

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

The Deferred Presentment Act,¹ which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider²) must register with the Office of Financial Regulation (OFR) and is subject to its regulation.³

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees.⁴ The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.⁵ Upon receipt of the customer's (drawer⁶) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.⁷ The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.⁸

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated for less than 24 hours.⁹ To verify such information, the provider must access a database established by OFR¹⁰ and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.¹¹

Current law provides a public records exemption for identifying information contained in the database. A deferred presentment provider may access such information in order to verify whether any

¹ Part IV of chapter 560, F.S.

² Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. Section 560.402(6), F.S.

³ Section 560.403, F.S.

⁴ Section 560.404(5), F.S.

⁵ Section 560.404(6), F.S. The maximum \$5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.

⁶ A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.

⁷ Section 560.404(8), F.S.

⁸ Section 560.404(18), F.S.

⁹ Section 560.404(19), F.S.

¹⁰ OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.

¹¹ Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number.

Telephone conversation with staff of OFR, January 27, 2006.

transactions are outstanding for a particular person. Pursuant to the Open Government Sunset Review Act,¹² the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.¹³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It clarifies that the public records exemption applies to information that identifies a drawer or a deferred presentment provider. The bill also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 560.4041, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹² Section 119.15, F.S.

¹³ Section 560.4041, F.S.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings 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.

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

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

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 because of the requirements of Art. 1, s. 24(c), Florida Constitution. 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 created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.