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ACCESS TO COURT RECORDS UNDER ATTACK



The Florida Constitutional right of access to public records specifically includes records of the judicial branch. This session, the First Amendment Foundation has noticed an effort to restrict access to court records. The legislative proposals vary – some bills automatically seal court records while other bills afford courts discretion to seal or expunge records.

While these bills are well intentioned, the incidental harms of sealing records often outweigh the benefits. Consider **House Bills 1193 and 1195**, sponsored by Vance Arthur Aloupis, Jr. (R-Miami). These bills are meant to protect evicted tenants from being blacklisted from finding future housing, but the bill affords privacy to even unlawful landlords. House Bill 1193 allows a tenant to ask a court to seal records of an eviction under certain circumstances, and House Bill 1195 creates a public records exemption for any sealed records. A landlord may be unethically or illegally evicting tenants, but the court records would be hidden under this legislation. Landlords would be protected from any accountability of wrongdoing.

Moreover, the purpose of the bill is undermined because a landlord could obtain eviction information from another source, such as asking the tenant's prior landlord, and use that information to deny housing to a tenant. While purporting to protect tenants, the denial of access to records could protect landlords and harm the public. Both bills passed the House Civil Justice and Property Rights subcommittee unanimously.



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Senate Bill 1972, Jason Pizzo (D-Miami), seals civil court records relating to a petition for a domestic violence injunction if the injunction is withdrawn or dismissed, or if there is a ruling in favor of the respondent. Senate Bill 1974 creates a public records exemption for those sealed records.

The exemption is intended to protect individuals who have been wrongfully accused of domestic violence; however, the court records could be sealed even if the petitioner voluntarily withdraws a petition and no finding against the respondent has been made. This exemption is overbroad. Both bills passed the Senate Judiciary committee unanimously and will be heard by the Criminal Justice committee Tuesday.

As mentioned above, some bills that propose sealing court records are less broad. **House Bill 523**, Jackie Toledo (R-Tampa), expands the current discretionary expunction process for offenses that were committed while a defendant was a victim of a human trafficking scheme. House Bill 525 creates an exemption for petitions for expunction. HB 525 passed the House Criminal Justice & Public Safety subcommittee and is now in the Government Operations subcommittee.

Senate Bill 468, Randolph Bracy (D-Orlando), permits certain courts to expunge misdemeanor convictions for possessing 20 grams or less of cannabis. Senate Bill 470 makes confidential and exempts records expunged under this statute. Both bills passed the Senate Judiciary committee and are now in the Criminal Justice committee.

Other legislature activity

Senate Bill 400, Ray Rodrigues (R-Fort Myers), was unanimously approved by the Senate Judiciary committee. The bill prohibits an agency from filing a declaratory action against the requestor to determine whether the record is confidential or exempt. The bill is now in the Senate Rules committee. The House Civil Justice & Property Rights subcommittee unanimously voted in favor of the House version, **House Bill 913**, Lawrence McClure (R-Plant City).

House Bill 7013, Commerce Committee, was approved by the House Appropriations committee 19-8. The "Technology Transparency" bill would regulate social media companies that censor users and would prohibit companies from taking any action to censor, deplatform, or shadow ban a "journalistic enterprise" based on the content of publication or broadcast. By requiring social media platforms to carry users' posts, even if such posts violate a company's policies, companies will be forced to carry messages with which they disagree, compelling speech in violation of the First Amendment. In addition, Section 230 of the Federal Communications Decency Act likely preempts this bill. Section 230 allows interactive service providers to filter and remove content without liability if done in good faith and in accordance with their terms of service. HB 7013 is now in the House Judiciary committee.

House Bill 643, Mike Gottlieb (D-Sunrise), was unanimously approved by the House Criminal Justice & Public Safety subcommittee. The bill exempts reinvestigation information generated during a new investigation by a conviction integrity unit within a state attorney's office. The exemption applies only during an active, ongoing, and good faith investigation of a claim of actual innocence and until the claim is no longer capable of further investigation. An amendment was passed to correct minor drafting errors.

House Bill 683, Chuck Brennan (R-Lake City), allows criminal conflict and civil regional conflict counsel to register a vehicle or vessel under a fictitious name and receive a license plate or decal based on a fictitious name and exempts records relating to the registration application. The House Criminal Justice & Public Safety subcommittee unanimously voted in favor of the bill, and it is now in the House Government Operations subcommittee.

House Bill 1311, Bobby Payne (R-Palatka), was unanimously approved by the House Tourism, Infrastructure & Energy subcommittee. HB 1311 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 confidential treatment. The bill is now in the House Government Operations subcommittee.

Senate Bill 1488, Kelli Stargel (R-Lakeland), was approved by the Senate Ethics & Elections committee 5-4, along party lines. SB 1488 exempts certain personal identifying information of state lawmakers and cabinet officers, and the names and places of employment of lawmakers and cabinet officers' spouses and children. If this bill becomes law, the public will have no way of knowing whether legislators live in the districts they are elected to represent or whether a conflict of interest exists between officials and their spouses or adult children. The bill is now in the Senate Governmental Oversight and Accountability committee.

Senate Bill 1704, Doug Broxson (R-Pensacola), was unanimously approved by the Senate Ethics and Elections committee and is now in the Senate Governmental Oversight and Accountability committee. The bill exempts certain records held by a supervisor of elections that, if disclosed, would facilitate unauthorized access to data or unauthorized modification, disclosure, or destruction of information related to the security of election technologies. Exemption already exists for information held by state agencies – this bill expands to supervisors of elections.



House Bill 1055, Tommy Gregory (R-Bradenton), creates an exemption and process to exempt trade secrets in records held by agencies. The House Commerce committee approved the bill unanimously. The bill has been amended to remove language that originally excluded from the definition of trade secret the parties to the contract and amount of money paid. The amendment expands the information that would be hidden from the public to include contract parties and amount paid to the contractor. Initially, FAF supported this bill because it narrowed and clarified the definition of trade secrets. Without this narrowing language and due to the expansive amendment, FAF no longer supports this measure. The bill is now in the House State Affairs committee.

House Bill 379, Mike Giallombardo (R-Cape Coral), was approved by the House Tourism, Infrastructure & Energy subcommittee 17-1 and is now in the Government Operations subcommittee. The bill exempts certain information held by an economic development agency administering state or a federally funded small business loan program. An agency can release the information in an aggregated and anonymized format. This exemption would preclude oversight of public loan programs.

House Bill 327, Bob Rommel (R-Naples), unanimously passed the House State Affairs committee. The bill exempts the addresses and phone number of individuals seeking shelter or assistance from an agency during an emergency. An amendment was adopted to limit the exemption and allow access to the names of individuals seeking shelter. FAF recommended narrowing the bill so that family members can locate their loved ones in an emergency.

Senate Bill 890, Ed Hooper (R-Palm Harbor), in part increases the maximum fine for violating public records laws from \$500 to \$2,000. The Senate Rules committee adopted an amendment that deletes this provision and imposes a noncriminal infraction, punishable by a fine not exceeding \$2,000, for unauthorized use or release of information in the Driver and Vehicle Information Database.

House Bill 35, Randy Fine (R-Palm Bay), moves legal notices from newspapers and their websites to government entities' websites. The House approved the measure 85-34. The Senate Judiciary committee will hear **Senate Bill 402**, Ray Rodrigues (R-Ft. Myers), on Monday, March 22. The Senate companion moves legal notices from newspapers and their websites to a new site created by the Florida Association of Court Clerks and Comptrollers.

The Senate voted in favor of **Senate Bill 68***, Lleana Garcia (R-Miami), which exempts the home address, photographs, and other information of current and former staff and domestic violence centers. Three senators voted against the bill.



Open Government Sunset Review

Senate Bill 7000, Senate Health Policy Committee, reinstates exemption for personal identifying information – other than a nurse’s name, licensure status, or licensure number – held by the Board of Nursing or Department of Health under the Nurse Licensure Compact. The bill exempts portions of meetings of the Commission of Nurse Licensure Compact Administrators, at which matters specifically exempt by federal or state law are discussed. The Senate Governmental Oversight and Accountability committee unanimously approved the measure, and it is now in the Senate Rules committee.

Senate Bill 7012, Criminal Justice Committee, was also unanimously approved by the Senate Governmental Oversight and Accountability committee. SB 7012 saves from sunset repeal the exemption for juvenile criminal history compiled by the Criminal Justice Information program from interstate sources. It is now in the Rules Committee.

GOS5, Government Operations subcommittee, was unanimously passed by the House Government Operations subcommittee. This bill reinstates the exemption for financial information of private entity applicants to the State Infrastructure Bank (SIB) and expands exemption to information of the guarantor of a private entity applicant. The exemption is based on the unsupported claim that private entities may be unwilling to apply to SIB if their information is public. However, DOT records show no difference between the number of applicants before and after the exemption was enacted.

House Bill 7009 reinstates the exemption for juvenile criminal history compiled by the Criminal Justice Information program from interstate sources. It was approved unanimously by the House State Affairs committee and was placed on the House Calendar for second reading.