right to bring a civil action against  
 353 anyone, including a consumer reporting agency, who fails to  
 354 comply with section 501.0051, Florida Statutes, which governs  
 355 the placement and removal of a security freeze on a protected  
 356 consumer's consumer report or record.

357 Section 3. This act shall take effect September 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 255 Insurance/Discriminatory Practices Relating to Firearm Ownership or Possession  
**SPONSOR(S):** Gaetz  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 424

| REFERENCE                           | ACTION | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF   |
|-------------------------------------|--------|--|--|
| 1) Insurance & Banking Subcommittee |        | Salzberg  | Cooper  |
| 2) Civil Justice Subcommittee       |        |  |  |
| 3) Regulatory Affairs Committee     |        |  |  |

### SUMMARY ANALYSIS

In Florida, current law prohibits unfair insurance trade practices as outlined and governed under part IX, of chapter 626, F.S. Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Additionally, current law prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not enumerated as an unfair trade practice and seemingly lacks sufficient enforcement authority.

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to:

- Issue, reissue, or renew a policy, cancel or otherwise terminate a policy, or charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm.
- Disclose an insured's or applicant's or such person's household member's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure.

This bill should not have a significant negative impact on Florida insurers because gun ownership is not currently used in determining liability in rate-setting. Insurers will have to alter their current disclosure and notice procedures to comply with this bill, resulting in an indeterminate amount of administrative costs.

The bill takes effect July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.<sup>1</sup> Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.<sup>2</sup> Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.<sup>3</sup>

OIR encounters discriminatory practices generally in three different ways:<sup>4</sup>

- 1) In proposed rate filings, which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- 2) When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.
- 3) From constituent calls to legislators' offices, which are passed along to OIR. In turn, these concerns are referred to the Bureau of Market Investigations.

Regarding the possession of a firearm, current law prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.<sup>5</sup> Although unrelated parts of the bill which passed were struck down in a legal challenge, the subsection relating to insuring firearms still remains good law today.<sup>6</sup> An issue with the current law is that it lacks specific authority to take action against any insurers which violate the proscribed behavior.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or possesses a firearm is not common practice within the insurance industry in Florida when determining liability in setting rates.<sup>7</sup> Insurers generally provide property loss coverage for firearms in two ways. Firearms may be covered as a part of the standard policy or as a "rider." A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the

---

<sup>1</sup> s. 627.062, F.S.

<sup>2</sup> s. 626.9541, F.S.

<sup>3</sup> s. 626.9541(1)(g)(1), F.S.

<sup>4</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

<sup>5</sup> s. 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.

<sup>6</sup> *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (2012)

<sup>7</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

insured or applicant's firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.<sup>8</sup>

### **Effect of the Bill**

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to:

- Issue, reissue, or renew a policy, cancel or otherwise terminate a policy, or charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm.
- Disclose an insured's or applicant's or such person's household member's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure.

One effect of the bill is to provide an enforcement mechanism pertaining to insurance practices and disclosure of firearms. By amending the unfair discriminatory practices section of the Florida statutes, the Office of Insurance Regulation will be able to absorb enforcement of these new provisions into their current regulatory scheme with little, if any, financial strain on OIR.<sup>9</sup>

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

**Section 1:** Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts by an insurer.

**Section 2:** Provides an effective date of July 1, 2014.

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

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.

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

##### **1. Revenues:**

This bill does not appear to have any impact on local revenue.

---

<sup>8</sup> According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on 01/20/2014.

<sup>9</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.



2. Expenditures:

This bill does not appear to have any impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm.
2. Insurance Providers: This bill should have little, if any, effect on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.<sup>10</sup> Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is a scrivener's error on line 66. The word "change" should read "charge". Additionally, on line 68, the comma after lawful should be removed to read "lawful use". An amendment has been prepared with these changes.

---

<sup>10</sup> Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
 2           An act relating to insurance; amending s. 626.9541,  
 3           F.S.; providing additional unfair methods of  
 4           competition and unfair or deceptive acts or practices  
 5           relating to the business of insurance, to which  
 6           penalties apply; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Paragraph (g) of subsection (1) of section  
 11   626.9541, Florida Statutes, is amended to read:

12           626.9541 Unfair methods of competition and unfair or  
 13   deceptive acts or practices defined.—

14           (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
 15   ACTS.—The following are defined as unfair methods of competition  
 16   and unfair or deceptive acts or practices:

17           (g) Unfair discrimination.—

18           1. Knowingly making or permitting any unfair  
 19   discrimination between individuals of the same actuarially  
 20   supportable class and equal expectation of life, in the rates  
 21   charged for any life insurance or annuity contract, in the  
 22   dividends or other benefits payable thereon, or in any other of  
 23   the terms and conditions of such contract.

24           2. Knowingly making or permitting any unfair  
 25   discrimination between individuals of the same actuarially  
 26   supportable class, as determined at the original time of

27 issuance of the coverage, and essentially the same hazard, in  
 28 the amount of premium, policy fees, or rates charged for any  
 29 policy or contract of accident, disability, or health insurance,  
 30 in the benefits payable thereunder, in any of the terms or  
 31 conditions of such contract, or in any other manner whatever.

32       3. For a health insurer, life insurer, disability insurer,  
 33 property and casualty insurer, automobile insurer, or managed  
 34 care provider to underwrite a policy, or refuse to issue,  
 35 reissue, or renew a policy, refuse to pay a claim, cancel or  
 36 otherwise terminate a policy, or increase rates based upon the  
 37 fact that an insured or applicant who is also the proposed  
 38 insured has made a claim or sought or should have sought medical  
 39 or psychological treatment in the past for abuse, protection  
 40 from abuse, or shelter from abuse, or that a claim was caused in  
 41 the past by, or might occur as a result of, any future assault,  
 42 battery, or sexual assault by a family or household member upon  
 43 another family or household member as defined in s. 741.28. A  
 44 health insurer, life insurer, disability insurer, or managed  
 45 care provider may refuse to underwrite, issue, or renew a policy  
 46 based on the applicant's medical condition, but shall not  
 47 consider whether such condition was caused by an act of abuse.  
 48 For purposes of this section, the term "abuse" means the  
 49 occurrence of one or more of the following acts:

50       a. Attempting or committing assault, battery, sexual  
 51 assault, or sexual battery;

52       b. Placing another in fear of imminent serious bodily

- 53 injury by physical menace;
- 54 c. False imprisonment;
- 55 d. Physically or sexually abusing a minor child; or
- 56 e. An act of domestic violence as defined in s. 741.28.

57

58 This subparagraph does not prohibit a property and casualty  
 59 insurer or an automobile insurer from excluding coverage for  
 60 intentional acts by the insured if such exclusion does not  
 61 constitute an act of unfair discrimination as defined in this  
 62 paragraph.

63 4. For a personal lines property or personal lines  
 64 automobile insurer to underwrite a policy, or refuse to issue,  
 65 reissue, or renew a policy, cancel or otherwise terminate a  
 66 policy, or change a discriminatory rate in this state based on  
 67 an insured's or applicant's or such person's household member's  
 68 lawful, use, possession, or ownership of a firearm.

69 5. For a personal lines property or personal lines  
 70 automobile insurer to disclose an insured's or applicant's or  
 71 such person's household member's ownership or possession of a  
 72 firearm to a third party or affiliated entity unless the insurer  
 73 discloses to the insured or applicant a specific need to  
 74 disclose the information and the insured or applicant expressly  
 75 consents to the disclosure.

76 Section 2. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 401 Underwriting, Cancellation Period, & Other Terms of Motor Vehicle Insurance Policies

**SPONSOR(S):** Goodson

**TIED BILLS:** IDEN./SIM. BILLS: SB 490

| REFERENCE                                       | ACTION | ANALYST           | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|-------------------|---------------------------------------|
| 1) Insurance & Banking Subcommittee             |        | Reilly <i>RJR</i> | Cooper <i>OK</i>                      |
| 2) Transportation & Highway Safety Subcommittee |        |                   |                                       |
| 3) Regulatory Affairs Committee                 |        |                   |                                       |

### SUMMARY ANALYSIS

Every owner or registrant of a motor vehicle required to be licensed and registered in Florida must maintain security continuously throughout the registration or licensing period. Generally, the security requirement is satisfied through the purchase of a motor vehicle insurance policy. At a minimum, Florida motorists are required to maintain \$10,000 in Personal Injury Protection coverage (PIP, or no-fault insurance) and \$10,000 in Property Damage liability (PD) coverage. Drivers found guilty of or who have entered a plea of guilty or nolo contendere to a charge of driving under the influence (DUI) must purchase additional insurance or furnish a certificate of deposit. Specifically, such drivers must purchase Bodily Injury liability coverage of \$100,000 in the event of bodily injury to, or death of, one person in any crash, \$300,000 in the event of bodily injury to, or death of, two or more persons in a crash, and \$50,000 in PD coverage. In the alternative, these drivers may furnish a certificate of deposit of at least \$350,000. The higher levels of coverage must be carried for three years.

A person whose driving privileges have been suspended or revoked for DUI must secure "noncancelable coverage" to have their driving privileges reinstated. A noncancelable policy must be issued for at least six months and, as to minimum coverage requirements, cannot be canceled by the insured for any reason. The insurer, however, has 30 days in which to complete underwriting, and may cancel the policy during this time. Coverage is in effect during the underwriting period. When underwriting is completed, the insurer must notify the Department of Highway Safety and Motor Vehicles (DHSMV) that the policy is in full force and effect. Once in force, the policy cannot be canceled for the remainder of the policy period. It also cannot be modified for any reason, even to increase coverage or add an additional risk. For any change, the insured must purchase another noncancelable policy. When a second policy is purchased, the unearned premium from the initial policy is credited toward the second policy only if both policies were issued by the same insurer.

House Bill 401 increases the underwriting period from 30 to 60 days for the noncancelable coverage required to reinstate driving privileges revoked or suspended for DUI or failure to maintain required security. With this change, the underwriting period for all motor vehicle insurance policies in Florida will be 60 days. The bill also removes language that prohibits any modification to a noncancelable policy that is in force and requires insureds that seek changes to purchase another noncancelable policy. The bill permits modification of a noncancelable policy as long as the minimum coverages are maintained.

The DHSMV estimates that it will incur \$20,800 in programming costs in implementing the changes made by the bill. There is no fiscal impact on local government.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Every owner or registrant of a motor vehicle<sup>1</sup> required to be licensed and registered in Florida must maintain security continuously throughout the registration or licensing period. Most motorists maintain the required security by purchasing a motor vehicle insurance policy.<sup>2</sup> At a minimum, motorists must purchase \$10,000 of Personal Injury Protection (PIP, or no-fault motor vehicle insurance) and \$10,000 of Property Damage liability (PD) coverage.<sup>3</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) must suspend, after notice and an opportunity to be heard, the registration and driver's license of any owner or registrant of a motor vehicle who fails to maintain a motor vehicle insurance policy providing the minimum required PIP and PD coverage.<sup>4</sup> A suspended driver's license or registration may be reinstated by obtaining the minimum required motor vehicle insurance and upon payment to the DHSMV of a nonrefundable reinstatement fee of \$150 for the first reinstatement, \$250 for the second reinstatement, and \$500 for each subsequent reinstatement during the three years following the first reinstatement. A person reinstating her or his insurance must secure noncancelable coverage as described in ss. 324.021(8), 324.023, and 627.7275(2), F.S., and present proof that the coverage is in force and maintain proof for two years.<sup>5</sup>

Every owner or operator who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence (DUI) under s. 316.193, F.S., must maintain a motor vehicle insurance policy that provides Bodily Injury liability coverage of \$100,000 in the event of bodily injury to, or death of, one person in a crash, \$300,000 of coverage in the event of bodily injury to, or death of, two or more persons in a crash, and \$50,000 in PD coverage. In the alternative, drivers may furnish a certificate of deposit of \$350,000 or more. The higher levels of coverage must be carried for three years.<sup>6</sup>

A person whose driving privileges have been suspended or revoked for DUI must secure "noncancelable coverage"<sup>7</sup> to have their driving privileges reinstated. A noncancelable policy must be issued for at least six months and, as to minimum coverage requirements, cannot be canceled by the insured for any reason. The insurer, however, has 30 days in which to complete underwriting, and may cancel the policy during this time.<sup>8</sup> Coverage is in effect during the underwriting period. When underwriting is completed, the insurer must notify the DHSMV that the policy is in full force and effect. Once in force, the policy cannot be canceled for the remainder of the policy period. It also cannot be modified for any reason, even to increase coverage or add an additional risk. For any change in coverage or risk, the insured must purchase another noncancelable policy. When a second policy is purchased, the unearned premium from the initial policy is credited toward the second policy only if both policies were issued by the same insurer.

<sup>1</sup> Other than a school bus or limousine. *See* s. 627.733(1).

<sup>2</sup> The required security may also be provided through self-insurance. *See* s. 627.733(3), F.S.

<sup>3</sup> Sections 627.736(1) and 324.022, F.S.

<sup>4</sup> Section 324.0221(2), F.S.

<sup>5</sup> Section 324.0221(3), F.S.

<sup>6</sup> Section 324.023, F.S.

<sup>7</sup> Through a motor vehicle insurance policy or self-insurance.

<sup>8</sup> Section 627.7275(2), F.S.



### **Effect of Bill**

House Bill 401 increases the underwriting period from 30 to 60 days for the noncancelable coverage required to reinstate driving privileges revoked or suspended for DUI or failure to maintain required security. With this change, the underwriting period for all motor vehicle insurance policies in Florida will be 60 days. The bill also removes language that prohibits any modification to a noncancelable policy that is in force and requires insureds that seek changes to purchase another noncancelable policy. The bill permits modification of a noncancelable policy as long as the minimum coverages are maintained. Thus, it eliminates the need for consumers to purchase multiple noncancelable policies with a duration of six months or longer whenever they seek any change to the policy.

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

Section 1. Amends s. 627.7275, F.S., relating to motor vehicle liability insurance.  
Section 2. Provide for the bill to take effect upon becoming law.

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

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

The DHSMV estimates that it will incur \$20,800 in programming costs to implement the changes made by the bill.

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Allowing modification of noncancelable policies may economically benefit consumers. The premium for noncancelable policies is paid in full up front. Thus, if a change is sought and a second policy is purchased, the consumer will immediately pay the entire premium on the second policy (or the balance due after the consumer is credited for the unearned premium on the first policy when both policies are purchased from the same insurer). Currently, circumstances may arise that result in consumers purchasing noncancelable coverage for longer durations than they actually need. For example, if there are two months left on a noncancelable policy when the policyholder wants to add coverage for a new driver (a child who has just received her driver's license), the policyholder will have to purchase a new, non-cancelable policy that is issued for six months (the minimum duration for a noncancelable policy).

### **FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that once the noncancelable provisions of the policy become effective, the coverages for bodily injury, property damage, and personal injury protection may not be reduced below required minimum limits and references two statutes contained in ch. 324, F.S. These statutes do not contain any minimum limits that apply to personal injury protection. Thus, it is suggested that the bill be amended to include a reference to s. 627.736, F.S.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to underwriting, cancellation period,  
 3           and other terms of motor vehicle insurance policies;  
 4           amending s. 627.7275, F.S.; revising requirements for  
 5           issuance, underwriting, and coverage of motor vehicle  
 6           insurance policies; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Section 627.7275, Florida Statutes, is amended  
 11   to read:

12           627.7275 Motor vehicle liability.—

13           (1) A motor vehicle insurance policy providing personal  
 14   injury protection as set forth in s. 627.736 may not be  
 15   delivered or issued for delivery in this state with respect to  
 16   any specifically insured or identified motor vehicle registered  
 17   or principally garaged in this state unless the policy also  
 18   provides coverage for property damage liability as required by  
 19   s. 324.022.

20           (2)(a) Insurers writing motor vehicle insurance in this  
 21   state shall make available, subject to the insurers' usual  
 22   underwriting restrictions:

23           1. Coverage under policies as described in subsection (1)  
 24   to any applicant for private passenger motor vehicle insurance  
 25   coverage who is seeking the coverage in order to reinstate the  
 26   applicant's driving privileges in this state when the driving

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

27 | privileges were revoked or suspended pursuant to s. 316.646 or  
 28 | s. 324.0221 due to the failure of the applicant to maintain  
 29 | required security.

30 |         2. Coverage under policies as described in subsection (1),  
 31 | which also provides liability coverage for bodily injury, death,  
 32 | and property damage arising out of the ownership, maintenance,  
 33 | or use of the motor vehicle in an amount not less than the  
 34 | limits described in s. 324.021(7) and conforms to the  
 35 | requirements of s. 324.151, to any applicant for private  
 36 | passenger motor vehicle insurance coverage who is seeking the  
 37 | coverage in order to reinstate the applicant's driving  
 38 | privileges in this state after such privileges were revoked or  
 39 | suspended under s. 316.193 or s. 322.26(2) for driving under the  
 40 | influence.

41 |         (b) The policies described in paragraph (a) shall be  
 42 | issued for a period of at least 6 months and as to the minimum  
 43 | coverages required under this section shall not be cancelable by  
 44 | the insured for any reason or by the insurer after a period not  
 45 | to exceed 60 ~~30~~ days during which the insurer must complete  
 46 | underwriting of the policy. After the insurer has completed  
 47 | underwriting the policy within the 60-day ~~30-day~~ period, the  
 48 | insurer shall notify the Department of Highway Safety and Motor  
 49 | Vehicles that the policy is in full force and effect and the  
 50 | policy shall not be cancelable for the remainder of the policy  
 51 | period. A premium shall be collected and coverage shall be in  
 52 | effect for the 60-day ~~30-day~~ period during which the insurer is

53 | completing the underwriting of the policy whether or not the  
 54 | person's driver license, motor vehicle tag, and motor vehicle  
 55 | registration are in effect. Once the noncancelable provisions of  
 56 | the policy become effective, the coverages for bodily injury,  
 57 | property damage, and personal injury protection shall not be  
 58 | reduced below the state-required minimum limits as required by  
 59 | s. 324.023 or s. 324.021 during the policy period ~~coverage or~~  
 60 | ~~risk shall not be changed during the policy period and the~~  
 61 | ~~premium shall be nonrefundable. If, during the pendency of the~~  
 62 | ~~2-year proof of insurance period required under s. 324.0221 or~~  
 63 | ~~during the 3-year proof of financial responsibility required~~  
 64 | ~~under s. 324.131, whichever is applicable, the insured obtains~~  
 65 | ~~additional coverage or coverage for an additional risk or~~  
 66 | ~~changes territories, the insured must obtain a new 6-month~~  
 67 | ~~noncancelable policy in accordance with the provisions of this~~  
 68 | ~~section. However, if the insured must obtain a new 6-month~~  
 69 | ~~policy and obtains the policy from the same insurer, the~~  
 70 | ~~policyholder shall receive credit on the new policy for any~~  
 71 | ~~premium paid on the previously issued policy.~~

72 |       (c) This subsection controls to the extent of any conflict  
 73 | with any other section.

74 |       (d) An insurer issuing a policy subject to this section  
 75 | may cancel the policy if, during the policy term, the named  
 76 | insured or any other operator, who resides in the same household  
 77 | or customarily operates an automobile insured under the policy,  
 78 | has his or her driver's license suspended or revoked.

HB 401

2014



79 |           (e) Nothing in this subsection requires an insurer to  
80 | offer a policy of insurance to an applicant if such offer would  
81 | be inconsistent with the insurer's underwriting guidelines and  
82 | procedures.

83 |           Section 2. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 413 Office of Financial Regulation  
**SPONSOR(S):** Santiago  
**TIED BILLS:** HB 415 **IDEN./SIM. BILLS:**

| REFERENCE  | ACTION | ANALYST   | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF   |
|--|--------|---|--|
| 1) Insurance & Banking Subcommittee                  |        | Bauer  | Cooper  |
| 2) Government Operations Appropriations Subcommittee |        |   |  |
| 3) Regulatory Affairs Committee                      |        |   |  |

### SUMMARY ANALYSIS

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. If a borrower defaults on a consumer debt, the lender will initiate collection efforts, usually through the sale or assignment of the asset to a third-party debt collector. State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that can occur before the debtor is sued, as well as during the litigation process.

At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (the Act), and regulates consumer collection agencies and prohibits many of the same debt collection practices prohibited by the federal Fair Debt Collection Practices Act. The Act gives primary oversight authority to the Office of Financial Regulation (OFR). Currently, the Act gives the OFR limited authority to deny registration to applicants, in contrast to some of the other regulatory programs administered by the OFR. In addition, the Act currently limits the OFR's investigative and examination authority to instances where a consumer complaint has been filed against a consumer collection agency, and does not give the OFR explicit authority to take action against unregistered consumer collection agencies.

The bill makes the following changes to the Act:

- Requires certain "control persons" of consumer collection agencies to be subject to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of criminal convictions;
- Enhances the OFR's registration, investigative, examination, and enforcement authority over consumer collection agencies;
- Subjects registrants to certain reporting requirements;
- Provides that the Act's prohibited practices apply to debt collectors instead of "any person";
- Provides that the Act's requirement to provide notice of assignment of debts is met by complying with the federal FDCPA's validation of debt requirements.

The bill has an insignificant fiscal impact on state government expenditures. The OFR would no longer be responsible for the collection and transfer of fingerprint processing fees to FDLE. However, OFR would collect and transfer to FDLE the fingerprint retention fees paid to OFR at initial licensing and renewal by consumer collection agencies at \$6 per control person per year. The fingerprint retention fee, after collection by OFR, would be transferred to FDLE. The bill's requirement for live-scan fingerprinting and retention fees for control persons has a fiscal impact on the private sector.

The bill provides an effective date of July 1, 2014.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is "charged off" corporate records.<sup>1</sup> Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which can in turn use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

State and federal debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

- *Federal:* The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau are the primary federal enforcement agencies of the Fair Debt Collection Practices Act (FDCPA).<sup>2</sup>
  - The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past three years.<sup>3</sup>
- *Florida:* At the state level, part VI of ch. 559, F.S., is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972.<sup>4</sup> The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines "consumer collection agency" as "any debt collector<sup>5</sup> or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act."
  - The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.<sup>6</sup>

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collections or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.<sup>7</sup> Both acts define "debt collector" narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide

---

<sup>1</sup> The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36,903 (June 12, 2000). It should be noted that a "charge-off" does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies.

<sup>2</sup> 15 U.S.C. §§ 1692-1692p. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-201, 124 Stat. 1376 § 1024(c)(3), directs that the FTC coordinate its law enforcement activities with the Consumer Financial Protection Bureau. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal laws, such as financial institutions (such as banks, savings associations, and credit unions).

<sup>3</sup> *Shining a Light on the Consumer Debt Industry: Hearing Before the Subcomm. on Financial Institutions and Consumer Protection of the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 1 (2013) (statement of James Reilly Dolan, Acting Associate Director for the Division of Financial Practices at the Federal Trade Commission).

<sup>4</sup> Chapter 72-81, Laws of Florida.

<sup>5</sup> Defined broadly at s. 559.55(6), F.S.

<sup>6</sup> E-mail from the OFR (received January 8, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>7</sup> Section 559.55(6), F.S., and 15 U.S.C. 1692a(6).

private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and attorney's fees and costs.<sup>8</sup>

In terms of the FDCPA's relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.<sup>9</sup> The Act also provides that in the event of an inconsistency with the FDCPA, the provision which is more protective of the consumer or debtor shall prevail.<sup>10</sup>

### **Registration of Consumer Collection Agencies in Florida**

The OFR is responsible for the registration of consumer collection agencies that are not otherwise exempted by the Act. The Act provides that a list of persons exempt from registration, including original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies authorized to do business in this state.<sup>11</sup>

According to the OFR, there are currently 1,344 registered consumer collection agencies in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. Of that number, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.<sup>12</sup> Once registered, CCAs must renew their registration between October 1 and December 31 of every year.<sup>13</sup>

A consumer collection agency must meet minimal requirements to register with the OFR and is "entitled to be registered when registration information is complete on its face and the \$200 registration fee has been paid."<sup>14</sup> Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of consumer collection agencies. Currently, the OFR cannot deny registration to any applicant, even if its control persons have been convicted of felony financial crimes or has been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.<sup>15</sup>

Other regulatory programs administered by the OFR include statutory and rule authority to deny licensure or registration based on applicants' civil, criminal, and regulatory history, which provides important public protections in light of the nature of industries regulated by the OFR and their access to consumers' financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or "control or relevant persons" listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods in that an applicant is

---

<sup>8</sup> Section 559.77 and 15 U.S.C. § 1692k.

<sup>9</sup> 15 U.S.C. § 1692n.

<sup>10</sup> Section 559.552, F.S.

<sup>11</sup> Section 559.553(4), F.S. However, it is noted that these persons are only exempt from the registration requirement in this section, not the rest of the Act.

<sup>12</sup> E-mail from the OFR (received January 9, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>13</sup> During the 2012 year, 1,283 consumer collection agencies renewed their registrations with the OFR. OFR bill analysis of HB 413 (received January 17, 2013), on file with the Insurance & Banking Subcommittee.

<sup>14</sup> Section 559.553(3), F.S. Information required on the application includes submission of business and trade names; the location of the business; statements identifying information as to owners, officers, directors and resident agents; and statements identifying and explaining any occasion on which a professional or occupational license held by the registrant or principal was the subject of any suspension or revocation proceeding.

<sup>15</sup> *Id.* See *Welch v. Florida West Coast, Inc.*, 816 So.2d 711 (Fla. 2nd DCA 2002) (holding that registration to engage in business as consumer collection agency is complete upon submission of registration form together with required fee). But see *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185 (11th Cir. 2010) (holding that failing to register as a consumer collection agency in Florida may serve as a basis for a claim under the FDCPA, which prohibits "claim[ing], attempt[ing], or threatening to enforce a debt when such person knows that the debt is not legitimate, or assert[ing] the existence of some other legal right when such person knows that the right does not exist.")

ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

The following table illustrates disqualifying periods for these other licenses under the OFR's jurisdiction. These disqualifying periods are explained in further detail through commission rule.<sup>16</sup>

| Industry/License Type  | Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude | All other felonies | Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude |
|--|---|--------------------|--|
| Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.) <sup>17</sup> | - Permanent bar <sup>18</sup><br><br>- 15 year bar for felonies involving acts of moral turpitude         | 7 year bar         | 5 year bar   |
| Relevant persons of money services businesses (ch. 560, F.S.) <sup>19</sup>                              | 15 year bar   | 7 year bar         | 5 year bar   |
| Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.) <sup>20</sup> | 15 year bar   | N/A                | 5 year bar   |

### Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.<sup>21</sup> Additionally, unregistered out-of-state consumer debt collectors can be subject to administrative fines of up to \$10,000 and enforcement actions by the Office of the Attorney General.<sup>22</sup>

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over *any person* if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on *registrants*.<sup>23</sup>

<sup>16</sup> Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

<sup>17</sup> See Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).

<sup>18</sup> The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch 560 and ch 517, F.S.).

<sup>19</sup> See Chapter 69V-560, Fla. Admin. Code (Money Transmitters).

<sup>20</sup> See Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).

<sup>21</sup> Section 559.785, F.S.

<sup>22</sup> Section 559.565, F.S.

<sup>23</sup> Sections 559.727 and 559.730, F.S.

## **Enforcement**

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry:

- Created a requirement that registrants maintain and produce certain books and records for at least three years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;<sup>24</sup>
- Designated the OFR, and not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute; required consumer complaints to be subject to penalty of perjury; required registrants to respond to the OFR's inquiries regarding consumer complaints.
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to \$10,000 per violation, suspensions or revocations on registrants as well as cease-and-desist orders against any person.<sup>25</sup>

The OFR is required to notify the appropriate state attorney or the Attorney General for cases pertaining to out-of-state consumer debt collectors, of any determination by the OFR of a violation of the requirements of this part.<sup>26</sup>

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.<sup>27</sup>

## **Effect of the Bill on the OFR's Registration and Enforcement Authority**

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S. of the Act:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new section 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-, 7-, and 15-year disqualifying periods from registration based on applicants' criminal histories.
- "Control person" – these natural persons must be fingerprinted and will be subject to registration review.

Section 2 of the bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S. for applicants, including a completed application form, a nonrefundable application fee of \$200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and by the Federal Bureau of Investigation (FBI) for federal criminal background checks to enable the OFR to determine applicants' fitness for registration. The costs of fingerprint processing are borne by the persons subject to the background check, while the OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is \$65 per control person, and the annual retention fee is \$6.<sup>28</sup> CCAs who become registered before the bill's effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e., before the next renewal cycle).

---

<sup>24</sup> See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.

<sup>25,26</sup> Ch. 2010-127, L.O.F. and s. 559.5556, F.S. See also Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.

<sup>26</sup> Section 559.725(5), F.S.

<sup>27</sup> Sections 559.5556 and 559.725(4), F.S.

<sup>28</sup> E-mail from the OFR (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

Once approved, the bill would subject registrants to reporting requirements in a new section 559.5551, F.S. This section requires registrants to notify the OFR when control persons enter certain convictions or pleas, and when changes occur in the information contained in the initial application (such as a new business address) and in the registrant's business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act, in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable \$200 renewal fee and fingerprint retention fee of \$6 at renewal time.

The bill creates a new section 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of chapter 119 and the Act.<sup>29</sup>

The bill provides additional grounds for administrative action, such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to denial, suspension, revocation, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to \$1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

### **Prohibited Practices – s. 559.72, F.S.**

Currently, the Act prohibits "any person" from engaging in certain debt collection practices, such as simulating law enforcement or an attorney; using or threatening force; using profane, obscene, vulgar, or willfully abusive language; and communicating with a debtor between 9 p.m. and 8 a.m. without the debtor's consent. Persons who violate this statute are subject to civil liability as well as a cease-and-desist order from the OFR. If a registrant violates this statute, it can also be subject to administrative fines of up to \$10,000 per violation, suspension, or revocation.

The bill amends the prohibited practices statute to state that only "debt collectors," instead of any persons, are prohibited in engaging in certain practices, which would match the Act to the FDCPA.

The Florida Collectors Association has stated that the current language is unique among states and subjects original creditors to a consumer debt collection statute, and that there have been abuses of this provision against small business owners across the state.<sup>30</sup> Consumer advocates believe that the current language is an important consumer protection against collection practices that involve fraud, harassment, threats, and other unscrupulous activity by anyone trying to collect a debt, and the departure from the FDCPA's language (which is limited to "debt collectors") provides a level playing field for anyone collecting a debt, regardless of whether they are a registered debt collector a "first party" debt collector [exempt from registration].<sup>31</sup>

---

<sup>29</sup> House Bill 415 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

<sup>30</sup> E-mail from the Florida Collectors Association (received January 24, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>31</sup> Florida Alliance for Consumer Protection White Paper on HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

It is noted that the bill does not amend the civil remedies provision of the Act (s. 559.77, F.S.), which currently allows debtors to pursue civil remedies against “a/any person” who violates s. 559.72, F.S.

### **Assignment vs. Validation of Consumer Debts**

#### *Notice of Assignment of Debts – Florida requirement*

The Act contains a provision that permits creditors to assign the right to bill and collect consumer debts, which is critical for the secondary market for defaulted consumer loans, and that such assignee is a real party in interest and may bring an action to collect a defaulted debt that is assigned to the assignee. However, the Act requires each assignee to provide written notice of the assignment to the debtor “as soon as practical after the assignment is made, but *at least 30 days before* any action to collect the debt,” so that debtors will be aware who will be collecting their debts.<sup>32</sup>

#### *Validation of Debts – Federal requirement*

Section 809(a) of the FDCPA contains a related but distinct notice requirement in which debt collectors are required to provide debtors with a written “validation notice” within five days *after* their initial communication with debtors. The validation notice must contain 1) the amount of the debt; (2) the name of the current owner of the debt; and (3) statements explaining, among other things, the right of consumers under the FDCPA to dispute debts and to request the name and the address of the original creditor, if different from the creditor that owns the debt. The validation notice must inform consumers that they have thirty days to dispute the debt and that their dispute must be in writing. For example, a consumer may contend that the collector is trying to collect from the wrong person or collect the wrong amount. If a consumer notifies a debt collector, in writing, within thirty days after receipt of a validation notice that he or she is disputing the debt, the collector must discontinue collecting on the debt (or the disputed portion of the debt) until the collector obtains “verification” of the debt and mails it to the consumer. The purpose of the federal validation requirement is to prevent debt collectors from “dunning the wrong person or attempting to collect debts which the consumer has already paid.”<sup>33</sup> In addition, the FDCPA contains a “mini-Miranda” requirement in that debt collectors must disclose in their initial communications with debtors that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.<sup>34</sup>

#### *Effect of the Bill on Notice Requirements*

However, the debt collection industry has stated that these requirements create a “catch-22” that the assignee is caught in between the Act and the FDCPA, since it believes the notice of assignment required by the Act would trigger the FDCPA’s “mini-Miranda” requirement.<sup>35</sup> In an effort to address this concern, Section 9 of the bill provides that compliance with s. 1692g of the FDCPA shall satisfy the notice of assignment requirement.<sup>36</sup>

However, it is noted that a recent federal district court opinion distinguished between letters that are “merely informative” versus those that are sent in connection with the collection of any debt, only the latter of which triggers the FDCPA’s mini-Miranda requirement.<sup>37</sup> Whether a debt collector’s notice of assignment (as required by the Act) can violate the FDCPA was a matter of first impression in *Parker v. Midland Credit Management, Inc.*, 874 F.Supp.2d 1353 (M.D. Fla. 2012). The court concluded:

A letter “that merely informs a debtor of the assignment of her debt [as required by the Act], provides the debtor with the new information, and clearly states that the letter is *not* an attempt to collect a debt

---

<sup>32</sup> Section 559.715, F.S.

<sup>33</sup> *Chaudry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999)

<sup>34</sup> 15 U.S.C. 1692e(11).

<sup>35</sup> E-mail from the Florida Collectors Association (received January 24, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>36</sup> As with current law, the Act does not provide a private right of action for a debt collector’s failure to comply with the notice of assignment requirement, since it is not enumerated under the prohibited practices statute (s. 559.72, F.S.).

<sup>37</sup> Another example of a letter that would be “merely informative” (and thus does not invoke the FDCPA’s mini-Miranda disclosure) is a notice from a post-default mortgage servicer to a borrower that its flood insurance is about to expire. E-mail from the FACP (received January 23, 2014), on file with the Insurance & Banking Subcommittee staff.

should stand as an example of a letter that does not constitute a communication in connection with the collection of a debt in violation of the FDCPA” (emphasis added).

The *Parker* court found that the notice of assignment required by the Act does not trigger the mini-Miranda requirement of the FDCPA nor did it implicate a compliance dilemma between the Act and the FDCPA. In fact, the court rejected the argument that a debt collector could not comply with both the Act and the FDCPA.<sup>38</sup>

The Florida Alliance for Consumer Protection (FACP) opposes the bill’s changes to the Florida act’s notice of assignment requirement because it does not give any enforcement timeframe within which to notify the consumer that the debt has been assigned, and essentially eviscerates the Florida requirement by deferring to the federal requirement. Additionally, FACP has noted that the federally required validation notice, which must include the name and address of the current owner of the debt, does not require notice to the consumer *before* the debt collection activity commences, only within five days *after* the initial communication. The FACP believes the assignment notice, sent separately and before the validation notice, is crucial to consumers in light of the rapid growth in the debt buying market in recent years, and eliminating the assignment notice “would lead consumers subject to guessing whether a debt buyer is legitimate or not when trying to collect a debt,” particularly with the rise of identity theft in the state.<sup>39</sup>

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 559.55, F.S., relating to definitions.

**Section 2:** Amends s. 559.553, F.S., relating to registration of consumer collection agencies required; exemptions.

**Section 3:** Creates s. 559.554, F.S., relating to powers and duties of the commission and office.

**Section 4:** Creates s. 559.5541, F.S., relating to examinations and investigations.

**Section 5:** Amends s. 559.555, F.S., relating to registration of consumer collection agencies; procedure.

**Section 6:** Creates an unnumbered section of the Florida Statutes, relating to consumer collection agencies registered before October 1, 2014.

**Section 7:** Creates s. 559.5551, F.S., relating to requirements of registrants.

**Section 8:** Amends s. 559.565, F.S., relating to enforcement action against out-of-state consumer debt collector.

**Section 9:** Amends s. 559.715, F.S., relating to assignment of consumer debts.

**Section 10:** Amends s. 559.72, F.S., relating to prohibited practices generally.

**Section 11:** Amends s. 559.730, F.S., relating to grounds for disciplinary action and administrative remedies.

**Section 12:** Provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

<sup>38</sup> *Parker*, 874 F.Supp.2d at 1356.

<sup>39</sup> FACP white paper on HB 413 (received January 23, 2014), on file with the Insurance & Banking Subcommittee.

1. Revenues:

The bill's requirement for control persons to submit electronic/live-scan fingerprints to live-scan vendors (who in turn submit fees to the FDLE for the background checks) will result in estimated total revenues of \$53,040. This estimate is based on the OFR's revenue projection estimate that the OFR will receive 408 initial consumer collection agency applications for 2014-2015<sup>40</sup>, with an average of 2 control persons per applicant to be fingerprint. Although the fee charged by each live-scan vendor varies, the average fee (according to the OFR) is \$65.

- 408 applications x 2 control persons per applicant x \$65 per applicant = **\$53,040** to cover the costs of fingerprinting each control person related to a CCA application (paid directly to FDLE)

In addition, the bill requires that fingerprints be retained as part of renewing a CCA registration. The cost to retain fingerprints is \$6 per control person. Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of 2 control persons per CCA, there would be 2,566 control persons subject to the \$6 annual retention fee that OFR would collect during registration renewal. Thus, the estimated total revenues for retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses to the FDLE.<sup>41</sup>

- 1,283 CCA registrant renewals x 2 control persons per registrant x \$6 per person = **\$15,396** to cover the costs of retained fingerprint fees to be passed onto FDLE.

2. Expenditures:

The estimated total revenues for fingerprint retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses.

The OFR indicated that the bill may result in a slight increase in investigations and examinations under the Act, but it should be able to absorb this caseload increase with existing resources.<sup>42</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's requirement that control persons of non-exempt collection agencies be fingerprinted and screened will incur average live-scan costs of \$65 per control person. Once registered, control persons of CCAs must submit an annual fee of \$6 for the cost of retaining fingerprints with the FDLE.

D. FISCAL COMMENTS:

See above.

---

<sup>40</sup> E-mail from the OFR (received January 22, 2014), on file with the Insurance & Banking Subcommittee staff.

<sup>41</sup> OFR's bill analysis of HB 413, on file with the Insurance & Banking Subcommittee staff.

<sup>42</sup> *Id.*



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Collectors Association supports this bill.

The Florida Alliance for Consumer Protection and the Florida Justice Association oppose the bill's change to s. 559.72, F.S., in which the bill sets forth prohibited practices for "any debt collector" instead of "any person."

The Florida Alliance for Consumer Protection opposes the bill's change to the notice of assignment requirement in s. 559.715, F.S.

Amendments are anticipated to address the following technical issues:

- Section 6 of the bill creates an unnumbered section of the Florida Statutes to provide for the applicability to consumer collection agencies that are registered before October 1, 2014. It appears that it should be placed within Section 559.555, F.S. (Section 5 of the bill), regarding registration of consumer collection agencies.
- Lines 338-341 of the bill require that the OFR provide written notification to an expired registrant. None of the OFR's other regulatory programs contain this requirement. The OFR and the FCA have agreed that this provision is not needed and should be removed from the bill.
- Lines 374-377 of the bill provide that the OFR may bring an administrative action "in accordance with s. 559.72" if a registrant's addition of a control person would result in a registration violation." It appears that the appropriate cross-reference on line 375 should be s. 559.730, F.S., which provides the OFR grounds for disciplinary action and administrative remedies. Specifically, the bill creates s. 559.730(1)(k), F.S., which provides that "[f]ailure to comply with, or a violation of, any provision of this part" is a ground for disciplinary action.
- Lines 610-612 of the bill require that any "processing" for the summary suspension of a registration must be conducted by the OFR's commissioner or designee. This appears to be a drafting error and should read "proceeding."
- A change in the bill's effective date to October 1, 2014 to allow the OFR more time for rulemaking and a service contract with the FDLE.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to the Office of Financial Regulation;  
 3       amending s. 559.55, F.S.; reordering and revising  
 4       definitions; amending s. 559.553, F.S.; deleting a  
 5       provision entitling prospective consumer collection  
 6       agency registrants to registration when specified  
 7       conditions are met; creating s. 559.554, F.S.;  
 8       providing powers and duties of the Office of Financial  
 9       Regulation and the Financial Services Commission;  
 10      authorizing the commission to adopt rules; requiring  
 11      fees, charges, and fines to be deposited in a  
 12      specified trust fund; creating s. 559.5541, F.S.;  
 13      authorizing the office to make investigations or  
 14      examinations to determine violations of specified  
 15      provisions; amending s. 559.555, F.S.; revising  
 16      registration procedures and application requirements  
 17      for consumer collection agencies; requiring applicants  
 18      and certain registrants to submit fingerprints;  
 19      providing that registrations are not transferable or  
 20      assignable; requiring consumer collection agencies to  
 21      report changes in specified information within a  
 22      specified period; providing registration renewal and  
 23      fingerprint retention fees; requiring the office to  
 24      provide notice of registration expiration within a  
 25      specified period; providing for applicability to  
 26      registration renewals for registrants initially

27 registered before a specified date; creating s.  
 28 559.5551, F.S.; providing notification requirements  
 29 for consumer collection agencies; authorizing the  
 30 office to bring an administrative action under certain  
 31 circumstances; amending s. 559.565, F.S.; conforming a  
 32 cross-reference; amending s. 559.715, F.S.; revising  
 33 written notice requirements for the assignment of  
 34 consumer debts; amending s. 559.72, F.S.; prohibiting  
 35 debt collectors from engaging in specified acts  
 36 relating to consumer debt collection; amending s.  
 37 559.730, F.S.; providing grounds for disciplinary  
 38 action; providing penalties; providing grounds for an  
 39 immediate suspension of a consumer collection agency  
 40 registration; providing grounds to deny a request to  
 41 terminate a registration and to withdraw a  
 42 registration application; providing an effective date.

43

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

45

46 Section 1. Section 559.55, Florida Statutes, is reordered  
 47 and amended to read:

48 559.55 Definitions.—The following terms shall, unless the  
 49 context otherwise indicates, have the following meanings for the  
 50 purpose of this part:

51 (1) "Commission" means the Financial Services Commission.

52 (2) ~~(5)~~ "Communication" means the conveying of information

53 regarding a debt directly or indirectly to any person through  
 54 any medium.

55 ~~(3)-(7)~~ "Consumer collection agency" means any debt  
 56 collector or business entity engaged in the business of  
 57 soliciting consumer debts for collection or of collecting  
 58 consumer debts, which debt collector or business is not  
 59 expressly exempted as set forth in s. 559.553(3) ~~559.553(4)~~.

60 (4) "Control person" means an individual, partnership,  
 61 corporation, trust, or other organization that possesses the  
 62 power, directly or indirectly, to direct the management or  
 63 policies of a company, whether through ownership of securities,  
 64 by contract, or otherwise. The term includes, but is not limited  
 65 to:

66 (a) A company's executive officers, including the  
 67 president, chief executive officer, chief financial officer,  
 68 chief operations officer, chief legal officer, chief compliance  
 69 officer, director, and other individuals having similar status  
 70 or functions.

71 (b) For a corporation, a shareholder who, directly or  
 72 indirectly, owns 10 percent or more or that has the power to  
 73 vote 10 percent or more, of a class of voting securities unless  
 74 the applicant is a publicly traded company.

75 (c) For a partnership, all general partners and limited or  
 76 special partners who have contributed 10 percent or more or that  
 77 have the right to receive, upon dissolution, 10 percent or more  
 78 of the partnership's capital.

79 |       (d) For a trust, each trustee.

80 |       (e) For a limited liability company, all elected managers  
 81 | and those members who have contributed 10 percent or more or  
 82 | that have the right to receive, upon dissolution, 10 percent or  
 83 | more of the partnership's capital.

84 |       ~~(5)(3)~~ "Creditor" means any person who offers or extends  
 85 | credit creating a debt or to whom a debt is owed, but does not  
 86 | include any person to the extent that they receive an assignment  
 87 | or transfer of a debt in default solely for the purpose of  
 88 | facilitating collection of such debt for another.

89 |       ~~(6)(1)~~ "Debt" or "consumer debt" means any obligation or  
 90 | alleged obligation of a consumer to pay money arising out of a  
 91 | transaction in which the money, property, insurance, or services  
 92 | which are the subject of the transaction are primarily for  
 93 | personal, family, or household purposes, whether or not such  
 94 | obligation has been reduced to judgment.

95 |       ~~(7)(6)~~ "Debt collector" means any person who uses any  
 96 | instrumentality of commerce within this state, whether initiated  
 97 | from within or outside this state, in any business the principal  
 98 | purpose of which is the collection of debts, or who regularly  
 99 | collects or attempts to collect, directly or indirectly, debts  
 100 | owed or due or asserted to be owed or due another. The term  
 101 | "debt collector" includes any creditor who, in the process of  
 102 | collecting her or his own debts, uses any name other than her or  
 103 | his own which would indicate that a third person is collecting  
 104 | or attempting to collect such debts. The term does not include:

105 (a) Any officer or employee of a creditor while, in the  
 106 name of the creditor, collecting debts for such creditor;

107 (b) Any person while acting as a debt collector for  
 108 another person, both of whom are related by common ownership or  
 109 affiliated by corporate control, if the person acting as a debt  
 110 collector for persons to whom it is so related or affiliated and  
 111 if the principal business of such persons is not the collection  
 112 of debts;

113 (c) Any officer or employee of any federal, state, or  
 114 local governmental body to the extent that collecting or  
 115 attempting to collect any debt is in the performance of her or  
 116 his official duties;

117 (d) Any person while serving or attempting to serve legal  
 118 process on any other person in connection with the judicial  
 119 enforcement of any debt;

120 (e) Any not-for-profit organization which, at the request  
 121 of consumers, performs bona fide consumer credit counseling and  
 122 assists consumers in the liquidation of their debts by receiving  
 123 payments from such consumers and distributing such amounts to  
 124 creditors; or

125 (f) Any person collecting or attempting to collect any  
 126 debt owed or due or asserted to be owed or due another to the  
 127 extent that such activity is incidental to a bona fide fiduciary  
 128 obligation or a bona fide escrow arrangement; concerns a debt  
 129 which was originated by such person; concerns a debt which was  
 130 not in default at the time it was obtained by such person; or

131 | concerns a debt obtained by such person as a secured party in a  
 132 | commercial credit transaction involving the creditor.

133 |       ~~(8)~~~~(2)~~ "Debtor" or "consumer" means any natural person  
 134 | obligated or allegedly obligated to pay any debt.

135 |       (9) "Federal Fair Debt Collection Practices Act" or  
 136 | "Federal Act" means the federal legislation regulating fair debt  
 137 | collection practices, as set forth in Pub. L. No. 95-109, as  
 138 | amended and published in 15 U.S.C. ss. 1692 et seq.

139 |       ~~(10)~~~~(4)~~ "Office" means the Office of Financial Regulation  
 140 | of the ~~Financial Services~~ commission.

141 |       ~~(11)~~~~(8)~~ "Out-of-state consumer debt collector" means any  
 142 | person whose business activities in this state involve both  
 143 | collecting or attempting to collect consumer debt from debtors  
 144 | located in this state by means of interstate communication  
 145 | originating from outside this state and soliciting consumer debt  
 146 | accounts for collection from creditors who have a business  
 147 | presence in this state. For purposes of this subsection, a  
 148 | creditor has a business presence in this state if either the  
 149 | creditor or an affiliate or subsidiary of the creditor has an  
 150 | office in this state.

151 |       Section 2. Section 559.553, Florida Statutes, is amended  
 152 | to read:

153 |       559.553 Registration of consumer collection agencies  
 154 | required; exemptions.—

155 |       (1) ~~A~~ ~~After January 1, 1994, no person may not shall~~  
 156 | engage in business in this state as a consumer collection agency



157 or continue to do business in this state as a consumer  
 158 collection agency without first registering in accordance with  
 159 this part, and thereafter maintaining a valid registration.

160 (2) Each consumer collection agency doing business in this  
 161 state shall register with the office and renew such registration  
 162 annually as set forth in s. 559.555.

163 ~~(3) A prospective registrant shall be entitled to be~~  
 164 ~~registered when registration information is complete on its face~~  
 165 ~~and the applicable registration fee has been paid; however, the~~  
 166 ~~office may reject a registration submitted by a prospective~~  
 167 ~~registrant if the registrant or any principal of the registrant~~  
 168 ~~previously has held any professional license or state~~  
 169 ~~registration which was the subject of any suspension or~~  
 170 ~~revocation which has not been explained by the prospective~~  
 171 ~~registrant to the satisfaction of the office either in the~~  
 172 ~~registration information submitted initially or upon the~~  
 173 ~~subsequent written request of the office. In the event that an~~  
 174 ~~attempted registration is rejected by the office the prospective~~  
 175 ~~registrant shall be informed of the basis for rejection.~~

176 (3)~~(4)~~ This section does ~~shall~~ not apply to:

- 177 (a) An ~~Any~~ original creditor.
- 178 (b) A ~~Any~~ member of The Florida Bar.
- 179 (c) A ~~Any~~ financial institution authorized to do business  
 180 in this state and any wholly owned subsidiary and affiliate  
 181 thereof.
- 182 (d) A ~~Any~~ licensed real estate broker.

183 (e) An ~~Any~~ insurance company authorized to do business in  
 184 this state.

185 (f) A ~~Any~~ consumer finance company and any wholly owned  
 186 subsidiary and affiliate thereof.

187 (g) A ~~Any~~ person licensed pursuant to chapter 520.

188 (h) An ~~Any~~ out-of-state consumer debt collector who does  
 189 not solicit consumer debt accounts for collection from credit  
 190 grantors who have a business presence in this state.

191 (i) An ~~Any~~ FDIC-insured institution or subsidiary or  
 192 affiliate thereof.

193 ~~(4)-(5)~~ An ~~Any~~ out-of-state consumer debt collector as  
 194 defined in s. 559.55(11) ~~559.55(8)~~ who is not exempt from  
 195 registration by application of subsection (3) ~~(4)~~ and who fails  
 196 to register in accordance with this part shall be subject to an  
 197 enforcement action by the state as specified in s. 559.565.

198 Section 3. Section 559.554, Florida Statutes, is created  
 199 to read:

200 559.554 Powers and duties of the commission and office.-

201 (1) The office is responsible for the administration and  
 202 enforcement of this part.

203 (2) The commission may adopt rules to administer this  
 204 part, including rules:

205 (a) Requiring electronic submission of forms, documents,  
 206 and fees required by this part.

207 (b) Establishing time periods during which a consumer  
 208 collection agency is barred from registration due to prior

209 criminal convictions of, or guilty or nolo contendere pleas by,  
 210 an applicant's control persons, regardless of adjudication.

211 1. The rules must provide:

212 a. A 15-year disqualifying period for felonies involving  
 213 fraud, dishonesty, breach of trust, money laundering, or other  
 214 acts of moral turpitude.

215 b. A 7-year disqualifying period for all other felonies.

216 c. A 5-year disqualifying period for misdemeanors  
 217 involving fraud, dishonesty, or other acts of moral turpitude.

218 2. The rules must provide for an additional waiting period  
 219 due to dates of imprisonment or community supervision, the  
 220 commitment of multiple crimes, and other factors reasonably  
 221 related to the applicant's criminal history.

222 3. The rules must provide for mitigating factors for  
 223 crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.

224 4. An applicant is not eligible for registration until  
 225 expiration of the disqualifying period set by rule.

226 5. Section 112.011 does not apply to eligibility for  
 227 registration under this part.

228 (3) All fees, charges, and fines collected pursuant to  
 229 this part shall be deposited into the Regulatory Trust Fund of  
 230 the office.

231 Section 4. Section 559.5541, Florida Statutes, is created  
 232 to read:

233 559.5541 Examinations and investigations.-

234 (1) Notwithstanding s. 559.725(4), the office may, without

235 advance notice, conduct examinations and investigations, within  
 236 or outside this state, to determine whether a person has  
 237 violated this part or related rules. For purposes of this  
 238 section, the office may examine the books, accounts, records,  
 239 and other documents or matters of any person subject to this  
 240 part. The office may compel the production of all relevant  
 241 books, records, and other documents and materials relative to an  
 242 examination or investigation. Examinations may not be made more  
 243 often than once during a 48-month period unless the office has  
 244 reason to believe a person has violated or will violate this  
 245 part or related rules.

246 (2) In order to reduce the burden on persons subject to  
 247 this part, the office may conduct a joint or concurrent  
 248 examination with a state or federal regulatory agency and may  
 249 furnish a copy of all examinations to an appropriate regulator  
 250 if the regulator agrees to abide by the confidentiality  
 251 provisions in chapter 119 and this part. The office may also  
 252 accept an examination from any appropriate regulator.

253 Section 5. Section 559.555, Florida Statutes, is amended  
 254 to read:

255 559.555 Registration of consumer collection agencies;  
 256 procedure.-

257 (1) A ~~Any~~ person who acts ~~required to register~~ as a  
 258 consumer collection agency ~~must be registered in accordance with~~  
 259 this section. ~~shall furnish to the office the registration fee~~  
 260 and information as follows:

261       (2) In order to apply for a consumer collection agency  
 262 registration, an applicant must:  
 263       (a) Submit a completed application form as prescribed by  
 264 rule of the commission.  
 265       (b) Submit a nonrefundable application fee of \$200.  
 266 Application fees may not be prorated for partial years of  
 267 registration.  
 268       (c) Submit fingerprints for each of the applicant's  
 269 control persons in accordance with rules adopted by the  
 270 commission.  
 271       1. The fingerprints may be submitted through a third-party  
 272 vendor authorized by the Department of Law Enforcement to  
 273 provide live-scan fingerprinting.  
 274       2. A state criminal history background check must be  
 275 conducted through the Department of Law Enforcement, and a  
 276 federal criminal history background check must be conducted  
 277 through the Federal Bureau of Investigation.  
 278       3. All fingerprints submitted to the Department of Law  
 279 Enforcement must be submitted electronically and entered into  
 280 the statewide automated biometric identification system  
 281 established in s. 943.05(2)(b) and available for use in  
 282 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
 283 annual fee to the Department of Law Enforcement to participate  
 284 in the system and inform the Department of Law Enforcement of  
 285 any person whose fingerprints are no longer required to be  
 286 retained.

287 4. The costs of fingerprint processing, including the cost  
 288 of retaining the fingerprints, shall be borne by the person  
 289 subject to the background check.

290 5. The office is responsible for reviewing the results of  
 291 the state and federal criminal history background checks and  
 292 determining whether the applicant meets registration  
 293 requirements.

294 (3) The office shall issue a consumer collection agency  
 295 registration to each person who is not otherwise ineligible and  
 296 who meets the requirements of this section. However, it is a  
 297 ground for denial of registration if the applicant or one of the  
 298 applicant's control persons has committed any violation  
 299 specified in this part, or is the subject of a pending felony  
 300 criminal prosecution or a prosecution or an administrative  
 301 enforcement action, in any jurisdiction, which involves fraud,  
 302 dishonesty, breach of trust, money laundering, or any other act  
 303 of moral turpitude.

304 (4) A registration issued under this part is not  
 305 transferable or assignable.

306 (5) A consumer collection agency shall report, on a form  
 307 prescribed by rule of the commission, any change in the  
 308 information contained in an initial application form, or an  
 309 amendment thereto, within 30 days after the change is effective.

310 ~~(1) The registrant shall pay to the office a registration~~  
 311 ~~fee in the amount of \$200. All amounts collected shall be~~  
 312 ~~deposited by the office to the credit of the Regulatory Trust~~

313 ~~Fund of the office.~~

314 ~~(2) Each registrant shall provide to the office the~~  
 315 ~~business name or trade name, the current mailing address, the~~  
 316 ~~current business location which constitutes its principal place~~  
 317 ~~of business, and the full name of each individual who is a~~  
 318 ~~principal of the registrant. "Principal of a registrant" means~~  
 319 ~~the registrant's owners if a partnership or sole proprietorship,~~  
 320 ~~corporate officers, corporate directors other than directors of~~  
 321 ~~a not-for-profit corporation organized pursuant to chapter 617~~  
 322 ~~and Florida resident agent if a corporate registrant. The~~  
 323 ~~registration information shall include a statement clearly~~  
 324 ~~identifying and explaining any occasion on which any~~  
 325 ~~professional license or state registration held by the~~  
 326 ~~registrant, by any principal of the registrant, or by any~~  
 327 ~~business entity in which any principal of the registrant was the~~  
 328 ~~owner of 10 percent or more of such business, was the subject of~~  
 329 ~~any suspension or revocation.~~

330 ~~(6)(3)~~ Renewal of registration shall be made between  
 331 October 1 and December 31 of each year. There shall be no  
 332 proration of the fee for any registration. In order to renew a  
 333 consumer collection agency registration, a registrant must  
 334 submit a nonrefundable renewal fee equal to the registration fee  
 335 and a nonrefundable fee to cover the costs of further  
 336 fingerprint processing and retention as set forth by commission  
 337 rule.

338 (7) The office shall provide written notification by

339 first-class mail to a registrant who fails to renew his or her  
 340 consumer collection agency registration within 10 business days  
 341 after expiration of the registration.

342 Section 6. A consumer collection agency registrant whose  
 343 initial registration is approved and issued by the Office of  
 344 Financial Regulation pursuant to s. 559.555, Florida Statutes,  
 345 before October 1, 2014, who seeks renewal of the registration  
 346 must submit fingerprints for each control person for live-scan  
 347 processing pursuant to s. 559.555(2)(c), Florida Statutes, as  
 348 amended by this act. Such fingerprints must be submitted before  
 349 renewing a registration that is scheduled to expire December 31,  
 350 2014.

351 Section 7. Section 559.5551, Florida Statutes, is created  
 352 to read:

353 559.5551 Requirements of registrants.-A registrant under  
 354 this part shall report to the office in a manner prescribed by  
 355 rule of the commission:

356 (1) A conviction of, or plea of nolo contendere to,  
 357 regardless of adjudication, a crime or administrative violation  
 358 that involves fraud, dishonesty, breach of trust, money  
 359 laundering, or any other act of moral turpitude, in any  
 360 jurisdiction, by the registrant or any control person within 30  
 361 days after the date of conviction, entry of a plea of nolo  
 362 contendere, or final administrative action.

363 (2) A conviction of, or plea of nolo contendere to,  
 364 regardless of adjudication, a felony committed by the registrant



365 or any control person within 30 days after the date of  
 366 conviction or the date the plea of nolo contendere is entered.

367 (3) A change to the information contained in an initial  
 368 application form or an amendment to the application within 30  
 369 days after the change is effective.

370 (4) An addition or subtraction of a control person or a  
 371 change in the form of business organization. A control person  
 372 added by a registrant is subject to this part and must submit  
 373 fingerprints in accordance with s. 559.555 and the rules of the  
 374 commission. The office may bring an administrative action in  
 375 accordance with s. 559.72 to enforce this part if the added  
 376 control person fails to meet registration requirements or comply  
 377 with any other provision of this part.

378 Section 8. Section 559.565, Florida Statutes, is amended  
 379 to read:

380 559.565 Enforcement action against out-of-state consumer  
 381 debt collector.— The remedies of this section are cumulative to  
 382 other sanctions and enforcement provisions of this part for any  
 383 violation by an out-of-state consumer debt collector, as defined  
 384 in s. 559.55(11) ~~559.55(8)~~.

385 (1) An out-of-state consumer debt collector who collects  
 386 or attempts to collect consumer debts in this state without  
 387 first registering in accordance with this part is subject to an  
 388 administrative fine of up to \$10,000 together with reasonable  
 389 attorney fees and court costs in any successful action by the  
 390 state to collect such fines.

391 (2) A ~~Any~~ person, whether or not exempt from registration  
 392 under this part, who violates s. 559.72 is subject to sanctions  
 393 the same as any other consumer debt collector, including  
 394 imposition of an administrative fine. The registration of a duly  
 395 registered out-of-state consumer debt collector is subject to  
 396 revocation or suspension in the same manner as the registration  
 397 of any other registrant under this part.

398 (3) In order to effectuate this section and enforce the  
 399 requirements of this part as it relates to out-of-state consumer  
 400 debt collectors, the Attorney General is expressly authorized to  
 401 initiate such action on behalf of the state as he or she deems  
 402 appropriate in any state or federal court of competent  
 403 jurisdiction.

404 Section 9. Section 559.715, Florida Statutes, is amended  
 405 to read:

406 559.715 Assignment of consumer debts.—This part does not  
 407 prohibit the assignment, by a creditor, of the right to bill and  
 408 collect a consumer debt. However, the assignee must give the  
 409 debtor written notice of the ~~such~~ assignment ~~as soon as~~  
 410 ~~practical after the assignment is made, but at least 30 days~~  
 411 ~~before any action to collect the debt.~~ Compliance with the  
 412 validation-of-debts requirements of the Federal Fair Debt  
 413 Collection Practices Act, 15 U.S.C. s. 1692g, shall satisfy the  
 414 written notice requirement. The assignee is a real party in  
 415 interest and may bring an action to collect a debt that has been  
 416 assigned to the assignee and is in default.

417 Section 10. Section 559.72, Florida Statutes, is amended  
 418 to read:

419 559.72 Prohibited practices generally.—In collecting  
 420 consumer debts, a debt collector may not ~~no person shall~~:

421 (1) Simulate in any manner a law enforcement officer or a  
 422 representative of any governmental agency.

423 (2) Use or threaten force or violence.

424 (3) Tell a debtor who disputes a consumer debt that she or  
 425 he or any person employing her or him will disclose to another,  
 426 orally or in writing, directly or indirectly, information  
 427 affecting the debtor's reputation for credit worthiness without  
 428 also informing the debtor that the existence of the dispute will  
 429 also be disclosed as required by subsection (6).

430 (4) Communicate or threaten to communicate with a debtor's  
 431 employer before obtaining final judgment against the debtor,  
 432 unless the debtor gives her or his permission in writing to  
 433 contact her or his employer or acknowledges in writing the  
 434 existence of the debt after the debt has been placed for  
 435 collection. However, this does not prohibit a person from  
 436 telling the debtor that her or his employer will be contacted if  
 437 a final judgment is obtained.

438 (5) Disclose to a person other than the debtor or her or  
 439 his family information affecting the debtor's reputation,  
 440 whether or not for credit worthiness, with knowledge or reason  
 441 to know that the other person does not have a legitimate  
 442 business need for the information or that the information is

443 false.

444 (6) Disclose information concerning the existence of a  
 445 debt known to be reasonably disputed by the debtor without  
 446 disclosing that fact. If a disclosure is made before such  
 447 dispute has been asserted and written notice is received from  
 448 the debtor that any part of the debt is disputed, and if such  
 449 dispute is reasonable, the person who made the original  
 450 disclosure must reveal upon the request of the debtor within 30  
 451 days the details of the dispute to each person to whom  
 452 disclosure of the debt without notice of the dispute was made  
 453 within the preceding 90 days.

454 (7) Willfully communicate with the debtor or any member of  
 455 her or his family with such frequency as can reasonably be  
 456 expected to harass the debtor or her or his family, or willfully  
 457 engage in other conduct which can reasonably be expected to  
 458 abuse or harass the debtor or any member of her or his family.

459 (8) Use profane, obscene, vulgar, or willfully abusive  
 460 language in communicating with the debtor or any member of her  
 461 or his family.

462 (9) Claim, attempt, or threaten to enforce a debt when  
 463 such person knows that the debt is not legitimate, or assert the  
 464 existence of some other legal right when such person knows that  
 465 the right does not exist.

466 (10) Use a communication that simulates in any manner  
 467 legal or judicial process or that gives the appearance of being  
 468 authorized, issued, or approved by a government, governmental

469 agency, or attorney at law, when it is not.

470 (11) Communicate with a debtor under the guise of an  
 471 attorney by using the stationery of an attorney or forms or  
 472 instruments that only attorneys are authorized to prepare.

473 (12) Orally communicate with a debtor in a manner that  
 474 gives the false impression or appearance that such person is or  
 475 is associated with an attorney.

476 (13) Advertise or threaten to advertise for sale any debt  
 477 as a means to enforce payment except under court order or when  
 478 acting as an assignee for the benefit of a creditor.

479 (14) Publish or post, threaten to publish or post, or  
 480 cause to be published or posted before the general public  
 481 individual names or any list of names of debtors, commonly known  
 482 as a deadbeat list, for the purpose of enforcing or attempting  
 483 to enforce collection of consumer debts.

484 (15) Refuse to provide adequate identification of herself  
 485 or himself or her or his employer or other entity whom she or he  
 486 represents if requested to do so by a debtor from whom she or he  
 487 is collecting or attempting to collect a consumer debt.

488 (16) Mail any communication to a debtor in an envelope or  
 489 postcard with words typed, written, or printed on the outside of  
 490 the envelope or postcard calculated to embarrass the debtor. An  
 491 example of this would be an envelope addressed to "Deadbeat,  
 492 Jane Doe" or "Deadbeat, John Doe."

493 (17) Communicate with the debtor between the hours of 9  
 494 p.m. and 8 a.m. in the debtor's time zone without the prior

495 consent of the debtor.

496 (a) The person may presume that the time a telephone call  
 497 is received conforms to the local time zone assigned to the area  
 498 code of the number called, unless the person reasonably believes  
 499 that the debtor's telephone is located in a different time zone.

500 (b) If, such as with toll-free numbers, an area code is  
 501 not assigned to a specific geographic area, the person may  
 502 presume that the time a telephone call is received conforms to  
 503 the local time zone of the debtor's last known place of  
 504 residence, unless the person reasonably believes that the  
 505 debtor's telephone is located in a different time zone.

506 (18) Communicate with a debtor if the person knows that  
 507 the debtor is represented by an attorney with respect to such  
 508 debt and has knowledge of, or can readily ascertain, such  
 509 attorney's name and address, unless the debtor's attorney fails  
 510 to respond within 30 days to a communication from the person,  
 511 unless the debtor's attorney consents to a direct communication  
 512 with the debtor, or unless the debtor initiates the  
 513 communication.

514 (19) Cause a debtor to be charged for communications by  
 515 concealing the true purpose of the communication, including  
 516 collect telephone calls and telegram fees.

517 Section 11. Section 559.730, Florida Statutes, is amended  
 518 to read:

519 559.730 Grounds for disciplinary action; administrative  
 520 remedies.-

521        (1) Each of the following acts constitutes a ground for  
 522 which the disciplinary actions specified in subsection (2) may  
 523 be taken against a person registered or required to be  
 524 registered under this part:

525        (a) Failure to disburse funds in accordance with  
 526 agreements.

527        (b) Fraud, misrepresentation, deceit, negligence, or  
 528 incompetence in a collection transaction.

529        (c) Commission of fraud, misrepresentation, concealment,  
 530 or dishonest dealing by trick, scheme, or device; culpable  
 531 negligence; breach of trust in a business transaction in any  
 532 state, nation, or territory; or aiding, assisting, or conspiring  
 533 with another person engaged in such misconduct and in  
 534 furtherance thereof.

535        (d) Being convicted of, or entering a plea of guilty or  
 536 nolo contendere to, regardless of adjudication, a felony or  
 537 crime involving fraud, dishonesty, breach of trust, money  
 538 laundering, or act of moral turpitude.

539        (e) Having a final judgment entered against the registrant  
 540 in a civil action upon grounds of fraud, embezzlement,  
 541 misrepresentation, or deceit.

542        (f) Being the subject of a decision, finding, injunction,  
 543 suspension, prohibition, revocation, denial, judgment, or  
 544 administrative order by a court of competent jurisdiction or an  
 545 administrative law judge, or by a state or federal agency,  
 546 involving a violation of a federal or state law relating to debt

547 collection or a rule or regulation adopted under such law.

548 (g) Having a license or registration, or the equivalent,  
 549 to practice a profession or occupation denied, suspended, or  
 550 revoked, or otherwise acted against, including the denial of a  
 551 registration or license by a registration or licensing authority  
 552 of this state or another state, territory, or country.

553 (h) Acting as a consumer collection agency without a  
 554 current registration issued under this part.

555 (i) A material misstatement or omission of fact on an  
 556 initial or amended registration application.

557 (j) Payment to the office for a registration or permit  
 558 with a check or electronic transmission of funds, which is  
 559 dishonored by the applicant's or registrant's financial  
 560 institution.

561 (k) Failure to comply with, or a violation of, any  
 562 provision of this part, or any rule or order made or issued  
 563 pursuant to this part.

564 (l) Failure to maintain, preserve, and keep available for  
 565 examination all books, accounts, or other documents required by  
 566 this part and the rules of the commission.

567 (m) Refusal to permit an investigation or examination of  
 568 books and records, or refusal to comply with an office subpoena  
 569 or subpoena duces tecum.

570 (n) Failure to timely pay a fee, charge, or fine imposed  
 571 or assessed pursuant to this part and the rules of the  
 572 commission.



573 (2) If the office finds a person in violation of any act  
 574 specified in this section, it may enter an order imposing one or  
 575 more of the following penalties:

576 (a) Issuance of a reprimand.

577 (b) Suspension of a registration, subject to reinstatement  
 578 upon satisfying all reasonable conditions imposed by the office.

579 (c) Revocation of a registration.

580 (d) Denial of a registration.

581 (e) Imposition of a fine of up to \$10,000 for each count  
 582 or separate offense.

583 (f) An administrative fine of up to \$1,000 per day for  
 584 each day that a person engages as a consumer collection agency  
 585 without a valid registration issued under this part.

586 ~~(1) The office may impose an administrative fine against,~~  
 587 ~~or revoke or suspend the registration of, a registrant under~~  
 588 ~~this part who has committed a violation of s. 559.72. Final~~  
 589 ~~action to fine, suspend, or revoke the registration of a~~  
 590 ~~registrant is subject to review in accordance with chapter 120.~~

591 (3)(2) The office may impose suspension rather than  
 592 revocation of a registration if circumstances warrant that one  
 593 or the other should be imposed and the registrant demonstrates  
 594 that the registrant has taken affirmative steps that can be  
 595 expected to effectively eliminate the violations and that the  
 596 registrant's registration has never been previously suspended.

597 (4) A consumer collection agency is subject to the  
 598 disciplinary actions specified in subsection (2) for a violation

599 | of subsection (1) by a control person of the consumer collection  
 600 | agency.

601 | (5) Pursuant to s. 120.06(6), the office may summarily  
 602 | suspend the registration of a consumer collection agency if the  
 603 | office has reason to believe that a registrant poses an  
 604 | immediate, serious danger to the public's health, safety, or  
 605 | welfare. The arrest of the registrant, or the consumer  
 606 | collection agency's control person, for any felony or any crime  
 607 | involving fraud, dishonesty, breach of trust, money laundering,  
 608 | or any other act of moral turpitude is deemed sufficient to  
 609 | constitute an immediate danger to the public's health, safety,  
 610 | or welfare. Any processing for the summary suspension of a  
 611 | registration must be conducted by the commissioner of the  
 612 | office, or designee, who shall issue the final summary order.

613 | (6) The office may deny a request to terminate a  
 614 | registration or withdraw a registration application if the  
 615 | office believes that an act that would be a ground for  
 616 | registration denial, suspension, restriction, or revocation  
 617 | under this part has been committed.

618 | ~~(7)(3) In addition to, or in lieu of suspension or~~  
 619 | ~~revocation of a registration, the office may impose an~~  
 620 | ~~administrative fine of up to \$10,000 per violation against a~~  
 621 | ~~registrant for violations of s. 559.72. The Financial Services~~  
 622 | ~~commission shall adopt rules establishing guidelines for~~  
 623 | ~~imposing administrative penalties.~~

624 | ~~(8)(4)~~ This part does not preclude any person from

HB 413

2014

625 | pursuing remedies available under the Federal Fair Debt  
626 | Collection Practices Act for any violation of such act.

627 |       Section 12. This act shall take effect July 1, 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 415 Pub. Rec./Investigations and Examinations by the Office of Financial Regulation  
**SPONSOR(S):** Santiago  
**TIED BILLS:** HB 413 **IDEN./SIM. BILLS:**

| REFERENCE                             | ACTION | ANALYST         | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---------------------------------------|--------|-----------------|--|
| 1) Insurance & Banking Subcommittee   |        | Bauer <i>gb</i> | Cooper <i>PC</i>                         |
| 2) Government Operations Subcommittee |        |                 |  |
| 3) Regulatory Affairs Committee       |        |                 |  |

### SUMMARY ANALYSIS

The State of Florida has a long history of providing public access to governmental records and meetings. In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level. In addition to the State Constitution, the Public Records Act, which predates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency. Unless specifically exempted, all agency records are available for public inspection. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

This bill creates section 559.5558 of the Florida Statutes, a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to consumer collection agencies, which is the subject of a pending bill, House Bill 413. HB 413 strengthens the OFR's registration, examination, and investigation authority over consumer collection agencies under the Florida Consumer Collection Practices Act (part VI of ch. 559, F.S.). Under current law, the OFR has no authority to withhold information relating to consumer collection agencies from public records disclosure, except what is specifically provided for under the Florida Public Records Act (ch. 119, F.S.), such as social security numbers and bank account numbers.

The bill, which is linked to the passage of HB 413, creates a public records exemption for certain investigative and examination information held by the OFR. Specifically, information relative to an investigation or examination by the OFR is confidential while the investigation or examination is "active," meaning the OFR (or a law enforcement or administrative agency) is proceeding with reasonable dispatch and has a reasonable good faith belief that the case may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a registration. Once such investigation or examination is no longer active, a consumer complaint and other information relative to an investigation or examination remain confidential under specified conditions. The bill also allows the OFR to share confidential and exempt information with law enforcement and administrative agencies and regulatory organizations.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that if HB 413 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it appears to require a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24, of the State Constitution, provides that:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

---

<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Fla. Const. art. I, s. 24.

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>15</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.<sup>17</sup> The Legislature is only limited in its review process by constitutional requirements.

### **Regulation of Consumer Collection Agencies and Debt Collectors**

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the Office

---

<sup>8</sup> Florida Attorney General Opinion 85-62.

<sup>9</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>10</sup> *Supra* fn. 1.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> *Supra* fn. 1.

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Straghan v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

of Financial Regulation (OFR). Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements. .

House Bill 413 (2014) strengthens the OFR's registration, examination, and investigation authority over consumer collection agencies. However, under current law, the OFR has no authority to withhold from public records disclosure any information relating to consumer complaints, investigations, examinations, and registrations except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).<sup>18</sup>

HB 413 also authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

### **Effect of the Bill**

The bill, which is linked to the passage of HB 413, creates a public records exemption for certain investigative and examination information held by the OFR. Specifically, information relative to an investigation or examination by the OFR is confidential while the investigation or examination is "active," meaning the OFR (or a law enforcement or administrative agency) is proceeding with reasonable dispatch and has a reasonable good faith belief that the case may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a registration. Once such investigation or examination is no longer active, a consumer complaint and other information relative to an investigation or examination remains confidential if disclosure would 1) jeopardize another active investigation or examination, 2) reveal certain identifying information of a complainant, customer, or account holder, 3) disclose the identity of a confidential source, 4) disclose investigative techniques or procedures, or 5) reveal trade secrets as defined in s. 688.002, F.S. The bill provides that in any administrative, civil, or criminal proceeding, the presiding officer can prevent the disclosure of the same information that remains confidential after an investigation or examination is no longer active.

The bill also allows the OFR to share confidential and exempt information with law enforcement and administrative agencies and regulatory organizations.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

**Section 1** creates s. 559.5558, F.S., providing an exemption from public records requirements for information held by the OFR pursuant to an investigation or examination of consumer collection agencies.

**Section 2** provides a statement of public necessity as required by the State Constitution.

**Section 3** provides a contingent effective date.

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

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

#### **1. Revenues:**

---

<sup>18</sup> The Public Records Act (ch. 119, F.S.) contains an agency-specific exemption for the OFR, in which any information that the OFR receives from other state or federal regulatory, administrative, or criminal justice agencies that confidential or exempt in accordance with the laws of the other agency. Additionally, this exemption provides confidentiality for any information that the OFR receives or develops as part of a joint or multiagency examination or investigation with these other agencies and that the OFR may obtain and use this information in accordance with a joint or multiagency agreement, except to any information that would otherwise be public if the OFR independently conducted an investigation or examination under Florida law. Section 119.0712(3), F.S.



None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's protection of trade secrets within information relating to an investigation or examination may benefit collection agencies, since disclosure of such information could result in a competitive disadvantage in the marketplace. In addition, the bill's protection of specified personal information of complainants, customers, or account holders may reduce the risk of identity theft.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

*Vote Requirement and Public Necessity Statement for Public Records Bills*

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

*Subject Requirement*

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes.

*Public Necessity Statement*

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created public-records or public-meetings exemption.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Lines 19-20, 36-37, and 90 of the bill refer to the OFR's enforcement authority "under this chapter" (ch. 559, F.S.). However, the OFR only has jurisdiction over parts V and VII (commercial and consumer collection agencies, respectively) of ch. 559, F.S., and HB 413 only amends provisions contained in part VI.

A strike-all amendment is anticipated to address this technical deficiency and to provide a clearer public necessity statement for the same investigative and examination-related information that this bill seeks to make confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The amendment will also provide a definition and limited exemption for personal health and financial information held by the OFR.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to public records; creating s.  
 3           559.7251, F.S.; providing an exemption from public  
 4           records requirements for information collected in  
 5           connection with investigations and examinations by the  
 6           Office of Financial Regulation of the Department of  
 7           Financial Services; providing for future legislative  
 8           review and repeal of the exemption; providing a  
 9           statement of public necessity; providing a contingent  
 10          effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Section 559.7251, Florida Statutes, is created  
 15   to read:

16           559.7251 Confidentiality of information relating to  
 17   investigations and examinations.—

18           (1) (a) Except as otherwise provided by this section,  
 19   information relative to an investigation or examination  
 20   performed by the office pursuant to this chapter, including any  
 21   consumer complaint received by the office, is confidential and  
 22   exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 23   Constitution until the investigation or examination is closed  
 24   and no longer active. For purposes of this subsection, an  
 25   investigation or examination is considered active if the office  
 26   or a law enforcement or administrative agency is proceeding with

27 reasonable dispatch and has a reasonable good faith belief that  
 28 the investigation or examination may lead to the filing of an  
 29 administrative, civil, or criminal proceeding or to the denial  
 30 or conditional grant of a registration.

31 (b) This subsection does not prohibit the disclosure of  
 32 information that is filed with the office as a normal condition  
 33 of registration and which, but for the investigation or  
 34 examination, would be subject to s. 119.07(1) and s. 24(a), Art.  
 35 I of the State Constitution.

36 (c) Except as necessary for the office to enforce the  
 37 provisions of this chapter, a consumer complaint and other  
 38 information relative to an investigation or examination shall  
 39 remain confidential and exempt from s. 119.07(1) and s. 24(a),  
 40 Art. I of the State Constitution after the investigation or  
 41 examination is closed and no longer active to the extent that  
 42 disclosure would:

43 1. Jeopardize the integrity of another active  
 44 investigation or examination.

45 2. Reveal the name, address, telephone number, or personal  
 46 identification information of a complainant, customer, or  
 47 account holder.

48 3. Disclose the identity of a confidential source.

49 4. Disclose the investigative techniques or procedures.

50 5. Reveal a trade secret as defined in s. 688.002.

51 (d) This section does not prohibit the office from  
 52 providing confidential and exempt information to a law

53 | enforcement agency, administrative agency, or regulatory  
 54 | organization. A law enforcement agency, administrative agency,  
 55 | or regulatory organization receiving confidential and exempt  
 56 | information in connection with its official duties shall  
 57 | maintain the confidentiality of the information that would  
 58 | otherwise be confidential.

59 | (g) If information subject to this subsection is offered  
 60 | in evidence in any administrative, civil, or criminal  
 61 | proceeding, the presiding officer may prevent the disclosure of  
 62 | information that would be confidential pursuant to paragraph  
 63 | (c).

64 | (2) This section is subject to the Open Government Sunset  
 65 | Review Act in accordance with s. 119.15 and shall stand repealed  
 66 | on October 2, 2019, unless reviewed and saved from repeal  
 67 | through reenactment by the Legislature.

68 | Section 2. (1) The Legislature finds that it is a public  
 69 | necessity to exempt from s. 119.07(1), Florida Statutes, and s.  
 70 | 24(a), Article I of the State Constitution all information  
 71 | relative to active investigations and examinations conducted  
 72 | pursuant to chapter 559, Florida Statutes, by the Office of  
 73 | Financial Regulation of the Financial Services Commission,  
 74 | including consumer complaints. Disclosure of such information  
 75 | could be defamatory to the individual or entity under  
 76 | investigation or examination and could cause unwarranted damage  
 77 | to the name or reputation of the person or individual entity  
 78 | that is the subject of the information, especially if the

79 | information is inaccurate. Such information may include personal  
 80 | financial information, which if available for public access,  
 81 | could jeopardize the financial safety of the individual who is  
 82 | the subject of the information. Furthermore, public access to  
 83 | such information could significantly impair or compromise an  
 84 | active investigation or examination by impeding the effective  
 85 | and efficient operation of active investigatory and examination  
 86 | functions.

87 |       (2) The Legislature finds that it is a public necessity  
 88 | that consumer complaints and other information relative to  
 89 | certain closed and inactive investigations and examinations  
 90 | conducted pursuant to chapter 559, Florida Statutes, by the  
 91 | Office of Financial Regulation of the Financial Services  
 92 | Commission be held confidential and exempt from s. 119.07(1),  
 93 | Florida Statutes, and s. 24(a), Article I of the State  
 94 | Constitution to the extent that disclosure would jeopardize  
 95 | other investigations or reveal information that should remain  
 96 | confidential. Disclosure of certain consumer complaints could  
 97 | significantly impair or compromise active investigations or  
 98 | examinations by impeding the effective and efficient operation  
 99 | of active investigatory and examination functions. Disclosure of  
 100 | such information may reveal the identity of a confidential  
 101 | source, which could pose a threat to the source's safety as well  
 102 | as impair pending and future investigations and examinations. In  
 103 | addition, certain consumer complaints may include personal  
 104 | financial information or other personal identification

105 information that may jeopardize the financial safety or violate  
106 the privacy of the individual who is the subject of the  
107 information. Finally, disclosure of certain consumer complaints  
108 may reveal information regarding trade secrets. Public access to  
109 such information would allow others to take the benefit of a  
110 trade secret without providing compensation or reimbursement to  
111 the owner of the trade secret.

112       Section 3. This act shall take effect on the same date  
113 that HB 413 or similar legislation takes effect, if such  
114 legislation is adopted in the same legislative session or an  
115 extension thereof and becomes law.



---

# Insurance & Banking Subcommittee

Tuesday, February 4, 2014

4:00 PM

Sumner Hall (404 HOB)

**AMENDMENT PACKET**





## INSURANCE & BANKING SUBCOMMITTEE

HB 255 by Rep. Gaetz

Insurance/Discriminatory Practices Relating to Firearm Ownership or Possession

### AMENDMENT SUMMARY

February 04, 2014

---

**Amendment 1 by Rep. Gaetz (Strike All):** This amendment includes the same or similar provisions that are in the bill relating to rates and disclosure regarding firearms. It also clarifies that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allows disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it does not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | ___   | (Y/N) |
| ADOPTED AS AMENDED    | ___   | (Y/N) |
| ADOPTED W/O OBJECTION | ___   | (Y/N) |
| FAILED TO ADOPT       | ___   | (Y/N) |
| WITHDRAWN             | ___   | (Y/N) |
| OTHER                 | _____ |       |

---

1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Gaetz offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (g) of subsection (1) of section  
8 626.9541, Florida Statutes, is amended to read:

9 626.9541 Unfair methods of competition and unfair or  
10 deceptive acts or practices defined.—

11 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
12 ACTS.—The following are defined as unfair methods of competition  
13 and unfair or deceptive acts or practices:

14 (g) *Unfair discrimination.*—

15 1. Knowingly making or permitting any unfair  
16 discrimination between individuals of the same actuarially  
17 supportable class and equal expectation of life, in the rates



Amendment No. 1

18 charged for a any life insurance or annuity contract, in the  
19 dividends or other benefits payable thereon, or in any other  
20 term or condition ~~of the terms and conditions~~ of such contract.

21 2. Knowingly making or permitting any unfair  
22 discrimination between individuals of the same actuarially  
23 supportable class, as determined at the ~~original~~ time of initial  
24 issuance of the coverage, and essentially the same hazard, in  
25 the amount of premium, policy fees, or rates charged for a any  
26 policy or contract of accident, disability, or health insurance,  
27 in the benefits payable thereunder, in ~~any of~~ the terms or  
28 conditions of such contract, or in any other manner ~~whatever~~.

29 3. For a health insurer, life insurer, disability insurer,  
30 property and casualty insurer, automobile insurer, or managed  
31 care provider to underwrite a policy, or refuse to issue,  
32 reissue, or renew a policy, refuse to pay a claim, cancel or  
33 otherwise terminate a policy, or increase rates based upon the  
34 fact that an insured or applicant who is also the proposed  
35 insured has made a claim or sought or should have sought medical  
36 or psychological treatment in the past for abuse, protection  
37 from abuse, or shelter from abuse, or that a claim was caused in  
38 the past by, or might occur as a result of, any future assault,  
39 battery, or sexual assault by a family or household member upon  
40 another family or household member as defined in s. 741.28. A  
41 health insurer, life insurer, disability insurer, or managed  
42 care provider may refuse to underwrite, issue, or renew a policy  
43 based on the applicant's medical condition, but may ~~shall~~ not



Amendment No. 1

44 consider whether such condition was caused by an act of abuse.  
45 For purposes of this section, the term "abuse" means the  
46 occurrence of one or more of the following acts:

- 47 a. Attempting or committing assault, battery, sexual  
48 assault, or sexual battery;
- 49 b. Placing another in fear of imminent serious bodily  
50 injury by physical menace;
- 51 c. False imprisonment;
- 52 d. Physically or sexually abusing a minor child; or
- 53 e. An act of domestic violence as defined in s. 741.28.

54

55 This subparagraph does not prohibit a property and casualty  
56 insurer or an automobile insurer from excluding coverage for  
57 intentional acts by the insured if such exclusion is ~~does~~ not  
58 constitute an act of unfair discrimination as defined in this  
59 paragraph.

60 4. For a personal lines property or personal lines  
61 automobile insurer to:

- 62 a. Refuse to issue, reissue, or renew a policy; cancel or  
63 otherwise terminate a policy; or charge an unfairly  
64 discriminatory rate in this state based on the lawful use,  
65 possession, or ownership of a firearm by the insurance  
66 applicant, insured, or a household member of the applicant or  
67 insured. This sub-subparagraph does not prevent an insurer from  
68 charging a supplemental premium that is not unfairly  
69 discriminatory for a separate rider voluntarily requested by the



Amendment No. 1

70 insurance applicant to insure a firearm or a firearm collection  
71 whose value exceeds the standard policy coverage.

72 b. Disclose the lawful ownership or possession of firearms  
73 of an insurance applicant, insured, or household member of the  
74 applicant or insured to a third party or an affiliated entity of  
75 the insurer unless the insurer discloses to the applicant or  
76 insured the specific need to disclose the information and the  
77 applicant or insured expressly consents to the disclosure, or  
78 the disclosure is necessary to quote or bind coverage, continue  
79 coverage, or adjust a claim. For purposes of underwriting and  
80 issuing insurance coverage, this sub-subparagraph does not  
81 prevent the sharing of information between an insurance company  
82 and its licensed insurance agent if a separate rider has been  
83 voluntarily requested by the policyholder or prospective  
84 policyholder to insure a firearm or a firearm collection whose  
85 value exceeds the standard policy coverage.

86 Section 2. This act shall take effect July 1, 2014.  
87  
88

89 -----  
90 T I T L E A M E N D M E N T

91 Remove everything before the enacting clause and insert:

92 A bill to be entitled

93 An act relating to discriminatory insurance practices; amending  
94 s. 626.9541, F.S.; providing that unfair discrimination on the  
95 basis of gun ownership in the provision of personal lines



Amendment No. 1

96 | property or personal lines automobile insurance is a  
97 | discriminatory insurance practice; clarifying that insurers are  
98 | not prevented from charging supplemental premiums or sharing  
99 | information between an insurer and its agent if a separate rider  
100 | has been requested; providing an effective date.





## INSURANCE & BANKING SUBCOMMITTEE

HB 413 by Rep. Santiago  
Office of Financial Regulation

### AMENDMENT SUMMARY February 4, 2014

---

**Amendment 1 by Rep. Santiago (strike-all amendment):** Makes the following changes:

- Provides a title change.
- Corrects a drafting error regarding requirements for collection agencies registered before October 1, 2014.
- Removes a requirement that the OFR provide written notification to an expired registrant.
- Corrects a cross-reference regarding the OFR's authority to enforce registration violations.
- Corrects a drafting error by substituting the word "proceeding" for "processing."
- Restores current law with regard to prohibited practices, which "no person shall" engage in.
- Restores current law with regard to the requirement to provide a notice of assignment of debt to debtors.
- Provides an effective date of October 1, 2014.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | _____ | (Y/N) |
| ADOPTED AS AMENDED    | _____ | (Y/N) |
| ADOPTED W/O OBJECTION | _____ | (Y/N) |
| FAILED TO ADOPT       | _____ | (Y/N) |
| WITHDRAWN             | _____ | (Y/N) |
| OTHER                 |       |       |

---

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Santiago offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 559.55, Florida Statutes, is reordered  
8 and amended to read:

9 559.55 Definitions.—The following terms shall, unless the  
10 context otherwise indicates, have the following meanings for the  
11 purpose of this part:

12 (1) "Commission" means the Financial Services Commission.

13 (2)-(5) "Communication" means the conveying of information  
14 regarding a debt directly or indirectly to any person through  
15 any medium.

16 (3)-(7) "Consumer collection agency" means any debt  
17 collector or business entity engaged in the business of



Amendment No. 1

18 soliciting consumer debts for collection or of collecting  
19 consumer debts, which debt collector or business is not  
20 expressly exempted as set forth in s. 559.553(3) ~~559.553(4)~~.

21 (4) "Control person" means an individual, partnership,  
22 corporation, trust, or other organization that possesses the  
23 power, directly or indirectly, to direct the management or  
24 policies of a company, whether through ownership of securities,  
25 by contract, or otherwise. The term includes, but is not limited  
26 to:

27 (a) A company's executive officers, including the  
28 president, chief executive officer, chief financial officer,  
29 chief operations officer, chief legal officer, chief compliance  
30 officer, director, and other individuals having similar status  
31 or functions.

32 (b) For a corporation, a shareholder who, directly or  
33 indirectly, owns 10 percent or more or that has the power to  
34 vote 10 percent or more, of a class of voting securities unless  
35 the applicant is a publicly traded company.

36 (c) For a partnership, all general partners and limited or  
37 special partners who have contributed 10 percent or more or that  
38 have the right to receive, upon dissolution, 10 percent or more  
39 of the partnership's capital.

40 (d) For a trust, each trustee.

41 (e) For a limited liability company, all elected managers  
42 and those members who have contributed 10 percent or more or



## Amendment No. 1

43 that have the right to receive, upon dissolution, 10 percent or  
44 more of the partnership's capital.

45 (5)~~(3)~~ "Creditor" means any person who offers or extends  
46 credit creating a debt or to whom a debt is owed, but does not  
47 include any person to the extent that they receive an assignment  
48 or transfer of a debt in default solely for the purpose of  
49 facilitating collection of such debt for another.

50 (6)~~(1)~~ "Debt" or "consumer debt" means any obligation or  
51 alleged obligation of a consumer to pay money arising out of a  
52 transaction in which the money, property, insurance, or services  
53 which are the subject of the transaction are primarily for  
54 personal, family, or household purposes, whether or not such  
55 obligation has been reduced to judgment.

56 (7)~~(6)~~ "Debt collector" means any person who uses any  
57 instrumentality of commerce within this state, whether initiated  
58 from within or outside this state, in any business the principal  
59 purpose of which is the collection of debts, or who regularly  
60 collects or attempts to collect, directly or indirectly, debts  
61 owed or due or asserted to be owed or due another. The term  
62 "debt collector" includes any creditor who, in the process of  
63 collecting her or his own debts, uses any name other than her or  
64 his own which would indicate that a third person is collecting  
65 or attempting to collect such debts. The term does not include:

66 (a) Any officer or employee of a creditor while, in the  
67 name of the creditor, collecting debts for such creditor;



Amendment No. 1

68 (b) Any person while acting as a debt collector for  
69 another person, both of whom are related by common ownership or  
70 affiliated by corporate control, if the person acting as a debt  
71 collector for persons to whom it is so related or affiliated and  
72 if the principal business of such persons is not the collection  
73 of debts;

74 (c) Any officer or employee of any federal, state, or  
75 local governmental body to the extent that collecting or  
76 attempting to collect any debt is in the performance of her or  
77 his official duties;

78 (d) Any person while serving or attempting to serve legal  
79 process on any other person in connection with the judicial  
80 enforcement of any debt;

81 (e) Any not-for-profit organization which, at the request  
82 of consumers, performs bona fide consumer credit counseling and  
83 assists consumers in the liquidation of their debts by receiving  
84 payments from such consumers and distributing such amounts to  
85 creditors; or

86 (f) Any person collecting or attempting to collect any  
87 debt owed or due or asserted to be owed or due another to the  
88 extent that such activity is incidental to a bona fide fiduciary  
89 obligation or a bona fide escrow arrangement; concerns a debt  
90 which was originated by such person; concerns a debt which was  
91 not in default at the time it was obtained by such person; or  
92 concerns a debt obtained by such person as a secured party in a  
93 commercial credit transaction involving the creditor.



Amendment No. 1

94        ~~(8)-(2)~~ "Debtor" or "consumer" means any natural person  
95 obligated or allegedly obligated to pay any debt.

96        (9) "Federal Fair Debt Collection Practices Act" or  
97 "Federal Act" means the federal legislation regulating fair debt  
98 collection practices, as set forth in Pub. L. No. 95-109, as  
99 amended and published in 15 U.S.C. ss. 1692 et seq.

100        ~~(10)-(4)~~ "Office" means the Office of Financial Regulation  
101 of the ~~Financial Services~~ commission.

102        ~~(11)-(8)~~ "Out-of-state consumer debt collector" means any  
103 person whose business activities in this state involve both  
104 collecting or attempting to collect consumer debt from debtors  
105 located in this state by means of interstate communication  
106 originating from outside this state and soliciting consumer debt  
107 accounts for collection from creditors who have a business  
108 presence in this state. For purposes of this subsection, a  
109 creditor has a business presence in this state if either the  
110 creditor or an affiliate or subsidiary of the creditor has an  
111 office in this state.

112        Section 2. Section 559.553, Florida Statutes, is amended  
113 to read:

114        559.553 Registration of consumer collection agencies  
115 required; exemptions.—

116        (1) ~~A After January 1, 1994, no person~~ may not shall  
117 engage in business in this state as a consumer collection agency  
118 or continue to do business in this state as a consumer



Amendment No. 1

119 collection agency without first registering in accordance with  
120 this part, and thereafter maintaining a valid registration.

121 (2) Each consumer collection agency doing business in this  
122 state shall register with the office and renew such registration  
123 annually as set forth in s. 559.555.

124 ~~(3) A prospective registrant shall be entitled to be~~  
125 ~~registered when registration information is complete on its face~~  
126 ~~and the applicable registration fee has been paid; however, the~~  
127 ~~office may reject a registration submitted by a prospective~~  
128 ~~registrant if the registrant or any principal of the registrant~~  
129 ~~previously has held any professional license or state~~  
130 ~~registration which was the subject of any suspension or~~  
131 ~~revocation which has not been explained by the prospective~~  
132 ~~registrant to the satisfaction of the office either in the~~  
133 ~~registration information submitted initially or upon the~~  
134 ~~subsequent written request of the office. In the event that an~~  
135 ~~attempted registration is rejected by the office the prospective~~  
136 ~~registrant shall be informed of the basis for rejection.~~

137 (3)(4) This section does shall not apply to:

138 (a) An Any original creditor.

139 (b) A Any member of The Florida Bar.

140 (c) A Any financial institution authorized to do business  
141 in this state and any wholly owned subsidiary and affiliate  
142 thereof.

143 (d) A Any licensed real estate broker.



Amendment No. 1

144 (e) An ~~Any~~ insurance company authorized to do business in  
145 this state.

146 (f) A ~~Any~~ consumer finance company and any wholly owned  
147 subsidiary and affiliate thereof.

148 (g) A ~~Any~~ person licensed pursuant to chapter 520.

149 (h) An ~~Any~~ out-of-state consumer debt collector who does  
150 not solicit consumer debt accounts for collection from credit  
151 grantors who have a business presence in this state.

152 (i) An ~~Any~~ FDIC-insured institution or subsidiary or  
153 affiliate thereof.

154 ~~(4)-(5)~~ An ~~Any~~ out-of-state consumer debt collector as  
155 defined in s. 559.55(11) ~~559.55(8)~~ who is not exempt from  
156 registration by application of subsection (3) ~~(4)~~ and who fails  
157 to register in accordance with this part shall be subject to an  
158 enforcement action by the state as specified in s. 559.565.

159 Section 3. Section 559.554, Florida Statutes, is created  
160 to read:

161 559.554 Powers and duties of the commission and office.-

162 (1) The office is responsible for the administration and  
163 enforcement of this part.

164 (2) The commission may adopt rules to administer this  
165 part, including rules:

166 (a) Requiring electronic submission of forms, documents,  
167 and fees required by this part.

168 (b) Establishing time periods during which a consumer  
169 collection agency is barred from registration due to prior





Amendment No. 1

170 criminal convictions of, or guilty or nolo contendere pleas by,  
171 an applicant's control persons, regardless of adjudication.

172 1. The rules must provide:

173 a. A 15-year disqualifying period for felonies involving  
174 fraud, dishonesty, breach of trust, money laundering, or other  
175 acts of moral turpitude.

176 b. A 7-year disqualifying period for all other felonies.

177 c. A 5-year disqualifying period for misdemeanors  
178 involving fraud, dishonesty, or other acts of moral turpitude.

179 2. The rules must provide for an additional waiting period  
180 due to dates of imprisonment or community supervision, the  
181 commitment of multiple crimes, and other factors reasonably  
182 related to the applicant's criminal history.

183 3. The rules must provide for mitigating factors for  
184 crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.

185 4. An applicant is not eligible for registration until  
186 expiration of the disqualifying period set by rule.

187 5. Section 112.011 does not apply to eligibility for  
188 registration under this part.

189 (3) All fees, charges, and fines collected pursuant to  
190 this part shall be deposited into the Regulatory Trust Fund of  
191 the office.

192 Section 4. Section 559.5541, Florida Statutes, is created  
193 to read:

194 559.5541 Examinations and investigations.-



Amendment No. 1

195       (1) Notwithstanding s. 559.725(4), the office may, without  
196 advance notice, conduct examinations and investigations, within  
197 or outside this state, to determine whether a person has  
198 violated this part or related rules. For purposes of this  
199 section, the office may examine the books, accounts, records,  
200 and other documents or matters of any person subject to this  
201 part. The office may compel the production of all relevant  
202 books, records, and other documents and materials relative to an  
203 examination or investigation. Examinations may not be made more  
204 often than once during a 48-month period unless the office has  
205 reason to believe a person has violated or will violate this  
206 part or related rules.

207       (2) In order to reduce the burden on persons subject to  
208 this part, the office may conduct a joint or concurrent  
209 examination with a state or federal regulatory agency and may  
210 furnish a copy of all examinations to an appropriate regulator  
211 if the regulator agrees to abide by the confidentiality  
212 provisions in chapter 119 and this part. The office may also  
213 accept an examination from any appropriate regulator.

214       Section 5. Section 559.555, Florida Statutes, is amended  
215 to read:

216       559.555 Registration of consumer collection agencies;  
217 procedure.—

218       (1) A Any person who acts required to register as a  
219 consumer collection agency must be registered in accordance with



Amendment No. 1

220 this section. shall furnish to the office the registration fee  
221 and information as follows:

222 (2) In order to apply for a consumer collection agency  
223 registration, an applicant must:

224 (a) Submit a completed application form as prescribed by  
225 rule of the commission.

226 (b) Submit a nonrefundable application fee of \$200.  
227 Application fees may not be prorated for partial years of  
228 registration.

229 (c) Submit fingerprints for each of the applicant's  
230 control persons in accordance with rules adopted by the  
231 commission.

232 1. The fingerprints may be submitted through a third-party  
233 vendor authorized by the Department of Law Enforcement to  
234 provide live-scan fingerprinting.

235 2. A state criminal history background check must be  
236 conducted through the Department of Law Enforcement, and a  
237 federal criminal history background check must be conducted  
238 through the Federal Bureau of Investigation.

239 3. All fingerprints submitted to the Department of Law  
240 Enforcement must be submitted electronically and entered into  
241 the statewide automated biometric identification system  
242 established in s. 943.05(2)(b) and available for use in  
243 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
244 annual fee to the Department of Law Enforcement to participate  
245 in the system and inform the Department of Law Enforcement of



Amendment No. 1

246 any person whose fingerprints are no longer required to be  
247 retained.

248 4. The costs of fingerprint processing, including the cost  
249 of retaining the fingerprints, shall be borne by the person  
250 subject to the background check.

251 5. The office is responsible for reviewing the results of  
252 the state and federal criminal history background checks and  
253 determining whether the applicant meets registration  
254 requirements.

255 (3) The office shall issue a consumer collection agency  
256 registration to each person who is not otherwise ineligible and  
257 who meets the requirements of this section. However, it is a  
258 ground for denial of registration if the applicant or one of the  
259 applicant's control persons has committed any violation  
260 specified in this part, or is the subject of a pending felony  
261 criminal prosecution or a prosecution or an administrative  
262 enforcement action, in any jurisdiction, which involves fraud,  
263 dishonesty, breach of trust, money laundering, or any other act  
264 of moral turpitude.

265 (4) A registration issued under this part is not  
266 transferable or assignable.

267 (5) A consumer collection agency shall report, on a form  
268 prescribed by rule of the commission, any change in the  
269 information contained in an initial application form, or an  
270 amendment thereto, within 30 days after the change is effective.



Amendment No. 1

271 ~~(1) The registrant shall pay to the office a registration~~  
272 ~~fee in the amount of \$200. All amounts collected shall be~~  
273 ~~deposited by the office to the credit of the Regulatory Trust~~  
274 ~~Fund of the office.~~

275 ~~(2) Each registrant shall provide to the office the~~  
276 ~~business name or trade name, the current mailing address, the~~  
277 ~~current business location which constitutes its principal place~~  
278 ~~of business, and the full name of each individual who is a~~  
279 ~~principal of the registrant. "Principal of a registrant" means~~  
280 ~~the registrant's owners if a partnership or sole proprietorship,~~  
281 ~~corporate officers, corporate directors other than directors of~~  
282 ~~a not for profit corporation organized pursuant to chapter 617~~  
283 ~~and Florida resident agent if a corporate registrant. The~~  
284 ~~registration information shall include a statement clearly~~  
285 ~~identifying and explaining any occasion on which any~~  
286 ~~professional license or state registration held by the~~  
287 ~~registrant, by any principal of the registrant, or by any~~  
288 ~~business entity in which any principal of the registrant was the~~  
289 ~~owner of 10 percent or more of such business, was the subject of~~  
290 ~~any suspension or revocation.~~

291 ~~(6)(3)~~ Renewal of registration shall be made between  
292 October 1 and December 31 of each year. There shall be no  
293 proration of the fee for any registration. In order to renew a  
294 consumer collection agency registration, a registrant must  
295 submit a nonrefundable renewal fee equal to the registration fee  
296 and a nonrefundable fee to cover the costs of further



Amendment No. 1

297 fingerprint processing and retention as set forth by commission  
298 rule.

299 (7) A consumer collection agency registrant whose initial  
300 registration is approved and issued by the Office of Financial  
301 Regulation pursuant to s. 559.555, Florida Statutes, before  
302 October 1, 2014, who seeks renewal of the registration must  
303 submit fingerprints for each control person for live-scan  
304 processing pursuant to s. 559.555(2)(c), Florida Statutes, as  
305 amended by this act. Such fingerprints must be submitted before  
306 renewing a registration that is scheduled to expire December 31,  
307 2014.

308 Section 6. Section 559.5551, Florida Statutes, is created  
309 to read:

310 559.5551 Requirements of registrants.—A registrant under  
311 this part shall report to the office in a manner prescribed by  
312 rule of the commission:

313 (1) A conviction of, or plea of nolo contendere to,  
314 regardless of adjudication, a crime or administrative violation  
315 that involves fraud, dishonesty, breach of trust, money  
316 laundering, or any other act of moral turpitude, in any  
317 jurisdiction, by the registrant or any control person within 30  
318 days after the date of conviction, entry of a plea of nolo  
319 contendere, or final administrative action.

320 (2) A conviction of, or plea of nolo contendere to,  
321 regardless of adjudication, a felony committed by the registrant



Amendment No. 1

322 or any control person within 30 days after the date of  
323 conviction or the date the plea of nolo contendere is entered.

324 (3) A change to the information contained in an initial  
325 application form or an amendment to the application within 30  
326 days after the change is effective.

327 (4) An addition or subtraction of a control person or a  
328 change in the form of business organization. A control person  
329 added by a registrant is subject to this part and must submit  
330 fingerprints in accordance with s. 559.555 and the rules of the  
331 commission. The office may bring an administrative action in  
332 accordance with s. 559.730 to enforce this part if the added  
333 control person fails to meet registration requirements or comply  
334 with any other provision of this part.

335 Section 7. Section 559.565, Florida Statutes, is amended  
336 to read:

337 559.565 Enforcement action against out-of-state consumer  
338 debt collector.— The remedies of this section are cumulative to  
339 other sanctions and enforcement provisions of this part for any  
340 violation by an out-of-state consumer debt collector, as defined  
341 in s. 559.55(11) ~~559.55(8)~~.

342 (1) An out-of-state consumer debt collector who collects  
343 or attempts to collect consumer debts in this state without  
344 first registering in accordance with this part is subject to an  
345 administrative fine of up to \$10,000 together with reasonable  
346 attorney fees and court costs in any successful action by the  
347 state to collect such fines.



Amendment No. 1

348 (2) A Any person, whether or not exempt from registration  
349 under this part, who violates s. 559.72 is subject to sanctions  
350 the same as any other consumer debt collector, including  
351 imposition of an administrative fine. The registration of a duly  
352 registered out-of-state consumer debt collector is subject to  
353 revocation or suspension in the same manner as the registration  
354 of any other registrant under this part.

355 (3) In order to effectuate this section and enforce the  
356 requirements of this part as it relates to out-of-state consumer  
357 debt collectors, the Attorney General is expressly authorized to  
358 initiate such action on behalf of the state as he or she deems  
359 appropriate in any state or federal court of competent  
360 jurisdiction.

361 Section 8. Section 559.730, Florida Statutes, is amended  
362 to read:

363 559.730 Grounds for disciplinary action; administrative  
364 remedies.—

365 (1) Each of the following acts constitutes a ground for  
366 which the disciplinary actions specified in subsection (2) may  
367 be taken against a person registered or required to be  
368 registered under this part:

369 (a) Failure to disburse funds in accordance with  
370 agreements.

371 (b) Fraud, misrepresentation, deceit, negligence, or  
372 incompetence in a collection transaction.





## Amendment No. 1

373       (c) Commission of fraud, misrepresentation, concealment,  
374 or dishonest dealing by trick, scheme, or device; culpable  
375 negligence; breach of trust in a business transaction in any  
376 state, nation, or territory; or aiding, assisting, or conspiring  
377 with another person engaged in such misconduct and in  
378 furtherance thereof.

379       (d) Being convicted of, or entering a plea of guilty or  
380 nolo contendere to, regardless of adjudication, a felony or  
381 crime involving fraud, dishonesty, breach of trust, money  
382 laundering, or act of moral turpitude.

383       (e) Having a final judgment entered against the registrant  
384 in a civil action upon grounds of fraud, embezzlement,  
385 misrepresentation, or deceit.

386       (f) Being the subject of a decision, finding, injunction,  
387 suspension, prohibition, revocation, denial, judgment, or  
388 administrative order by a court of competent jurisdiction or an  
389 administrative law judge, or by a state or federal agency,  
390 involving a violation of a federal or state law relating to debt  
391 collection or a rule or regulation adopted under such law.

392       (g) Having a license or registration, or the equivalent,  
393 to practice a profession or occupation denied, suspended, or  
394 revoked, or otherwise acted against, including the denial of a  
395 registration or license by a registration or licensing authority  
396 of this state or another state, territory, or country.

397       (h) Acting as a consumer collection agency without a  
398 current registration issued under this part.



Amendment No. 1

399        (i) A material misstatement or omission of fact on an  
400 initial or amended registration application.

401        (j) Payment to the office for a registration or permit  
402 with a check or electronic transmission of funds, which is  
403 dishonored by the applicant's or registrant's financial  
404 institution.

405        (k) Failure to comply with, or a violation of, any  
406 provision of this part, or any rule or order made or issued  
407 pursuant to this part.

408        (l) Failure to maintain, preserve, and keep available for  
409 examination all books, accounts, or other documents required by  
410 this part and the rules of the commission.

411        (m) Refusal to permit an investigation or examination of  
412 books and records, or refusal to comply with an office subpoena  
413 or subpoena duces tecum.

414        (n) Failure to timely pay a fee, charge, or fine imposed  
415 or assessed pursuant to this part and the rules of the  
416 commission.

417        (2) If the office finds a person in violation of any act  
418 specified in this section, it may enter an order imposing one or  
419 more of the following penalties:

420            (a) Issuance of a reprimand.

421            (b) Suspension of a registration, subject to reinstatement  
422 upon satisfying all reasonable conditions imposed by the office.

423            (c) Revocation of a registration.

424            (d) Denial of a registration.



Amendment No. 1

425 (e) Imposition of a fine of up to \$10,000 for each count  
426 or separate offense.

427 (f) An administrative fine of up to \$1,000 per day for  
428 each day that a person engages as a consumer collection agency  
429 without a valid registration issued under this part.

430 ~~(1) The office may impose an administrative fine against,~~  
431 ~~or revoke or suspend the registration of, a registrant under~~  
432 ~~this part who has committed a violation of s. 559.72. Final~~  
433 ~~action to fine, suspend, or revoke the registration of a~~  
434 ~~registrant is subject to review in accordance with chapter 120.~~

435 (3)(2) The office may impose suspension rather than  
436 revocation of a registration if circumstances warrant that one  
437 or the other should be imposed and the registrant demonstrates  
438 that the registrant has taken affirmative steps that can be  
439 expected to effectively eliminate the violations and that the  
440 registrant's registration has never been previously suspended.

441 (4) A consumer collection agency is subject to the  
442 disciplinary actions specified in subsection (2) for a violation  
443 of subsection (1) by a control person of the consumer collection  
444 agency.

445 (5) Pursuant to s. 120.06(6), the office may summarily  
446 suspend the registration of a consumer collection agency if the  
447 office has reason to believe that a registrant poses an  
448 immediate, serious danger to the public's health, safety, or  
449 welfare. The arrest of the registrant, or the consumer  
450 collection agency's control person, for any felony or any crime



Amendment No. 1

451 involving fraud, dishonesty, breach of trust, money laundering,  
 452 or any other act of moral turpitude is deemed sufficient to  
 453 constitute an immediate danger to the public's health, safety,  
 454 or welfare. Any proceeding for the summary suspension of a  
 455 registration must be conducted by the commissioner of the  
 456 office, or designee, who shall issue the final summary order.

457 (6) The office may deny a request to terminate a  
 458 registration or withdraw a registration application if the  
 459 office believes that an act that would be a ground for  
 460 registration denial, suspension, restriction, or revocation  
 461 under this part has been committed.

462 ~~(7)(3) In addition to, or in lieu of suspension or~~  
 463 ~~revocation of a registration, the office may impose an~~  
 464 ~~administrative fine of up to \$10,000 per violation against a~~  
 465 ~~registrant for violations of s. 559.72. The Financial Services~~  
 466 ~~commission shall adopt rules establishing guidelines for~~  
 467 ~~imposing administrative penalties.~~

468 ~~(8)(4)~~ This part does not preclude any person from  
 469 pursuing remedies available under the Federal Fair Debt  
 470 Collection Practices Act for any violation of such act.

471 Section 9. This act shall take effect October 1, 2014.  
 472  
 473

474 -----

475 T I T L E A M E N D M E N T

476 Remove everything before the enacting clause and insert:



## Amendment No. 1

477 An act relating to consumer collection practices; amending s.  
478 559.55, F.S.; reordering and revising definitions; amending s.  
479 559.553, F.S.; deleting a provision entitling prospective  
480 consumer collection agency registrants to registration when  
481 specified conditions are met; creating s. 559.554, F.S.;  
482 providing powers and duties of the Office of Financial  
483 Regulation and the Financial Services Commission; authorizing  
484 the commission to adopt rules; requiring fees, charges, and  
485 fines to be deposited in a specified trust fund; creating s.  
486 559.5541, F.S.; authorizing the office to make investigations or  
487 examinations to determine violations of specified provisions;  
488 amending s. 559.555, F.S.; revising registration procedures and  
489 application requirements for consumer collection agencies;  
490 requiring applicants and certain registrants to submit  
491 fingerprints; providing that registrations are not transferable  
492 or assignable; requiring consumer collection agencies to report  
493 changes in specified information within a specified period;  
494 providing registration renewal and fingerprint retention fees;  
495 providing for applicability to registration renewals for  
496 registrants initially registered before a specified date;  
497 creating s. 559.5551, F.S.; providing notification requirements  
498 for consumer collection agencies; authorizing the office to  
499 bring an administrative action under certain circumstances;  
500 amending s. 559.565, F.S.; conforming a cross-reference;  
501 amending s. 559.730, F.S.; providing grounds for disciplinary  
502 action; providing penalties; providing grounds for an immediate



Amendment No. 1

503 suspension of a consumer collection agency registration;  
504 providing grounds to deny a request to terminate a registration  
505 and to withdraw a registration application; providing an  
506 effective date.



**INSURANCE & BANKING SUBCOMMITTEE**

**HB 415 by Rep. Santiago  
Pub. Rec./Investigations and Examinations by the Office of Financial Regulation**

**AMENDMENT SUMMARY  
February 4, 2014**

---

**Amendment 1 by Rep. Santiago (strike-all amendment):** Makes the following changes:

- Provides a clearer public necessity statement for the bill.
- Provides a definition and a limited exemption for "personal health information" held by the OFR.





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

|                       |       |       |
|-----------------------|-------|-------|
| ADOPTED               | ___   | (Y/N) |
| ADOPTED AS AMENDED    | ___   | (Y/N) |
| ADOPTED W/O OBJECTION | ___   | (Y/N) |
| FAILED TO ADOPT       | ___   | (Y/N) |
| WITHDRAWN             | ___   | (Y/N) |
| OTHER                 | _____ |       |

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Santiago offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 559.5558, Florida Statutes, is created  
8 to read:

9 559.5558 Public-records exemption.-

10 (1) DEFINITIONS.-As used in this section, the term

11 "personal financial and health information" means:

12 (a) Information relating to the existence, nature, source,  
13 or amount of a consumer's personal income, expenses, and debt;

14 (b) Information relating to a consumer's financial  
15 transactions of any kind;



Amendment No. 1

16 (c) Information relating to the existence, identification,  
17 nature, or value of a consumer's assets, liabilities, or net  
18 worth;

19 (d) A consumer's personal health condition, disease, or  
20 injury; or

21 (e) A history of a consumer's personal medical diagnosis  
22 or treatment.

23 (2) INVESTIGATIONS AND EXAMINATIONS.—

24 (a) Except as otherwise provided in this section,  
25 information held by the office pursuant to an investigation or  
26 examination of a violation of this part is confidential and  
27 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
28 Constitution. However, information made confidential and exempt  
29 pursuant to this section may be disclosed by the office to a law  
30 enforcement agency or another administrative agency in the  
31 performance of its official duties and responsibilities.

32 (b) Such information is no longer confidential and exempt  
33 once the investigation or examination is completed or ceases to  
34 be active unless disclosure of the information would:

35 1. Jeopardize the integrity of another active  
36 investigation or examination;

37 2. Reveal the personal identifying information of a  
38 consumer, unless the consumer is also the complainant. In the  
39 case of a complainant, the complainant's personal identifying  
40 information is subject to disclosure after the investigation or  
41 examination is completed or ceases to be active; however, the



Amendment No. 1

42 complainant's personal financial and health information remains  
43 confidential and exempt;

44 3. Reveal the identity of a confidential source;

45 4. Reveal investigative or examination techniques or  
46 procedures; or

47 5. Reveal trade secrets, as defined in s. 688.002.

48 (c) For purposes of this section, an investigation or  
49 examination shall be considered active if the investigation or  
50 examination is proceeding with reasonable dispatch and the  
51 office has a reasonable good faith belief that the investigation  
52 or examination may lead to the filing of an administrative,  
53 civil, or criminal proceeding or the denial or conditional grant  
54 of an application for registration or other approval required  
55 under this part.

56 (3) REVIEW AND REPEAL.—This section is subject to the Open  
57 Government Sunset Review Act in accordance with s. 119.15 and  
58 shall stand repealed on October 2, 2019, unless reviewed and  
59 saved from repeal through reenactment by the Legislature.

60 Section 2. The Legislature finds that it is a public  
61 necessity that information held by the Office of Financial  
62 Regulation pursuant to an investigation or examination conducted  
63 under part VI of chapter 559, Florida Statutes, be confidential  
64 and exempt from public-records requirements for the following  
65 reasons:

66 (1) An investigation or examination conducted by the  
67 Office of Financial Regulation may lead to the filing of an



Amendment No. 1

68 administrative, civil, or criminal proceeding or to the denial  
69 or conditional granting of a registration. The premature release  
70 of such information could frustrate or thwart the investigation  
71 or examination and impair the ability of the office to  
72 effectively and efficiently administer part VI of chapter 559,  
73 Florida Statutes.

74 (2) Information held by the Office of Financial Regulation  
75 which is provided to a law enforcement agency or another  
76 administrative agency for further investigation or examination  
77 needs to remain confidential and exempt until the investigation  
78 or examination is completed or ceases to be active. Release of  
79 this information before the completion of that investigation or  
80 examination would jeopardize the integrity of the investigation  
81 and impair the ability of other agencies to carry out their  
82 statutory duties.

83 (3) Investigations and examinations of consumer collection  
84 agencies frequently involve the gathering of sensitive personal  
85 information, including financial and health information  
86 concerning complainants and consumers. The office may not  
87 otherwise have access to this sensitive personal information but  
88 for the investigation or examination. Because of the sensitive  
89 personal nature of the information gathered, if the individuals  
90 who are the subject of such information are identifiable, the  
91 disclosure of this information to the public could cause  
92 unwarranted damage to the good name or reputation of the  
93 individuals, especially if information associated with the



Amendment No. 1

94 individual is inaccurate. Furthermore, if the individuals who  
95 are the subject of such information are identifiable, public  
96 access to such information could jeopardize the financial safety  
97 of such individuals by placing them at risk of becoming the  
98 subjects of identity theft. The Legislature further finds that  
99 it is a public necessity that health information held by the  
100 office be made confidential and exempt because matters of  
101 personal health are traditionally private and confidential  
102 concerns between the patient and the health care provider. The  
103 private and confidential nature of personal health matters  
104 pervades both the public and private health care sectors.  
105 Moreover, public disclosure of health information could have a  
106 negative effect upon a person's business and personal  
107 relationships, and could also have detrimental financial  
108 consequences.

109 (4) Releasing information identifying a confidential  
110 source could jeopardize both the integrity of a current and  
111 future investigation or examination as well as the safety of the  
112 confidential source.

113 (5) Revealing investigative or examination techniques and  
114 procedures could allow a person to hide or conceal violations of  
115 law that otherwise would have been discovered during an  
116 investigation or examination. This exemption is necessary for  
117 the office, as well as law enforcement and other administrative  
118 agencies, in order for such agencies to effectively and



Amendment No. 1

119 efficiently carry out their statutory duties, which would be  
120 significantly impaired without this exemption.

121 (6) A trade secret derives independent economic value,  
122 actual or potential, from not being generally known to, and not  
123 readily ascertainable by, other persons who can obtain economic  
124 value from its disclosure or use. Without an exemption for a  
125 trade secret held by the office, that trade secret becomes a  
126 public record when received and must be divulged upon request.  
127 Divulging a trade secret under the public-records law would  
128 destroy the value of that property, causing a financial loss to  
129 the person or entity submitting the trade secret. Release of  
130 that information would give business competitors an unfair  
131 advantage and weaken the position of the person or entity  
132 supplying the trade secret in the marketplace.

133 Section 3. This act shall take effect on the same date  
134 that HB 413 or similar legislation takes effect if such  
135 legislation is adopted in the same legislative session, or an  
136 extension thereof, and becomes law.

137

138

139

-----

140

T I T L E A M E N D M E N T

141

Remove line 5 and insert:

142

Regulation pursuant to an investigation or examination of

143

consumer

144