



# FLORIDA ALLIANCE

FOR CONSUMER PROTECTION

## 2014 SESSION REPORT

The Florida Legislature 2014 session saw the filing of 1812 bills; 264 of those bill passed. Florida Alliance for Consumer Protection followed 141 bills that stood to possibly impact in some way the rights of consumers and tenants. Below is a list of bills, with the impact on consumers, that passed this session.

### DEBT COLLECTION

**Consumers were saved from losing protection from first party debt collectors and benefit from regulatory enhancements from OFR**

#### **HB 413/SB 1006 (Santiago/Hays) Consumer Collection Practices**

FLACP worked hard opposing several horrible sections of this bill that would have eroded important protections for consumers. See our white paper analysis, one page sheet, and the group opposition letter we wrote. Our efforts proved successful; the original efforts by Office of Financial Regulation to enhance its registration, investigation, examination, and enforcement authority over consumer collection agencies passed. The bill is effective October 1, 2014, Chapter No. 2014-116.

#### **HB 415/SB 1002 (Santiago/Hays) Pub. Rec./Office of Financial Regulation**

This bill creates a public records exemption for certain investigative and examination information held by OFR relating to consumer collection agencies. The records are exempt during the investigation and examination but are subject to a public records request after the investigation or examination is closed, in most cases. The First Amendment Foundation was neutral on this bill. The bill is effective October 1, 2014, Chapter no. 2014-117.

### SECURITY OF CONSUMER'S INFORMATION

**Consumers gain further protection against a breach of secured information but are not given a private right of action to enforce in some cases**

#### **SB 242/HB 151 (Detert/Fitzhagen) Security of Protected Consumer's Information**

Keeping I.D. Safe (KIDS) Act creates sec. 501.0051, which provides a mechanism for

a parent or guardian to have a credit report created for a protected individual and to have a security freeze placed on that account. A protected individual is one who is younger than 16 years of age or a person of any age with developmental disabilities who has an appointed guardian. Requires reporting agency provide consumer with a written summary of their rights. Provides for a right of action for violation of this section against a person who falsely or without permission obtains a protected consumer's report; the person is liable to the representative and protected consumer, as well as the consumer reporting agency, for actual damages or \$1000 statutory damages, whichever is greater. The bill is effective September 1, 2014, Chapter no. 2014-66.

### **SB 1524 (Thrasher)/HB 7085 (Metz) Security of Confidential Personal Information**

Repeals current law at sec. 817.5681 and creates the "Florida Information Protection Act of 2014" at sec. 501.171 to strengthen the requirements surrounding notification to the public of a security breach; requires that entities give notice of a breach of protected information, if it affects 500 or more individuals in the state, to the attorney general within 30 days after knowledge of the breach, as well as shortening the time to notify each individual impacted within 30 days. If the Act is violated, it will be treated as an unfair or deceptive trade practice in an action brought by the AG. The bill specifically states, however, that no private cause of action is created. The bill is effective July 1, 2014, Chapter no. 2014-189.

### **REGULATION OF FINANCIAL INSTITUTIONS AND MORTGAGE BROKERS Consumers gain little in these changes but lose protections granted to Floridians over and above protections in federal law**

#### **SB 1012/HB 673 (Richter/Broxson) Financial Institutions HB 631/SB 666 (Workman/Detert) Mortgage Brokers**

This bill was negotiated between OFR and the Florida Bankers Association prior to filing. Added to the bill at the end of session was HB 631 dealing with mortgage brokers, an industry bill. The changes of interest to consumers: all financial institutions operating in Florida may charge fees to cash checks presented by payees in person, which provides consistency between Florida-chartered financial institutions and others; out-of-state business trusts that own pools of mortgages and pursue foreclosure actions in Florida courts are not considered to be engaging in trust business in Florida; deleted are the limitations on interest and charges on loans up to \$50,000 for Florida chartered banks; pre-emption is granted to the state expansively for financial institutions and a variety of other entities regulated by a number of federal agencies; financial institutions are granted protection against civil liability to a third party *solely* by virtue of extending a loan or line of credit to the borrower. The remainder of the bill amends Chapter 494 relating to mortgage lenders and brokers, including deleting from law the Florida Fair Lending Act. The bill is effective on July 1, 2014, Chapter no. 2014-91.

## **TITLE INSURANCE**

**Makes industry sought-changes that both address a state court ruling industry does not like and to encourage an active domestic title insurer in Florida, remaining doubtful whether any changes will result in rate relief for consumers**

### **HB 321/SB 570 (Passidomo/Galvano) Title Insurance**

Lowers the statutory premium reserves for domestic title insurers with \$50 million in surplus; limits liability under policies to contract remedies for the breach of a duty which arises solely from the terms of the contract; revises some licensing issues. This bill includes the provisions of HB 805, below, except for the requirement that industry add 600 jobs. The bill is effective July 1, 2014, except as otherwise provided, Chapter no. 2014-112.

### **HB 805/SB 758 (Moraitis/Lee) Title Insurer Reserves**

This bill provides that the statutory premium reserve for foreign title insurers that transfer domicile to Florida will be the amount required by the laws of the insurer's former state of domicile. After December 31, 2013, Florida law applies to the statutory premium. The bill also provides a premium tax exemption for title insurers on all portions of title insurance premiums retained by insurer agents and agencies. However, this is contingent on title insurers adding at least 600 Florida-based employees between July 1, 2014 and July 1, 2016. The bill takes effect upon becoming law, except as otherwise stated, Chapter no. 2014-132.

## **RIGHTS OF CONDOMINIUM OWNERS AND TENANTS**

**Condominium Associations return to the legislature for yet another round of relief from the foreclosure crisis**

### **HB 807/SB 798 (Moraitis/Ring) Residential Properties**

Among other provisions in the bill, it allows for deeming a condominium unit abandoned, allowing the association to then enter and do a variety of things, charging the owner for any costs of these "repairs." The desire of attorneys advocating for this change is to allow association boards the ability to inspect units and recover costs associated with issues in the unit, such as turning on the air conditioner or removing mold or mildew. The term "abandonment" as used in the bill appears to mean both a unit that is truly abandoned but also one where the owner is simply away from the unit and failed to tell the board where he or she would be since there is no requirement that the owner be behind on assessments. Further, the bill allows for petitioning for a receiver to rent the abandoned unit. The bill takes effect on July 1, 2014, Chapter no. 2014-133.

## **TELEPHONE SOLICIATION**

### **Expands the “Do Not Call” program**

#### **SB 450/HB 1191 (Clemens/Cruz) Telephone Solicitation**

The bill expands the definition of “telephonic sales call” to include text messaging in the Do Not Call program. A telephone solicitor is also prohibited from sending a text message to a consumer who has already communicated that he or she does not want to be contacted. The bill takes effect on July 1, 2014, Chapter no. 2014-75.

## **DEFERRED PRESENTMENT PROVIDERS**

### **Unauthorized payday lenders may not collect on payday loan debt**

#### **SB 590/HB 623 (Richter/Roberson) Money Services Business**

The bill, from the Office of Financial Regulation, among other changes, amends sec. 560.125(1), Deferred Presentment Transaction, providing that a payday loan by an unauthorized person (not licensed or otherwise exempted from licensing) is void and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges related to the transaction. If the transaction is void, neither the first party owner nor the debt buyer should be able to engage in any collection activities on the payday loan debt, though the bill is worded to limit this consumer protection against the unauthorized payday lender only. The bill takes effect on July 1, 2014, Chapter no. 2014-81.

## **PROPERTY INSURANCE CLAIMS**

### **Homeowner Claims Bill of Rights is created**

#### **SB 708/HB 743 (Bean/Hood) Property Insurance Claims**

This bill from the Department of Financial Services provides that an insurer may cancel a policy or deny coverage if it discovers a misrepresentation or omission on the insurance application after issuing the policy; but if a residential property policy has been in effect more than 90 days, a claim cannot be denied or policy terminated based on credit information from public records. The bill also creates a “Homeowner Claims Bill of Rights” which describes consumers’ rights held by personal lines residential property insurance policyholders. Insurers, beginning October 1, 2014, should get a copy of the Bill of Rights within 14 days of the insurer receiving a claim on the policy. The bill takes effect on July 1, 2014, unless otherwise provided, Chapter no. 2014-86.

## **SALES OF AUTOMOTIVE RELATED PRODUCTS**

Though consumers should be wary of “additional automotive related products” like extended warranty, maintenance package, dent repair or tire protection, the bill seeks to level the playing field between the manufacturer and the dealer in selling these products to the consumer

### **HB 783/SB 832 (Albritton/Flores) Motor Vehicle Sales**

Currently the manufacturer’s captive automotive financial institution might have a competitive advantage over third parties in offering their aftermarket automotive product to the consumer. The bill prohibits an automotive manufacturer’s finance company from denying or charging a fee solely because the contract contains an automotive-related product from a competitor that is of similar nature, scope, and quality. The bill takes effect on July 1, 2014, Chapter no. 2014-130.

## **CLERK OF COURTS**

Makes several changes related to activities of the clerk’s of court

### **HB 797/SB 788 (Pilon/Ring) Clerks of Court**

The bill provides that a tax certificate may be redeemed any time before the tax deed is issued (repealing language that provided a person may redeem a tax certificate at any time before the property is placed on the list of lands for public sale); amends sec. 77.28 to eliminate the attorney fee payment (\$100) from being processed through the court system and directs the party to pay the garnishee’s attorney directly. The bill takes effect on July 1, 2014, Chapter no. 2014-211.

## **COURT SYSTEM**

Sponsors indicate these are changes of outdated provisions of Florida Statutes to the court system

### **SB 828/HB 7003 (Bradley/Metz) Court System**

A Florida Bar Journal article (*Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*) and two appellate courts note the current statutory procedure for judgment collection is outdated. The bill requires that the judgment debtor file a motion requesting proceedings supplementary, allows for hearings regarding fraudulent conveyances, provides for impleader of a third party who may be in possession of property of the debtor or who may have received a fraudulent conveyance from the judgment debtor, and allows the court to enter any order required. These provisions are retroactive. The bill takes effect on July 1, 2014, Chapter no. 2014-182.

## **SUBSURFACE RIGHTS**

**Addresses the brouhaha in the Tampa area when, unbeknownst to the buyers, a developer retained subsurface rights**

### **HB 489/SB 1032 (Spano/Latvala) Subsurface Rights**

Requires the builder or developer of residential property to place disclosures in the sales contract if they will sever or retain any subsurface rights. No statement as to what happens if the seller does not do this. The bill takes effect on October 1, 2014, Chapter no. 2014-34.

## **WARRANTIES**

**Changes the method of delivery of a variety of warranties**

### **HB 291 (Santiago) Warranty Associations**

Motor vehicle service agreements, home warranties, and service warranties all must be delivered within 45 days after the purchase of the warranty agreement; further these warranties may “delivered” electronically. The bill takes effect on July 1, 2014, Chapter no. 2014-111.