

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records of the Office of Financial Regulation of the Financial Services Commission.

B. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation of the Financial Services Commission is responsible for the regulation and licensure of finance companies.¹ The office is authorized to conduct investigations and examinations of licensees or other persons to determine compliance with consumer finance requirements.² An investigation or examination may include a review of the books and accounts of any licensee or other person.

Current law does not provide a public records exemption for records relating to such investigations and examinations. In comparison, limited public records exemptions are provided for office investigations and examinations of financial institutions,³ mortgage brokers and mortgage lenders,⁴ retail installment sales providers,⁵ securities dealers,⁶ and money transmitters (check cashers, deferred presentment providers, and foreign currency exchangers).⁷

Effect of Bill

The bill creates a public records exemption for information held by the office pursuant to an investigation or examination for compliance with the Consumer Finance Act, until the investigation or examination is completed or ceases to be active. Investigation or examination information will remain confidential and exempt from public disclosure if the office submits the information to a law enforcement agency, administrative agency, or regulatory organization for further investigation or examination, until that agency's investigation or examination is completed or ceases to be active.

An investigation or examination is considered active if the office or any law enforcement, administrative, or regulatory organization:

- Is proceeding with reasonable dispatch; or
- Believes that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit.

Once an investigation or examination is completed or ceases to be active, information will remain confidential and exempt from public disclosure if disclosure would:

- Jeopardize another active investigation or examination;
- Reveal the name, address, telephone number, social security number or other identifying information of a complainant, customer, or account holder;

¹ Chapter 516, F.S.

² Section 516.11, F.S.

³ Section 655.057, F.S.

⁴ Section 494.00125, F.S.

⁵ Section 520.9965, F.S.

⁶ Section 517.2015, F.S.

⁷ Section 560.129, F.S.

- Reveal the identity of a confidential source;
- Reveal investigative techniques or procedures; or
- Reveal a trade secret.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

C. SECTION DIRECTORY:

Section 1 creates s. 516.115, F.S., to create a public records exemption for investigation and examination information held by the office.

Section 2 provides a statement of public necessity.

Section 3 provides an October 1, 2005, effective date that is contingent upon the passage of HB 381 or substantially similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill could create a fiscal impact on the office, because office staff would have to be trained with regards to the categories of information that is made confidential and exempt from public disclosure versus records that are available for public inspection and copying. The office could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. The bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida 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 may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995⁸ 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 public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

⁸ Section 119.15, F.S.