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BILLS MOVING THROUGH THE FLORIDA LEGISLATURE

March 2--March 5

Legislation to regulate social media is making its way through the House. COM1 and COM2 were filed Friday, and the House Commerce committee voted to approve COM1 and COM2 Tuesday. COM1, titled Technology Transparency, would require social media sites to provide notification to a user who is deplatformed or censored within 30 days of censorship, and include an explanation of how the platform became aware of the censored material. Although the committee chair, Rep. Blaise Ingoglia (R-Spring Hill), said the bill would require big tech companies to publish consistent standards for censorship and consistently apply those standards, the bill is more complex.

In addition to the regulations for censoring users, the bill prohibits social media platforms from taking any action to censor, deplatform, or shadow ban a “journalistic enterprise” based on the content of a publication or broadcast.



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This applies only to entities that have at least 50,000 monthly paid subscribers or 100,000 monthly active users; publish 100 hours of audio or video available online with at least 100 million viewers annually; operate a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or operates a broadcast license issued by the Federal Communications Commission. In other words, small print or online outlets serving rural communities or college papers could be censored, but a social media company would be forced to carry a larger paper or station's story even when the content violates the social media company's policy.

COM1 would also give the Department of Legal Affairs and the Attorney General authority to investigate social media companies for violating censorship and antitrust practices. COM2 would make information received by the Department and AG in the course of an investigation not only exempt but also confidential. By making investigative information confidential, the Department and Attorney General's Office are prohibited from releasing information to act in the public's best interest. Confidentiality of investigative information is contrary to Fla. Stat. § 119.071(2)(c) and case law.

Once an investigation is no longer active, the Department and AGO can release certain information. A tech company's proprietary information remains confidential and exempt. Although this bill is related to the Technology Transparency legislation, confidentiality restricts the public's access to information related to social media companies' practices. Technology companies' information is protected at the expense of the constitutional right of access to information collected by our government.

OTHER LEGISLATIVE ACTIVITY

Senate Bill 1048, Aaron Bean (R-Jacksonville). The Senate Criminal Justice committee approved SB 1048, which creates an exemption for certain information held by a conviction integrity unit within a State Attorney's Office to review claims of actual innocence. The exemption applies to information during an active, ongoing, and good faith investigation. The bill is now in the Judiciary Committee.

Senate Bill 972, Ana Maria Rodriguez (R-Doral), amends Fla. Stat. § 163.01 to permit an administrative entity created by an interlocal agreement with member public agencies located in four contiguous counties to conduct public meetings and workshops by communication media technology. According to the staff analysis, this bill would allow public bodies like the Southeast Florida Regional Climate Change Compact committee to conduct meetings remotely. FAF has not taken a position on the bill, but we did provide language to the Senate Community Affairs staff to ensure the public has a means to participate and is provided notice of how to comment at remote meetings. The Community Affairs committee approved SB 972, and the bill is now in the Governmental Oversight and Accountability committee.

Senate Bill 890, Ed Hooper (R-Palm Harbor), which in part increases the maximum penalty for violations of chapter 119 from \$500 to \$2,000, was approved by the Senate Transportation committee and is now in the Senate Rules committee.

House Bill 1, Juan Alphonso Fernandez-Barquin (R-Miami), Combating Public Disorder, cleared its second committee with ten in favor and five against. FAF explained that the measure violates the First Amendment and will deter protestors and journalists covering demonstrations. It is now in the House Judiciary committee.

Senate Bill 844, Ed Hooper (R-Palm Harbor), allows certain individuals to enter access agreements with clerks of court to inspect otherwise exempt public records. This bill, as originally filed, allowed clerks to enter access agreements for a specific lawful purpose including, but not limited to determining marketability of title, perfecting or enforcing a lien or other interest in real property. As amended, the bill removes the inclusive language and restricts access for specific purposes: perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property. SB 844 increases access to otherwise exempt records but only to certain individuals for limited purposes. This bill manifests the burden that 1,000-plus exemptions and dozens of home address exemptions on records custodians and the public. The solution should not be permitting access to only a few professions.

Senate Bill 68*, Ileana Garcia (R-Miami), which exempts the home address, photographs, and other information of current and former staff and domestic violence centers, passed the Senate Rules committee unanimously, its third committee hearing. It heads to the entire Senate for approval.

House Bill 619, Webster Barnaby (R-Orange City). When banks fail, it is often a result of mismanagement. HB 619 would make it harder for the public to know the owners and leaders involved in the bank by exempting the names of shareholders and directors from de novo bank charters. The staff analysis for HB 619 shows only a handful of applicants have been submitted to the Office of Financial Regulation over the past three years. In fact, there have been more public records requests for bank charters than applications for bank charters. Attorneys, journalists, and bank officials have all sought access to these applications over the past three years. HB 619 would make increase the time to fulfill these requests because custodians would have to review and redact exempt information. The bill passed the House Insurance & Banking subcommittee 11-5.

OPEN GOVERNMENT SUNSET REVIEW UPDATE

HB 7001 saves from repeal an exemption for meetings held by the Interstate Commission of Nurse Licensure Compact Administrators at which exempt information is discussed. The statute does require minutes be taken at exempt meetings and release of minutes subject to a majority vote of the commission or court order. The House Professions & Public Health subcommittee approved the legislation, and it is now in the House State Affairs committee.

FAF has addressed the misapplication and overuse of trade secret exemptions. There is an effort in the legislature to enact a standardized definition and process to exclude trade secrets from public view.

A uniform exemption would also eliminate the need to pass and review a multitude of trade secret bills. The Senate Agriculture reviewed and approved six trade secret exemptions this week.

The following OGSRs, which FAF has not taken a position on, also passed:

- **GOS3 & SB 7036** exempt and make confidential information held by the Department of Agriculture and Consumer Services as part of a joint investigation with another state or federal agency.
- **GOS4** exempts criminal history information compiled by the Criminal Justice Information Program from Interstate sources.
- **SB 7050** exempts unsolicited proposals received by a public entity.

NEW BILLS FILED SINCE OUR LAST REPORT



Court Records

This session, we're seeing a trend of bills aimed at limiting access to court records. The bills are meant to ensure that unjustified arrests or evictions do not prevent an individual from gaining employment or finding housing. Most private employees or parents hiring childcare are in the dark and cannot even ask about a potential employee's past arrests or charges if expunged. Rather than restricting the public's right to know, a better solution is to limit what employers or landlords can consider when making hiring or rent decisions.

SB 1662 Automatic Sealing of Criminal History Records Bobby Powell (D-West Palm Beach)

Fla. Stat. § 943.059(2)(a) requires FDLE to automatically seal a criminal history record that does not result in an indictment, information, or other charging document. Subsection 3 requires the clerk of court to send a copy of the disposition of a criminal history record eligible for automatic sealing to FDLE. SB 1662 imposes deadlines on clerks to submit copies of records, created before Fla. Stat. § 943.059(2)(a) was enacted, that can be expunged. There is no review of the records to be sealed. Nor is there a limit on the number of times a person may obtain an automatic sealing.

HB 1195/SB 1744 Pub. Rec./Court Records of Eviction Proceedings Vance Aloupis, Jr. (R-Miami), SB 1748 Shevrin Jones (D-Miami Gardens)

HB 1193/SB 1746 allows a defendant in an eviction proceeding to move to seal proceeding and have his or her name replaced with "tenant" on the progress docket. Motion to seal must be granted under certain circumstances. HB 1195/SB 1748 exempt and make confidential the name of a defendant removed from a progress docket and any records sealed under this bill.

SB 1806 Public Records/Court Records Lauren Book (D-Plantation)

Expands exemption for Baker and Marchman records to exempt the names of respondents of petitions for treatment and examination.

Criminal Justice

HB 1451 Community Safety and Criminal Justice Fentrice Driskell (D-Tampa)

In part, requires the release of a body camera recording within 15 days of an incident when an officer: discharges a firearm, uses a stun gun or stun gun on a person resulting in death or serious bodily injury. Does not apply to the extent that application would conflict with Marsy's Law.

Meetings

SB 1852 Public Meetings/Mental Health & Substance Abuse Disorder Services Commission* Darryl Rouson (D-St. Petersburg)

SB 1844 creates a Mental Health & Substance Abuse Disorder Services Commission to examine services in Florida, investigate and make recommendations for system of care. SB 1852 exempts portions of meetings at which exempt or confidential information is discussed. FAF recommends holding exempt portions of meetings on the record and releasing transcripts or minutes if a court determines the meetings were not limited to exempt information.

HB 1311 Public Meetings/Public Service Commission Bobby Payne (R-Palatka)

Exempts any portion of a hearing before the Florida Public Service that cannot be fully and fairly conducted without necessarily revealing proprietary confidential business information that is exempt from public records laws. The entire hearing, including exempt portions, must be recorded. Only the redacted version of the transcript prepared must be disclosed under chapter 119. Requires each party claiming confidentiality to provide redactions and request for confidential treatment.

Public Records

SB 1806 Public Records/Victims of Florida Reform School Abuse* Darryl Rouson (D-St. Petersburg)

SB 288 provides a process for former students of the Dozier School for Boys and Okeechobee School to be certified as victims and permits victims to file a claim for victim compensation. SB 1806 exempts any personal identifying information submitted to the Department of State.

SB 1836 Public Records/Lottery Winners Tina Polsky (D-Boca Raton)

Exempts the names of a winner of a lottery prize valued at \$250,000 or more, unless the winner consents to the release of his or her name. Access to the names of winners has revealed suspicious patterns suggesting dishonest practice. Further, there is no evidence that winners of prizes of \$250,000 are at a greater risk than winners at the \$100,000 or \$200,000 level.

SB 1634/HB 1399 Public Records/Aquaculture/Department of Agriculture and Consumer Services* Jason Brodeur (R-Lake Mary), Andrew Learned (D-Riverview)

Exempts and makes confidential certain information held by the Department related to shellfish processing facilities, audit records, and aquaculture production records. FAF suggests making the records merely exempt and not confidential.

