

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: SB 698

SPONSOR: Senator Sebesta

SUBJECT: Florida Consumer Finance/Public Records

DATE: March 6, 2005

REVISED: 03/10/2005

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/2 amendments</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>GO</u>	<u></u>
4.	<u></u>	<u></u>	<u>RC</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- 2 Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 698 creates a public records exemption for information obtained by the Office of Financial Regulation (OFR) of the Financial Services Commission in connection with investigations and examinations under the Florida Consumer Finance Act.¹ In general, such information would remain confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution until the investigation was completed or ceased to be active. However, such information would remain confidential and exempt after the investigation is completed or ceases to be active to the extent disclosure would:

- Jeopardize the integrity of another active investigation;
- Reveal the name, address, telephone number, social security number, or any other identifying information of any complainant, customer, or account holder;
- Disclose the identity of a confidential source;
- Disclose investigative techniques or procedures; or
- Reveal a trade secret, as defined in s. 688.002, F.S.

¹ Chapter 516, F.S.

The bill provides a statement of public necessity that the release of such information prior to an examination or investigation is completed or ceases to be active could jeopardize the integrity of the investigation or another examination or investigation.

This bill creates section 516.115 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 a public records law. However, the bill 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.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if 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;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.15(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption that exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Investigation and Examination of Commercial and Consumer Collection Agencies

The Office of Financial Regulation (OFR) of the Financial Services Commission is responsible for the regulation and licensure of finance companies, under ch. 516, F.S. The provisions of ch. 516, F.S., do not apply to certain entities that conduct business under, and as permitted by

any Florida law or the United States relating to banks, savings banks, trust companies, and credit unions.²

Presently, the OFR is authorized to conduct investigations and examinations of licensees or other persons to determine compliance with ch. 516, F.S.³ An investigation or examination may include a review of the books and accounts of any licensee or other person. However, the current law does not exempt any records relating to such investigations and examination from the public records law. In comparison, limited public records exemptions are provided in current law for OFR investigations and examinations of financial institutions,⁴ mortgage brokers and mortgage lenders,⁵ retail installment sales providers,⁶ securities dealers,⁷ and money transmitters (check cashers, deferred presentment providers, and foreign currency exchangers).⁸

III. Effect of Proposed Changes:

Section 1 provides that information received or created during an investigation or examination, including any consumer complaint, under ch. 516, F.S., the Consumer Finance Act, is confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution until the investigation or examination is completed or ceases to be active, except as otherwise provided in this section.

An investigation or examination would be considered active if the OFR, law enforcement or administrative agency was proceeding with reasonable dispatch and had a good faith belief that the investigation or examination might lead to the filing of an administrative, civil, or criminal proceeding.

The OFR is authorized to provide such confidential and exempt information to a law enforcement or administrative agency or regulatory organization in furtherance of its duties and responsibilities. The receiving agency or organization would be required to maintain the confidentiality and exempt status of the information so long as it would otherwise be confidential and exempt from disclosure.

The section provides that such information relative to an investigation or examination, including a consumer complaint, would remain confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution after the investigation or examination is completed or ceases to be active to the extent disclosure would:

- Jeopardize the integrity of another active investigation or examination;

² Section 516.02(4), F.S.

³ Section 516.11, F.S.

⁴ Section 655.057, F.S.

⁵ Section 494.00125, F.S.

⁶ Section 520.9965, F.S.

⁷ Section 517.2015, F.S.

⁸ Section 560.129, F.S.

- Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder;
- Disclose the identity of a confidential source;
- Disclose investigative techniques or procedures; or
- Reveal a trade secret, as defined in s. 688.002, F.S.

If the office receives a request for information that is confidential and exempt under this section, the office is required to notify the person requesting the information the reason disclosure is prohibited under this section. This provision appears to be unnecessary, since s. 119.07(1), F.S., already requires an agency to state the statutory basis of the exemption that is applicable for any requested record. If requested, an agency is required to state in writing the reasons for the conclusion that a record is confidential and exempt.

This public record exemption would be subject to the Open Government Sunset Review Act of 1995 and, in accordance with s. 119.15, F.S., would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 states the public necessity for providing that information relative to an investigation or examination is confidential and exempt from s. 119.07(1), F.S. and s. 24 (a), Art. I of the State Constitution. The section provides that the release of such information prior to an examination or investigation is completed or ceases to be active could jeopardize the integrity of the investigation or examination or another examination or investigation.

The section also provides that the release of such information relating to an examination or investigation could result in the disclosure of the name, address, telephone number, social security number, or any other identifying information of any complainant that is a confidential source, customer information, trade secrets or proprietary information of a business. The release of such identifying information could cause unwarranted damage to such persons by facilitating identity theft or jeopardizing the safety of such persons. Disclosure of proprietary information or trade secrets of a business could cause injury to the affected entity in the marketplace.

Section 3 provides that this act will take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The public records exemption protects the identity and safety of persons reporting alleged violations of the law to the Office of Financial Regulation (OFR) of the Financial Services Commission. The bill also protects personal and identifying information concerning customers and account holders. The disclosure of the proprietary records of a business entity could place such an entity at a competitive disadvantage with competitors.

C. Government Sector Impact:

The public records exemption provides the OFR with an effective investigatory tool to assist in the performance of its compliance and enforcement duties relating to part I of ch. 516, F.S., Florida Consumer Finance Act requirements. The exemption is necessary to protect the integrity and ongoing investigations and examinations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode #222710 by Banking and Insurance:

This amendment eliminates a provision in the bill that requires the Office of Financial Regulation to notify any person requesting confidential and exempt information the reason disclosure is prohibited under this newly created s. 516.115, F.S. This notification appears to be unnecessary, since s. 119.07(1), F.S., already requires an agency to state the statutory basis of the exemption that is applicable for any requested record. If requested, an agency is also required to state in writing the reasons for the conclusion that a record is confidential and exempt.

Barcode #112530 by Banking and Insurance:

This amendment clarifies and reorganizes the public necessity statement for the public records exemption.

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