

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7003 PCB OTM 20-04 OGSR/Payment Instrument Transaction Information/Office of Financial Regulation

SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Andrade

TIED BILLS: **IDEN./SIM. BILLS:** SB 7014

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7003 passed the House on January 29, 2020, and subsequently passed the Senate on March 5, 2020.

The Open Government Sunset Review Act (Act) requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Office of Financial Regulation (OFR) licenses and regulates check cashers. Florida law imposes various requirements on check cashers, including that such licensees maintain records of certain payment instrument transaction information. Beginning in 2013, Florida law required check cashers to enter specified information related to each payment instrument that exceeds \$1,000 into OFR's check cashing database. A public record exemption was also created in 2013 to provide that such payment instrument transaction information held by OFR within the check cashing database that identifies a licensee, payor, payee, or conductor is confidential and exempt from public record requirements. In accordance with the Act, the 2013 public record exemption for information in the check cashing database was set for repeal on October 2, 2018.

In 2018, the Legislature amended the exemption to clarify that OFR may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor. The 2018 legislation also extended the repeal date of the public record exemption, moving it from 2018 to 2020.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

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

The bill was approved by the Governor on September 4, 2020, ch. 2020-169, L.O.F., and will become effective on October 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ (Act) sets forth a legislative review process for newly created or substantially amended public record or public meeting 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.²

The Act 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:

- Allow the state or its political subdivisions to administer effectively and efficiently a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

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.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation Check Cashing Regulations

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to chapter 560, F.S. Florida law imposes various requirements on check cashers, including requiring the licensee to maintain copies of each payment instrument cashed.⁶ If the payment instrument exceeds \$1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,⁷ on all customers who cash corporate payment instruments that exceed \$1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.⁸

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 560.310(1), F.S.

⁷ Rule 69V-560.704, F.A.C.

⁸ Section 560.310(2)(a)-(c), F.S.

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds \$1,000:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor⁹ 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 of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.¹⁰

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.¹¹

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for payment instrument transaction information (check cashing database information) held by OFR that identifies a licensee, payor, payee, or conductor.¹² OFR may enter into information-sharing agreements with DFS, law enforcement agencies, and other governmental agencies in certain circumstances, and require those agencies to maintain the confidentiality of the information, except as required by court order.

The 2013 public necessity statement for the exemption provided that use of the check cashing database is necessary to deter money laundering through these entities and to prevent fraud, including workers' compensation fraud. In addition, it provided that:

[T]he public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check-cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. Such information is traditionally private and sensitive. Protecting the confidentiality of information that would identify these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program. The public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensee or payors in the marketplace. If such information were publicly

⁹ The term "conductor" is defined as "a natural person who presents himself or herself to a [check casher] for purposes of cashing a payment instrument." Section 560.103(9), F.S. The term is used in the context of the cashing of a corporate payment instrument, which is a payment instrument on which the payee is not a natural person (i.e., the payee is a corporate entity). Section 560.103(10), F.S. A check casher may accept or cash a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face. Section 560.309(4), F.S.

¹⁰ Section 560.310(1)(d), F.S.

¹¹ Section 560.310(5), F.S.

¹² Chapter 2013-155, L.O.F.; codified as s. 560.312, F.S.

available, competitors could determine the amount of business conducted by other licensees or payors.¹³

During the 2017 interim, subcommittee staff met with staff from OFR and DFS as part of its review of the exemption under the Open Government Sunset Review Act. OFR and DFS recommended that the exemption be reenacted noting that the exemption has allowed the agencies to properly regulate licensees and to monitor and prevent fraud while preventing the disclosure of information that would identify the licensee payor, payee, or conductor. In 2018, the Legislature amended the exemption to clarify that OFR may release payment instrument transaction information in the aggregate, so long as the information released does not reveal information that identifies a licensee, payor, payee, or conductor.¹⁴ The 2018 legislation also extended the repeal date of the public record exemption, moving it from 2018 to 2020.

During the 2019 interim, subcommittee staff discussed the exemption with OFR, and OFR reiterated the importance of maintaining the exemption to protect licensees and the personal financial information of consumers. According to OFR, disclosure of such information could expose such individuals to significant risk for identity theft.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.¹⁵

Effect of the Bill

The bill removes the repeal date, thereby maintaining the public record exemption for payment instrument transaction information held by OFR pursuant to s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor.

II. 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.

¹³ Section 2, ch. 2013-155, L.O.F.

¹⁴ Chapter 2018-116, L.O.F.; codified as s. 560.312(4), F.S.

¹⁵ Section 560.312(3), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.