

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1868

INTRODUCER: Senator Bean

SUBJECT: Public Records/Payment Instrument Transaction/Office of Financial Regulation

DATE: April 15, 2013

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Naf     | McVaney        | GO        | <b>Pre-meeting</b> |
| 2. |         |                | RC        |                    |
| 3. |         |                |           |                    |
| 4. |         |                |           |                    |
| 5. |         |                |           |                    |
| 6. |         |                |           |                    |

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**I. Summary:**

SB 1868 is a public records bill that is linked to SB 410.

In pertinent part, SB 410 requires specified information relating to a check cashing transaction exceeding \$1,000 to be submitted to a database operated by the Office of Financial Regulation (OFR). This bill creates a public records exemption for payment instrument transaction information held in the database by the OFR. Specifically, any such information that identifies a licensee, payor, payee, or conductor is confidential and exempt from public records disclosure requirements.

This bill authorizes a licensee to access information that it submits to the OIR for inclusion in the database. It also authorizes OFR to enter into information-sharing agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in certain circumstances, and requires those agencies to maintain the confidentiality of the information, except as otherwise required by court order.

This bill provides for repeal of the exemption on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill creates section 560.312 of the Florida Statutes.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act<sup>10</sup> requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.<sup>11</sup> It further provides that a public records exemption may be created

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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 the 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S.

<sup>11</sup> Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>12</sup>

### **SB 410: Payment Instrument Transaction Database**

Current law requires each money services business licensee<sup>13</sup> and its authorized vendors to maintain all information necessary for determining compliance with the chapter under which they are licensed.<sup>14</sup> In addition, licensed check cashers and foreign currency exchangers<sup>15</sup> must maintain specified information on each transaction in which the payment instrument<sup>16</sup> exceeds \$1,000.<sup>17</sup>

Current law also requires the Office of Financial Regulation (OFR) to implement a database for deferred presentment<sup>18</sup> providers.<sup>19</sup> Before entering into a deferred presentment transaction, a deferred presentment provider must submit specified data for inclusion in the database.<sup>20</sup>

In pertinent part, SB 410 requires a licensed check casher, before entering into a transaction in which the payment instrument exceeds \$1,000, to submit specified information for inclusion in the deferred presentment database. The information that must be submitted includes:

- Transaction data.

<sup>12</sup> Section 119.15(5)(b), F.S.

<sup>13</sup> Licensed pursuant to ch. 560, F.S. The following entities are exempt:

- Banks, credit card banks, credit unions, trust companies, associations, offices of an international banking corporation, Edge Act or agreement corporations, or other financial depository institutions organized under the laws of any state or the United States;
- The United States or any agency or instrumentality thereof; and
- The state of Florida or any of its political subdivisions (s. 560.104, F.S.).

<sup>14</sup> Section 560.1105, F.S.

<sup>15</sup> Check cashing and foreign currency exchange licensure is not required for a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person per day and that are incidental to the retail sale of goods or services whose compensation for cashing payment instruments at each site does not exceed 5 percent or the total gross income from the retail sale of goods or services by such person during the last 60 days (s. 560.304, F.S.).

<sup>16</sup> "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. Section 560.103(29), F.S.

<sup>17</sup> Section 560.310(2), F.S. Such information includes:

- Customer files;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer;
- A thumbprint of the customer taken by the licensee when the payment instrument is present for negotiation or payment

<sup>18</sup> "Deferred presentment transaction" means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a deferment period. "Deferment period" means the number of days a deferred presentment provider agrees to defer depositing, presenting, or redeeming a payment instrument. "Drawer" means a customer who writes a personal check and upon whose account the check is drawn. Section 560.402, F.S.

<sup>19</sup> Section 560.404(23), F.S.

<sup>20</sup> *Id.* Such required information includes:

- The drawer's name, social security number or employment authorization alien number, address, and driver's license number;
- The amount and date of the transaction;
- The date that the transaction is closed; and
- Such additional information as is required by rule.

- Payor name.
- Payee name.
- Customer 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 the payment instrument.
- Branch or location where the payment instrument was accepted.
- Type of identification and identification number presented by the payee or customer.
- Payee's workers' compensation insurance policy number, if the payee is a business.

A 2008 grand jury report found that some contractors and check cashers have colluded on a scheme that allows the contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage; additionally, such contractors may avoid the payment of state and federal taxes.<sup>21</sup> In 2011, the Chief Financial Officer formed a Money Service Business Facilitated Workers' Compensation Work Group to study the issue of workers' compensation premium fraud facilitated by check cashers. The work group's recommendations include the establishment of a statewide database for regulators and law enforcement to use in the detection of workers' compensation insurance fraud.<sup>22</sup>

The submission of certain check cashing to the database may enhance the ability of regulators and law enforcement to effectively target individuals who are engaging in criminal activity, and would allow information to be compared on a statewide basis. However, the database would include personal financial information of those utilizing check cashing services and private business transaction information that is traditionally private.

### III. Effect of Proposed Changes:

This bill, which is linked to SB 410, creates a public records exemption for certain payment instrument transaction information held by the OFR. Specifically, payment instrument transaction information held in the database that identifies a licensee, payor, payee, or conductor<sup>23</sup> is confidential and exempt from public records disclosure requirements.

The bill authorizes a licensee to access information that it submits to the OFR for inclusion in the database. In addition, the bill authorizes the OFR to enter into agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in order to share confidential and exempt information contained in the database for purposes of detecting and deterring financial crimes and workers' compensation violations. Any department or agency

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<sup>21</sup> *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008. For their participation and risk, the check cashers may receive a greater fee for cashing the checks than is allowed by statute (authorized fees are set forth in s. 560.304(8), F.S.).

<sup>22</sup> *A Report by the Money Service Business Facilitated-Workers' Compensation Fraud Work Group*, available online at [http://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC\\_MSBReport-Rec.pdf](http://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf) (last viewed April 15, 2013).

<sup>23</sup> A "conductor" is a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument (s. 560.103(9), F.S.).

that receives the confidential and exempt information must maintain the confidentiality of that information, unless a court order compels production of the information.

The bill provides that subsection (1) of the bill is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is contingent upon passage of SB 410 or similar legislation.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature; therefore, this bill requires a two-thirds vote.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption; therefore, this bill contains a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill may benefit the private sector. By making the identities of payees and customers confidential, personal financial information will be protected. Similarly, by making the identities of payors and licensees confidential, business information will be protected.

**C. Government Sector Impact:**

The bill likely could create a minimal fiscal impact on the OFR, because staff responsible for complying with public records requests could require training related to the public records exemption. In addition, the OFR could incur costs associated with redaction of the confidential and exempt information prior to releasing a record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the OFR.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that subsection (1) will repeal pursuant to the Open Government Sunset Review Act, unless reenacted by the Legislature. Repealing only subsection (1), however, would retain in law the sections relating to release of the protected information and the Open Government Sunset Review Act. It is suggested that the bill be amended to instead provide that the entire section is subject to the Open Government Sunset Review Act.

**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.