

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-04 OGSR/Payment Instrument Transaction Information/Office of Financial Regulation

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Harrington	Smith

SUMMARY ANALYSIS

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

The Office of Financial Regulation (OFR) licenses and regulates check cashers. Florida law imposes various requirements on check cashiers, including that such licensees maintain certain payment instrument transaction information. In addition, certain information related to each payment instrument being cashed that exceeds \$1,000 must be entered into OFR's check cashing database. Current law provides that payment instrument transaction information held by OFR pursuant to the database that identifies a licensee, payor, payee, or conductor is confidential and exempt from public record requirements. OFR may enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order. In addition, OFR may release payment instrument information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation Check Cashing Regulations

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to chapter 560, F.S. Florida law imposes various requirements on check cashiers, including requiring the licensee to maintain copies of each payment instrument cashed.⁶ If the payment instrument exceeds \$1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,⁷ on all customers who cash corporate payment instruments that exceed \$1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.⁸

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds \$1,000:

- Transaction date;
- Payor name as displayed on the payment instrument;

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

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

⁶ Section 560.310(1), F.S.

⁷ Rule 69V-560.704, F.A.C.

⁸ Section 560.310(2)(a)-(c), F.S.

- Payee name as displayed on the payment instrument;
- Conductor name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.⁹

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.¹⁰

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for payment instrument transaction information (check cashing database information) held by OFR that identifies a licensee, payor, payee, or conductor.¹¹ OFR may enter into information-sharing agreements with DFS, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The 2013 public necessity statement for the exemption provided that use of the check cashing database is necessary to deter money laundering through these entities and to prevent fraud, including workers' compensation fraud. In addition, it provided that:

[T]he public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check-cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. Such information is traditionally private and sensitive. Protecting the confidentiality of information that would identify these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. The public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensee or payors in the marketplace. If such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors.¹²

During the 2017 interim, subcommittee staff met with staff from OFR and DFS as part of its review under the Open Government Sunset Review Act. OFR and DFS recommended that the exemption be reenacted noting that the exemption has allowed the agencies to properly regulate licensees and to monitor and prevent fraud while preventing the disclosure of information that would identify the licensee payor, payee, or conductor. In 2018, the Legislature amended the exemption to clarify that OFR may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.¹³ The 2018 legislation also extended the repeal date of the public record exemption, moving it from 2018 to 2020.

⁹ Section 560.310(1)(d), F.S.

¹⁰ Section 560.310(5), F.S.

¹¹ Chapter 2013-155, L.O.F.; codified as s. 560.312, F.S.

¹² Section 2, ch. 2013-155, L.O.F.

¹³ Chapter 2018-116, L.O.F.; codified as s. 560.312(4), F.S.

During the 2019 interim, subcommittee staff discussed the exemption with OFR and OFR reiterated the importance of maintaining the exemption to protect licensees and the personal financial information of consumers. According to OFR, disclosure of such information could expose such individuals to significant risk for identity theft.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.¹⁴

Effect of the Bill

The bill removes the repeal date thereby maintaining the public record exemption for payment instrument transaction information held by OFR pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

B. SECTION DIRECTORY:

Section 1 amends s. 560.312, F.S., to save from repeal the public record exemption for payment instrument transaction information held by OFR that reveals a licensee, payor, payee, or conductor.

Section 2 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

¹⁴ Section 560.312(3), F.S.
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2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.