

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: Judiciary Committee

BILL: CS/SB 698
SPONSOR: Judiciary Committee and Senator Sebesta
SUBJECT: Florida Consumer Finance/Public Records
DATE: March 24, 2005 REVISED: _____

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

I. Summary:

Committee Substitute for 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 Any records maintained in connection with these investigations would be confidential and exempt from s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution until an investigation is completed or cease to be active. Certain records protected under this exemption would remain exempt to the extent that 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.

The committee substitute provides a statement of public necessity that the release of information prior to the completion or inactivity of an OFR examination or investigation could jeopardize the integrity of that investigation or another examination or investigation. In addition, the committee substitute states that the exemption would continue after the investigation or examination is completed or no longer active because the release of certain records protected under this exemption could facilitate identity theft, could allow a person to hide or conceal violations of law, and could create an unfair trade advantage.

¹ Chapter 516, F.S.

This committee substitute creates section 516.115, 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 the public records law. However, the bill creating the exemption 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 on October 2nd of the fifth year after enactment of a new exemption or substantial amendment of an existing exemption the exemption shall repeal, unless the Legislature reviews and reenacts 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 or federal law relating to banks, savings banks, trust companies, and credit unions.²

² Section 516.02(4), F.S.

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, but current law does not exempt any records relating to these investigations and examinations 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:

Committee Substitute for Senate Bill 698 creates a public records exemption for information received or created during an investigation or examination, including any consumer complaint, under ch. 516, F.S., the Florida Consumer Finance Act, which would otherwise be subject to the requirements of s. 119.07(1), F.S., and s. 24 (a), Art. I of the State Constitution. Records received or created in connection with an investigation or examination would be protected until the investigation or examination is completed or is no longer active. An investigation or examination would be considered “active” if the Office of Financial Regulation (OFR), law enforcement, an administrative agency, or a regulatory organization 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 information received or obtained in connection with an investigation or examination 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 confidential and exempt status of the information so long as the information would otherwise be exempt and confidential.

The committee substitute provides that 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 cease to be active if disclosure would:

- Jeopardize the integrity of another active investigation or examination;
- 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.

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.

The committee substitute includes a sunset provision as required under s. 119.15(3)(a), F.S., and in accordance with the Open Government Sunset Review Act of 1995. The public records exemption will repeal on October 2, 2010, unless it is reviewed and reenacted by the Legislature.

The committee substitute also contains a statement of public necessity for creating an exemption for what would otherwise be public records related to an investigation or examination.⁹ The statement reads that releasing any information obtained or received in connection with an examination or investigation could jeopardize the integrity of the investigation or examination or another examination or investigation.

The public necessities provided for exempting certain sensitive records after an investigation or examination is no longer active or completed are that disclosure could:

- Jeopardize the integrity of another active investigation or examination;
- Reveal the name, address, telephone number, or social security number, or any other identifying information of a complainant, customer, or account holder, facilitating identity theft;
- Disclose the identity of a confidential source;
- Disclose investigative techniques or procedures; or
- Reveal proprietary information or trade secrets of a business under investigation, giving an unfair advantage to competitors in the marketplace.

The committee substitute provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This committee substitute 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. Additionally, the committee substitute provides that when OFR provides exempt records to a law enforcement agency, administrative agency, or regulatory organization, the receiving entity must maintain the exempt and confidential status of the records. If an entity receives a request for records that are protected under this section, the entity must state the statutory basis of the exemption, and if requested state in writing the specific reasons for the conclusion that a record is exempt and confidential.¹⁰

Under Article I, s. 24(c) of the State Constitution, records may be exempted from open government requirements only where the exemption is no broader than necessary to

⁹ Art. I, s. 24(c) of the Florida Constitution require a statement of public necessity when an exemption to the public records law is created or substantially amended to broaden a preexisting exemption.

¹⁰ s. 119.07(1)(c)-(d), F.S.

accomplish the stated purpose of the law. A law creating an exemption must contain only exemptions from the public records and meetings requirements and provisions governing enforcement and must relate to one subject. This committee substitute appears to comply with these constitutional provisions.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed public records exemption in the committee substitute would prevent disclosure of sensitive personal information of complainants, account holders, and customers. Preventing disclosure of the personal information contained in these records may provide added protection from identity theft to consumers.

The committee substitute would also exempt records containing trade secrets from disclosure, protecting businesses under investigation from the unfair practices that could arise if a competitor were able to obtain these records as the result of a public records request.

C. Government Sector Impact:

The public records exemption may provide the Office of Financial Regulation 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., the Florida Consumer Finance Act. The exemption may help to protect the integrity of ongoing investigations and examinations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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