

STORAGE NAME: h1675.sgc.doc
DATE: February 14, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1675 (PCB SA 02-10)

RELATING TO: Public Records

SPONSOR(S): Committee on State Administration and Representative(s) Brummer

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a public records exemption for bank account numbers and debit, charge, and credit card numbers held by an agency.¹ The bill provides for retroactive application of the public records exemption for such numbers.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that public disclosure of a person's bank account number and debit, charge, and credit card number would create the opportunity for theft or fraud thereby jeopardizing the financial safety of that person. Revealing such number could interfere with an individual's willingness to pay a financial debt owed to an agency or to otherwise provide such numbers to an agency for the furtherance of that agency's duties and responsibilities. When people are discouraged from providing or refuse to provide such numbers to an agency, then the effective and efficient administration of that agency's programs is significantly impaired.

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

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

¹ The previously existing exemption for bank account numbers and debit, charge, and credit card numbers given to an agency for the purpose of payment of any fee or debt repealed on October 2, 2001. (Section 119.07(3)(z), F.S.) Last session, both Senate and House bills were introduced to reenact the exemption; however, the House bill died in the Senate Committee on Governmental Oversight and Productivity, and the Senate bill died in the Senate Committee on Rules and Calendar.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. PRESENT SITUATION:

Section 119.07(3)(z), F.S.

Section 119.07(3)(z), F.S., was enacted by the 1995 Florida Legislature. This section created a public records exemption for bank account numbers or debit, charge, or credit card numbers given to an agency² for the purpose of payment of any fee or debt owed to that agency. The exemption also provided that such numbers could be used by an agency, as needed, in any administrative or judicial proceeding, so long as such numbers were kept confidential and exempt, unless otherwise ordered by the court.

In Interim Project Report 2001-041, Confidentiality of Bank Account, Charge, Debit or Credit Card Numbers, the Senate Committee on Governmental Oversight and Productivity determined that the use of electronic and other indirect payment options is necessary for the effective and efficient administration of modern governmental programs. Agencies that permit payment of fees or debts by debit or credit card can reduce the time in which payment to the state is made, minimize paperwork through direct transfer of funds, as well as make payment more convenient for the person or entity that owes the fee or debt. Furthermore, as e-commerce increases, and as the State of Florida continues to computerize and link various state systems, the use of alternative payment options is expected to grow. Failure to protect financial account information would disrupt these programs.³

The Senate Committee on Governmental Oversight and Productivity surveyed state agencies regarding the repeal of the public records exemption for bank account numbers and debit, charge, or credit card numbers. The agencies surveyed indicated that the exemption permits the efficient administration of a governmental program. Of the agencies surveyed,

- 41 percent of the respondents obtain bank account numbers;
- 20.5 percent obtain charge account numbers;

² Section 119.011(2), F.S., defines “agency” as 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 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.”

³ See Interim Project Report 2001-041, Florida Senate Committee on Governmental Oversight and Productivity (September 2000).

- 18.2 percent obtain debit account numbers; and
- 41 percent obtain credit card numbers.⁴

When asked whether the exemption permits the efficient administration of a governmental program, 63.6 percent of the agencies indicated that it did. Fifty percent of the agencies stated that the administration of a program would be significantly impaired without the exemption. Seventy-five percent of the responding agencies supported reenactment of the exemption.⁵

During the 2001 Legislative Session, the Florida House of Representatives and the Florida Senate introduced legislation to reenact this public records exemption; however, the House bill died in the Senate Committee on Governmental Oversight and Productivity, and the Senate bill died in the Senate Committee on Rules and Calendar. Therefore, on October 2, 2001, this public records exemption repealed.

Collection of bank account numbers and debit, charge, and credit card numbers

Agencies collect *bank account numbers* for the following purposes: conducting credit checks;⁶ conducting fraud investigations;⁷ direct deposit of salary;⁸ filing a complaint;⁹ payment of driver's reinstatement fee;¹⁰ payment of fines;¹¹ payment of licensure fees;¹² payment of a permit;¹³ payment of services rendered;¹⁴ payment of supplemental benefits;¹⁵ and reimbursement.¹⁶

⁴ *Id* at 4.

⁵ *Id*.

⁶ The Department of Banking and Finance (DBF) collects bank account numbers for purposes of conducting credit checks. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. Bank account numbers are contained in credit reports received by the electrical contractors licensing board, within the Department of Business and Professional Regulation (DBPR). Such reports are necessary to show financial viability. Telephone conversation with Candace Jones-Wright, Legislative Affairs Director, DBPR, December 19, 2001.

⁷ The Department of Agriculture and Consumer Affairs (DACA) collects bank account numbers for purposes of conducting a fraud investigation. Telephone conversation with David McInnes, DACA, January 7, 2002.

⁸ The Department of Banking and Finance requires direct deposit of funds by any electronic or other transfer medium approved by the department. Section 17.076(2), F.S. "As a condition of employment, a person appointed to a position in state government is required to participate in the direct deposit program." S. 110.113(1), F.S.

⁹ The Department of Agriculture and Consumer Affairs (DACA) collects bank account numbers from consumers when a consumer files a complaint. Telephone conversation with David McInnes, DACA, January 7, 2002.

¹⁰ When a person pays a traffic fine after the due date, that person has to pay a driver's license reinstatement fee of \$25. That fee can be paid by check. If the fee is paid by check, then that check is microfilmed and held by the Department of Highway Safety and Motor Vehicles (DHSMV). Telephone conversation with staff, DHSMV, December 12, 2001.

¹¹ The Department of Agriculture and Consumer Affairs (DACA) collects bank account numbers for payment of fines. Telephone conversation with David McInnes, DACA, January 7, 2002. The Department of Banking and Finance (DBF) collects bank account numbers for payment of fines. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001.

¹² The Department of Banking and Finance collects bank account numbers for payment of licensure fees. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. The Department of Business and Professional Regulation (DBPR) allows payment of licensure fees by check. Telephone conversation with Candace Jones-Wright, Legislative Affairs Director, DBPR, December 12, 2001. Additionally, the construction industry licensing board, within DBPR, also collects bank account numbers for licensing purposes. Such number is necessary to show financial viability. Telephone conversation with Candace Jones-Wright, Legislative Affairs Director, DBPR, December 19, 2001. The Department of State (DOS) allows payment of licensure fees by check. Additionally, DOS images the check for audit purposes. Telephone conversation with Rivers Buford, Legislative Affairs Director, DOS, January 7, 2002.

¹³ The Department of Agriculture and Consumer Affairs (DACA) collects bank account numbers for payment of food permits. Telephone conversation with David McInnes, DACA, January 7, 2002.

¹⁴ The Department of Health (DOH) maintains checks submitted for payment of services rendered. Email from Terry Davis, DOH, December 20, 2001.

¹⁵ The Department of Labor and Employment Security (DLES) collects bank account numbers for purposes of direct deposit of a person's supplemental benefits. Telephone conversation with Sheri Cape, Legislative Affairs Director, DLES, December 27, 2001.

Additionally, the Department of Children and Families (DCF) collects client *bank account numbers* for the department's hard copy file in order to verify that the client has a bank account.¹⁷

Agencies collect *debit card numbers* and *credit card numbers* for the following purposes: conducting credit checks;¹⁸ payment of fines;¹⁹ and payment of licensure fees.²⁰ In addition to those purposes, agencies also collect *credit card numbers* for purposes of: conducting fraud investigations;²¹ filing complaints;²² online processing of corporate files;²³ payment of driver's license reinstatement fee;²⁴ payment of permits;²⁵ and subscription renewals.²⁶ Additionally, DCF collects client *credit card numbers* for the department's hard copy file in order to verify that the client has a credit card account.

With regard to *charge card numbers*, there are instances in which a client's charge card number could be maintained in a DCF hard copy file.²⁷

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to

¹⁶ The Department of Lottery collects bank account numbers for reimbursement purposes. Telephone conversation with Bob Spiegel, Department of Lottery, December 14, 2001.

¹⁷ Telephone conversation with Joyce Sealy, Department of Children and Families, December 12, 2001.

¹⁸ The Department of Banking and Finance (DBF) collects debit card numbers for purposes of conducting credit checks. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. DBF also collects credit card numbers for purposes of conducting credit checks. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. Credit card numbers are contained in credit reports received by the electrical contractors licensing board, within the Department of Business and Professional Regulation (DBPR). Such reports are necessary to show financial viability. Telephone conversation with Candace Jones-Wright, Legislative Affairs Director, DBPR, December 19, 2001.

¹⁹ The Department of Banking and Finance (DBF) collects debit card numbers for payment of fines. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. DBF also collects credit card numbers for payment of fines. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. The Department of Agriculture and Consumer Affairs (DACA) collects credit card numbers for payment of fines. Telephone conversation with David McInnes, DACA, January 7, 2002.

²⁰ The Department of Banking and Finance (DBF) collects debit card numbers for payment of licensure fees. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. DBF collects credit card numbers for payment of licensure fees. Telephone conversation with Sunny Phillips, Legislative Affairs Director, DBF, December 12, 2001. The Agency for Healthcare Administration (AHCA) collects credit card numbers for purposes of licensure renewal. Telephone conversation with Toni Smith, Legislative Affairs Director, AHCA, December 12, 2001. Paramutual realtors may renew their license online with a credit card. Telephone conversation with Candace Jones-Wright, Legislative Affairs Director, Department of Business and Professional Regulation, December 19, 2001. The Department of Health (DOH) collects credit card numbers from applicants seeking licensure or renewing their license. Email from Terry Davis, DOH, December 20, 2001.

²¹ The Department of Agriculture and Consumer Affairs (DACA) collects credit card numbers for purposes of conducting fraud investigations. Telephone conversation with David McInnes, DACA, January 7, 2002.

²² The Department of Agriculture and Consumer Affairs collects credit card numbers from consumers when filing a complaint. *Id.*

²³ The Department of State (DOS) provides online processing of corporate files. Those corporate files contain credit card numbers. Telephone conversation with Rivers Buford, Legislative Affairs Director, DOS, December 12, 2001.

²⁴ The driver's license reinstatement fee can be paid over the telephone with a credit card. Telephone conversation with staff, Department of Highway Safety and Motor Vehicles, December 12, 2001.

²⁵ The Department of Agriculture and Consumer Affairs (DACA) collects credit card numbers for payment of food permits. Telephone conversation with David McInnes, DACA, January 7, 2002.

²⁶ The Florida Fish and Wildlife Conservation Commission accepts credit card payments for subscriptions to the Commission's Wildlife Magazine. The credit card number is submitted on a "subscription order form". That form is kept for a period of three years as required by law. Email from Jackie Fauls, Florida Fish and Wildlife Conservation Commission, December 19, 2001.

²⁷ Telephone conversation with Joyce Sealy, Department of Children and Families, December 12, 2001.

government records as follows:

Every person has the right to inspect or copy any public records 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.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

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

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for bank account numbers and debit, charge, and credit card numbers held by an agency. The former exemption only exempted such numbers if those numbers were provided to an agency for the purpose of payment of any fee or debt owed to that agency. This bill applies to such numbers provided to an agency for any reason, not just for payment of a debt or fee owed to that agency, because it was discovered that agencies collect such numbers for purposes other than payment of a debt or fee.

This bill provides a public necessity statement, as required by Art. I, s. 24 of the Florida Constitution, which states that the public disclosure of a person's bank account number and debit, charge, or credit card number would create the opportunity for theft or fraud thereby jeopardizing the financial safety of that person. Revealing such number could interfere with an individual's willingness to pay a financial debt owed to an agency or to otherwise provide such numbers to an agency for the furtherance of that agency's duties and responsibilities. When people are discouraged from providing or refuse to provide such numbers to an agency, then the effective and efficient administration of that agency's programs is significantly impaired.

This bill provides for retroactive application of the public records exemption.²⁸

²⁸ On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to receive retroactive application. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 26 Fla. L. Weekly S268.

Additionally, this bill *formally* repeals the public records exemption found in section 119.07(3)(z), F.S., for bank account numbers and debit, charge, and credit card numbers given to an agency for the purpose of payment of any fee or debt, because that exemption repealed October 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. 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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COUNCIL FOR SMARTER GOVERNMENT:

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