

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7089 PCB GVOPS 15-06 OGSR/Credit History Information and Credit Scores/OFR
SPONSOR(S): Government Operations Subcommittee, Narain
TIED BILLS: **IDEN./SIM. BILLS:** SB 7012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Harrington	Williamson
1) State Affairs Committee	13 Y, 0 N	Harrington	Camechis

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record 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 non-depository loan originators (mortgage brokers and mortgage lenders). Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness. As part of the licensure process, an applicant must authorize the release of an independent credit report and credit score to OFR.

Current law provides a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators. OFR may provide the confidential and exempt credit history information or credit scores to another governmental entity having oversight or regulatory or law enforcement authority.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

The Open Government Sunset Review 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:

- 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 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Federal Regulation of Loan Originators

The federal Housing and Economic Recovery Act (act) was enacted in 2008.⁴ Title V of the act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE Act). The intent of the SAFE Act is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements.⁵

The SAFE Act directs the establishment of a nationwide mortgage licensing system and registry (NMLS registry or registry).⁶ The NMLS registry collects and maintains specified information on loan originators to create a common database among federal and state regulators.⁷ Only authorized recipients may access the information in the NMLS registry, and authorized recipients may not share information obtained from the registry or provide third party access to the services or consumer report information.

The SAFE Act requires states to comply with its minimum standards and to participate in the NMLS registry.⁸ It also requires loan originators to obtain an annual state license and provide fingerprints for

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁴ Public Law 110-289, July 30, 2008.

⁵ Public Law 110-289, Title V, s. 1502.

⁶ *Id.* at ss. 1502 and 1503.

⁷ *Id.*

⁸ The SAFE Act provides that if the state does not enact minimum regulatory standards that comply with the SAFE Act after the enactment, the U.S. Department of Housing and Urban Development will enforce the minimum standards for loan originators in the state as state-licensed loan originators. *Id.* at s. 1508.

purposes of a criminal background check, and allows the state regulator to access a credit report through the registry.⁹

Florida Regulation of Loan Originators

The Office of Financial Regulation (OFR) regulates non-depository loan originators and other specified financial entities.¹⁰ In 2009, the Legislature enacted legislation to bring the state into compliance with the SAFE Act.¹¹ The legislation required OFR to license loan originators.¹² Applicants for an initial license or license renewal must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness.

The loan originator licensure and renewal process includes a review of the applicant's credit report and credit information, which OFR accesses through the NMLS registry.¹³ Before OFR can access the information, the applicant must complete the credit authorization process through the NMLS registry.¹⁴ The credit report obtained through the NMLS registry is a TransUnion Credit Report with a Vantage Score.¹⁵ OFR is required to comply with terms and conditions relating to the confidentiality of the registry information.

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.¹⁶ OFR may provide the confidential and exempt¹⁷ information to another governmental entity having oversight or regulatory or law enforcement authority.¹⁸

Section 2 of chapter 2010-169, L.O.F., which is the public necessity statement for the public record exemption, provides that:

Credit history information and credit scores are sensitive and personal information. Disclosure of such information and scores could cause harm to the person who is the subject of the information. Such information could be defamatory and could cause unwarranted damage to the name or reputation of the person who is the subject of the information, especially if such information is inaccurate. Furthermore, access to such information could jeopardize the financial safety of the individual who is the subject of that information by placing the person at risk of becoming the object of identity theft.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁹

⁹ *Id.* at ss. 1504 and 1505.

¹⁰ OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

¹¹ Chapter 2009-241, L.O.F.

¹² *Id.*

¹³ As part of the licensure process, OFR evaluates the credit report and credit history in the context of the "totality of the circumstances." See ss. 494.00611 and 494.00321, F.S., and chapter 69V-40.0113, F.A.C.

¹⁴ See Frequently Asked Questions at: <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited March 10, 2015).

¹⁵ *Id.*

¹⁶ Chapter 2010-169, L.O.F.; codified as s. 494.00125(3), F.S.

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ Section 494.00125(3)(b), F.S.

¹⁹ Section 494.00125(3)(d), F.S.

During the 2014 interim, subcommittee staff met with OFR staff as part of the Open Government Sunset Review process. OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for credit history information and credit scores held by OFR related to licensure of loan originators.

B. SECTION DIRECTORY:

Section 1 amends s. 494.00125, F.S., to save from repeal the public record exemption for credit history information and credit scores held by OFR.

Section 2 provides an effective date of October 1, 2015.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.