

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: S7072

INTRODUCER: For the consideration of the Banking and Insurance Committee

SUBJECT: Public Records (Deferred Presentment Providers)

DATE: January 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The PCB reenacts and revises the current public records exemption for certain information submitted by deferred presentment providers to the database maintained by the Office of Financial Regulation (OFR), which is scheduled for repeal on October 2, 2006.

Deferred presentment providers, (“providers”) more commonly known as “pay-day lenders,” are businesses that charge a fee for cashing an individual’s check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. A provider is prohibited from entering into a transaction with a person who has an outstanding transaction with any provider, or whose previous transaction has been terminated for less than 24 hours. To verify such information, the provider must access a database established by OFR. All providers must submit certain data to the database on each transaction.

The PCB makes the following changes to the current exemption:

- Instead of exempting “identifying” information contained in the database, the PCB more specifically exempts information “which identifies, or is specific to, a drawer [individual] or deferred presentment provider.” This is consistent with how the current exemption has been interpreted and applied by OFR.
- Instead of allowing providers to access information in the database to verify whether any transactions are outstanding for a particular person, the PCB more specifically allows a provider to access information that it has entered into the database and to obtain an eligibility

determination for a particular person based on information in the database. This is consistent with how the current law has been interpreted and applied by OFR.

- The PCB deletes language that allows the office (OFR) to access the database for the purpose of maintaining the database, because such language is unnecessary.
- The PCB authorizes a court, upon a showing of good cause, to issue an order authorizing any person to view or copy information contained in the database. This follows a recommendation that was made by the First Amendment Foundation.

The PCB contains a statement of public necessity for the exemption and provides for future repeal and legislative review, since it may be considered an expansion of the current exemption.

This bill substantially amends section 560.4041 of the Florida Statutes.

II. Present Situation:

Public Records; Exemptions

Section 24(a), Art. I of the Florida Constitution states, “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.”

Section 24(c), Art. I of the Florida Constitution permits the Legislature to create exemptions from the public records law. However, the bill creating the exemption must contain a statement of public necessity that justifies the exemption, and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”¹

Under s. 119.15(2), F.S., an exemption may be maintained only if: “(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals; (b) The exemption is necessary for the effective and efficient administration of a governmental program; or (c) The exemption affects confidential information concerning an entity.”

¹ Section 119.15(3)(b), F.S.

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption protects “information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption protects “information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”²

Deferred Presentment Providers

“Deferred presentment providers,” more commonly known as “pay-day lenders,” 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.

The Deferred Presentment Act was enacted in Florida in 2001, codified as part IV of chapter 560, F.S.³ This act supplemented requirements that applied to check cashing operations, generally. The law requires any person engaged in a deferred presentment transaction (a “deferred presentment provider”) to be registered with the Office of Financial Regulation (OFR) and be subject to its regulation.

² Section 119.15(4)(b), F.S.

³ Ch. 2001-119, Laws of Fla., which created ss. 560.404-560.408, F.S., designated as Part IV of ch. 560, F.S.

The law establishes \$500, plus allowable fees, as the maximum face amount of a check that may be taken for deferred presentment. The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.⁴ Upon receipt of the customer's ("drawer's") check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. For example, a provider may advance \$100 in exchange for the drawer's \$115 post-dated check. The deferred presentment agreement may not be for a term in excess of 31 days or less than 7 days. The provider is prohibited from renewing or extending any transaction ("rollover") or from holding more than one outstanding check for any one drawer at any one time.⁵

Database of Deferred Presentment Transactions

A deferred presentment provider is prohibited from entering 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 has been terminated for less than 24 hours.⁶ To verify such information, the provider must access a database established by OFR. The 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. Providers must submit the following data on each transaction, as required by OFR:

- 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.⁷

A separate act in 2001 created a public records exemption for "identifying information" contained in the database.⁸ The identifying information contained in the database is confidential and exempt from the Public Records Law, except that the identifying information in the database may be accessed by deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person and by OFR for the purpose of maintaining the database. This statutory exemption stands repealed on October 2, 2006, unless reviewed and reenacted by the Legislature, pursuant to the Open Government Sunset Review Act of 1995.

The Office of Financial Regulation considers all of the information in the database to be "identifying information" that is confidential and exempt. This includes not only information that identifies the drawer (name, social security or employment authorization alien registration number, address, driver's license number, date of birth), but also information that identifies the

⁴ Section 560.404(5) and (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.

⁵ Section 560.404(8) and (18), F.S.

⁶ Section 560.404(19), F.S.

⁷ Section 560.404(23), F.S. All of the information listed is required by statute, except the drawer's date of birth and check number.

⁸ Ch. 2001-268, Laws of Fla.; s. 560.4041, F.S.

number and amount of transactions for a particular provider. All of the information is considered to be “identifying information” regarding a particular transaction. However, the 2001 act creating this exemption contained a public necessity statement that refers only to protecting the identity of the individual, not the business.⁹ The broader interpretation by OFR is influenced by another statute that exempts from public disclosure all quarterly reports required to be submitted to OFR by deferred presentment providers.¹⁰ These quarterly reports contain such information as required by rule, which includes monthly totals of the number, face amount, and fees charged for deferred presentment transactions. The 2000 act that created this other public records exemption made legislative findings that quarterly reports contain detailed business information, proprietary matters, and market share data which, if disclosed to a third party, could harm the money transmitter and result in a competitive disadvantage if used by another money transmitter.¹¹ Since these quarterly reports are confidential and exempt, OFR believes it would be inconsistent and improper to reveal such information from the database, supporting a broad interpretation of the exemption for “identifying information.”

The statute provides that “the database may be accessed by deferred presentment providers to verify whether any deferred presentment transactions are outstanding for a particular person.” As implemented by OFR and specified by rule, a deferred presentment provider has access to all information that it enters into the database, but has limited access to information submitted by other providers.¹² A provider can only obtain an eligibility determination for a particular person, based on the identifying information provided by that provider. The inquiry states only that a person is eligible or ineligible for a new transaction and a general description of the reason why a person is ineligible. The person (drawer) seeking the transaction may make a direct inquiry to the vendor to request a more detailed explanation of a particular transaction that was the basis for an ineligibility determination.

Committee Staff Report and Recommendations

In September, 2005, the staff of the Senate Banking and Insurance Committee published, *Open Government Sunset Review of s. 560.4041, F.S., Deferred Presentment Providers*, (Interim Project Report 2006-202). The report recommended that the public records exemption under review be reenacted and amended. Rather than exempting “identifying information” in the database, the report recommended that the law more specifically exempt information that identifies either the person who writes the check (“drawer”) or the deferred presentment provider. This would be consistent with how the exemption has been interpreted and applied by OFR.

⁹ *The Legislature finds that the exemption from public-records requirements which is provided in this act is a public necessity due to the need to prevent identity theft and related crimes and to prevent borrowers who may already be in financial difficulty from being put at further risk from the threat of fraud. The Legislature further finds that to make such identifying information available would be an unwarranted invasion of the privacy of the person who furnishes to a deferred presentment provider the information that the provider submits to the Department of Banking and Finance [currently, OFR] for incorporation into the database. (Sec. 2, ch. 2001- 268, Laws of Fla.)*

¹⁰ Section 560.129(3), F.S., exempts from public disclosure all quarterly reports submitted by money transmitters under s. 560.118(2)(b), F.S.

¹¹ Ch. 2000-293, Laws of Fla.

¹² Rule 69V-560.912, Fla. Admin. Code.

The report stated that exempting information identifying an individual person is justified due to the sensitive, personal nature of the information, which would be an unwarranted invasion of privacy if disclosed, and is further justified by the need to prevent identity theft against the individual and related fraud crimes. Exempting information identifying a business engaged in deferred presentment transactions is justified because the information in the database for each transaction is proprietary business information, the disclosure of which could harm the provider's business and could result in a competitive disadvantage if used by another provider or other money transmitter.

The report also recommended that the law be amended to more clearly specify the information from the database that may be provided to deferred presentment providers, consistent with OFR's current rules, to allow providers to access information that it has entered into the database and to obtain an eligibility determination for a particular person based on information in the database.

An alternative recommendation is to create a single new exemption to replace the two exemptions currently provided for the quarterly reports submitted by money transmitters [s. 560.129(3), F.S.] and the identifying information submitted by deferred presentment providers to the OFR database [s. 560.4041, F.S.]. A single exemption should exempt information on financial transactions entered into by a money transmitter that is specific to or identifies a particular money transmitter or individual.

III. Effect of Proposed Changes:

The proposed committee bill (PCB) reenacts and amends the public records exemption for information contained in the database maintained by OFR of all deferred presentment transactions. The PCB makes the following changes to the current exemption:

- Instead of exempting "identifying" information contained in the database, the PCB more specifically exempts information "which identifies, or is specific to, a drawer [individual] or deferred presentment provider." This is consistent with how the current exemption has been interpreted and applied by OFR.
- Instead of allowing deferred presentment providers to access information in the database to verify whether any transactions are outstanding for a particular person, the PCB more specifically allows a provider to access information that it has entered into the database and to obtain an eligibility determination for a particular person based on information in the database. This is also consistent with how the current law has been interpreted and applied by OFR.
- The PCB deletes language that allows the office (OFR) to access the database for the purpose of maintaining the database, because such language is unnecessary.
- The PCB authorizes a court, upon a showing of good cause, to issue an order authorizing any person to view or copy information contained in the database. This follows a recommendation that was made by the First Amendment Foundation.

The PCB provides for repeal of the exemption on October 2, 2011, subject to legislative review, because it could be argued that the PCB expands the scope of the exemption by expressly protecting information that identifies, or is specific to, a deferred presentment provider, as well as a “drawer” or person who enters into a transaction. For this reason the PCB also contains a statement of public necessity. The justification for protecting information specific to a particular “drawer” is to protect the privacy of the individual and the need to prevent identity theft and related fraud crimes. Information that identifies a provider is protected because such information constitutes proprietary business information that is of value to a provider and would provide a competitive disadvantage if disclosed to another provider.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The PCB provides for future repeal and contains a statement of public necessity because it could be argued that the PCB expands the scope of the current exemption. (See, Effects of Proposed Changes, above.)

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The PCB protects proprietary business information of deferred presentment providers by exempting from public disclosure specific information about deferred presentment transactions entered into by a provider.

C. Government Sector Impact:

By allowing for a court order compelling disclosure of information from the deferred presentment database, OFR may be required to expend resources to provide access to such information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
