

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: SB 1584

INTRODUCER: Senator Thrasher

SUBJECT: Public Records/Money Services Businesses/Office of Financial Regulation

DATE: January 31, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Pre-meeting
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation (OFR).

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.¹

This bill creates the following section of the Florida Statutes: 560.312

II. Present Situation:

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. 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. A bill enacting an exemption or substantially amending an

¹ Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.²

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act³ 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

Statewide database

Section 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third-party instruments exceeding \$1,000. These files must contain a copy of the customer's personal identification and a thumbprint taken by the licensee. Licensees must also maintain an electronic payment log.

Under Rule 69V-560.704, F.A.C., licensees are required to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as secure and maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, Articles of Incorporation, information from Department of Financial Services' Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. These customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,

² Section 24(c), Art. I of the State Constitution.

³ s. 119.15, F.S.

- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Legislation proposed during the 2012 Legislative Session⁴ authorizes the OFR to implement a centralized statewide database to gather transactional data from check cashers for checks exceeding \$1,000, corporate payment instruments, and third-party payment instruments. Check cashers will be required to enter this information into the database in a timely manner.

The centralization of the data will allow regulators and law enforcement to effectively target individuals who are engaging in criminal activity as these crimes are occurring instead of forensically attempting to reconstruct the activities of defunct shell companies. The centralization of the data will also allow information to be compared on a statewide basis.

III. Effect of Proposed Changes:

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation.

The bill sets forth legislative findings of public necessity to protect the integrity of the database and all personal information contained within.

The bill takes effect on the date that SB 1586, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session takes effect and subsequently becomes a law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ 2012 - SB 1586

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.