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## A MOVE TOWARDS CLOSED COURT PROCEEDINGS FOR THE WEALTHY

**HB 1363/SB 1304 Public Records/Trust Proceedings**

Elizabeth Fetterhoff (R-DeLand), Joe Gruters (R-Sarasota)

Requires a clerk of court, upon written request, to keep all official records separate and out of public view in a proceeding involving a family trust company, licensed family trust company, or foreign licensed family trust company. Makes confidential

and exempts official records – defined as the docket, all filings, and other records – of such cases. The bill provides access to official records only to the following individuals: trust settlor; trustee or trust director; trust beneficiary; attorney for the settlor, fiduciary, or a beneficiary of the trust. In addition, the following individuals may petition a court for access to the confidential official records: a person showing a specific interest in the trust, a transaction relating to the trust, or an asset held or previously held by the trust. These persons may obtain the records only when a court determines they have shown "a compelling need for releasing the information requested." While some individuals may be able to show a compelling need for trust information, the general public cannot show a need for access to the court records.



The sponsor of the House bill, Rep. Elizabeth Fetterhoff, explained that Florida is losing out on the business of creating and being home to family trust companies because of our state's presumption of access to court proceedings. According to the representative, most family trust companies are going to South Dakota and Wyoming.

Not mentioned at the meeting – trusts in South Dakota and Wyoming were found throughout the Pandora Papers, documents provided to the International Consortium of Investigative Journalists, which exposed how secretive financial systems protect the deals and assets of the world's richest and most powerful people. Investigative reporters analyzing the Pandora Papers told PBS that South Dakota's secretive trust laws created a strong incentive for someone whose main goal is to hide assets from reporters or

another country to avoid paying taxes. While there was nothing in the leaked documents to indicate the trusts in South Dakota held criminal proceeds, nearly 30 of the 200 trusts in South Dakota were connected to individuals or businesses accused of fraud, bribery or human rights abuses. Wyoming was no different. Journalists found that the trust companies manage at least \$31.5 billion in assets in the Cowboy State. Russian oligarchs and an officer connected to the dictator of the Dominican Republic have placed their assets in trusts in Wyoming. In the years since these trusts were enacted, economic benefits have not materialized in Wyoming. There are other laws and regulations contributing to South Dakota and Wyoming's status as tax havens for the wealthy. Nonetheless, it's unclear why Florida would want to shelter and hide these family trusts to compete with Wyoming and South Dakota.

There is a long tradition of open access to court proceedings in our state and country. The Florida Supreme Court has held that civil proceedings in our state are "public events and adhere to the well established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988). Public trials are necessary to the judicial system's credibility in a free society. This legislation would make secret all court proceedings for certain family trusts, which often include large sums of money. Currently, a party seeking closure has the burden to show why closing public access is necessary. **HB 1363** and **SB 1304** would allow parties to trust proceedings to go to court in secret without ever showing closure is necessary. Florida judges are well-equipped to decide motions to seal proceedings based on the facts presented in each case. In a country that is founded on three separated branches of power to hold the others in check, how can the legislature demand that judges have such little discretion to open certain proceedings to the public? This has the look of a very slippery slope.

When asked, Rep. Fetterhoff could not name a single instance of a court refusing to seal trust proceedings and an individual being harmed by public access. This exemption is overbroad and lacks specificity. The ultrawealthy will be able to access Florida's courts in secret while all other party's will proceed in public. **HB 1363** passed the House Judiciary committee over 5 no votes. The Senate Rules Committee approved **SB 1304** 15-2.

## COURT RECORDS

### **HB 1413/SB 1526 Public Records/Annuity Contact Payees**

John Snyder (R-Palm City), Jim Boyd (R-Bradenton)

Exempts personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of the family members, dependents, and beneficiaries of such payee. A structured settlement is an arrangement for periodic payment of damages for personal injuries awarded in a settlement or judgment of a tort resolution. Exemption withholds only court files relating to the approval of a transfer of settlement payment rights. Records become public 6 months after a court order approving or denying the transfer application. The House Judiciary Committee unanimously approved **HB 1413**. The Senate unanimously approved **SB 1526**.

### **HB 197/SB 344 Public Records/Nonjudicial Record of the Arrest of a Minor**

David Smith (R-Winder Springs), Keith Perry (R-Gainesville)

Exempts and makes confidential the record of the arrest of a minor who has successfully

completed a diversion program for a misdemeanor or a felony, other than a forcible felony. The House unanimously approved **HB 197**. The Senate temporarily postponed consideration of **SB 344**.

### **SB 1846 Public Records/Respondent's Name**

Patt Maney (R-Fort Walton Beach), Aaron Bean (R-Jacksonville)

Makes confidential and exempts a respondent's name, at trial and on appeal, and all petitions or applications for voluntary and involuntary admission for mental health examinations or treatment (Baker Act) and for application or petitions for substance abuse treatment or assessment (Marchman Act). The bill unanimously passed the Senate Appropriations Committee.

## **LAW ENFORCEMENT + CRIMINAL JUSTICE RECORDS**

### **HB 1513 Public Records/Autopsy Reports of Child Victims of Domestic Violence**

Chuck Clemons (R-Jonesville)

Exempts and makes confidential the autopsy report of a minor whose death is related to an act of domestic violence by a family or household member. Allows a surviving parent who did not commit the act of domestic violence leading to the minor's death to view and copy the report. In addition, local, state, or federal agencies may access the report. A court, upon a showing of good cause, may order any person to view or copy the report. In a recent public records lawsuit against the Department of Children and Families, the court granted *in camera* review of records related to a minor's death which the Department argued were exempt. The autopsy of the child was critical to the court's decision to review the rest of DCF's files on the child and assess whether an exemption applied. Without public access to the autopsy and medical examiner's report, showing neglect was a contributing cause to the child's death, the court may not granted *in camera* review and analyzed DCF's records. The House unanimously passed **HB 1513**.

### **HB 773/HB 1045 Public Records/Law Enforcement Geolocation Information**

Matt Willhite (D-Wellington), Ed Hooper (R-Palm Harbor)

Exempts law enforcement geolocation information. Defines law enforcement geolocation information as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or vehicle. **HB 773** provides that information must be released to local, state, and federal government entities; to any person who seeks a petition in circuit court and shows good cause for access to the information; if requested in criminal, civil, or administrative proceedings upon a showing of good cause; and if law enforcement geolocation information is included in a uniform traffic citation, crash report, homicide report, arrest report, or any other official report by an agency. The Senate version is similar and requires release in the first three situations; **SB 1045** states that the exemption does not apply to specified records and other official reports issued by an agency. The House Judiciary Committee unanimously approved **HB 773**. The Senate passed **SB 1045**. Senator Lori Berman (D-Boynton Beach) was the sole no vote.

### **HB 873/SB 1204 Public Records/Execution Information**

Patt Maney (R-Fort Walton Beach), Doug Broxson (R-Pensacola)

Exempts identifying information or information that could reasonably lead to identification of a

person or entity participating in any aspect of an execution. Supporters say that this bill is needed because once the source of drugs used for carrying out executions is publicly known, it is difficult to procure drugs from the source. Pharmaceutical companies that make drugs to save lives are generally unhappy to learn that their products are being used to end lives. This legislation misleads both pharmaceutical companies and the public. In addition, states that have adopted similar exemptions have continued to face problems acquiring necessary drugs. Secrecy does not guarantee the Department of Corrections will be able to access these medications. The House Judiciary Committee approved **HB 873** 13-4. The Senate temporarily postponed hearing **SB 1204**.

### **SB 598 Public Records/Criminal Conflict and Civil Regional Counsel Office**

Dennis Baxley (R-Lady Lake)

**SB 596**, in part, authorizes an office of criminal conflict and civil regional counsel to register a license plate or decal under a fictitious name for counsel's use. **SB 598** exempts records relating to the registration application for a license plate or decal issued under a fictitious name. The Senate Appropriations unanimously approved **SB 598**.

## EDUCATION RECORDS

### **HB 7059 OGSR/Campus Emergency Response**

Reinstates exemption for campus emergency response plans and exemption for meetings that would reveal campus emergency response plans. The public necessity statement for the exemption stated that public access to emergency responses could hamper or disable a public institution's response to terrorism. However, universities and colleges cited the exemption to withhold information about COVID-19 response plans. The sponsor of the original bill, Rep. Byron Donalds (R-Naples), explained that the exemption was not intended to withhold pandemic response plans and encouraged schools to release the plans. Without access to COVID-19 response plans, students, their family members and faculty do not know whether colleges and universities are following their own plans or whether the plans are effective. Because the exemption withholds more records than necessary to achieve its stated purpose, FAF opposes reinstating the exemption without an amendment narrowing the exemption. The State Affairs Committee passed **HB 7059** 20-3.



## AGENCY RECORDS

### **HB 7043 OGSR/Information Submitted by Insurers/DFS**

Reinstates exemption for information relating to investigating and tracking insurance fraud submitted by insurers to the Department of Financial Services. The House State Affairs Committee unanimously approved the **HB 7043**.



## **SB 1042 Public Records/Registry of Persons with Special Needs**

Jason Brodeur (R-Lake Mary)

**SB 1040** permits a local law enforcement agency to develop and maintain a database, known as the “Special Persons Registry” of persons who have developmental, psychological, or other disabilities or conditions that may be relevant to interactions with law enforcement. Parents or guardians may enroll a person in the registry. **SB 1042** exempts and makes confidential all records relating to a person's enrollment in the Registry. Exempt information may be disclosed upon request to a law enforcement agency, a county emergency management agency, or a fire department. Law enforcement agencies and emergency responders may release the information with the consent of the person enrolled in the registry or their representative; in a medical emergency; by court order upon a showing of good cause; to another governmental agency; and in the interest of public safety to locate the enrollee or protect the enrollee's safety. The Appropriations Subcommittee on Health and Human Services unanimously approved **SB 1042**.

## **HB 1121/SB 1614 Public Records/Motor Vehicle Crashes/ Traffic Citations**

Chuck Brannan (R-Lake City), Gayle Harrell (R-Stuart)

Exempts and makes confidential crash reports that reveal the identity of parties involved in the crash. Redacted reports must be made available, upon request, to radio and television stations licensed by the FCC and newspapers qualified to publish legal notices. In its current form, the legislation allows the media to access reports and inform the public of crashes and detect crash patterns. Both bills impose civil penalties on parties who obtain a crash report or data and knowingly disclose or use the information for improper purposes. The penalties do not apply to tv and radio stations or newspapers. The House Commerce Committee unanimously approved **HB 1121**. The Senate Rules committee unanimously voted in favor of **SB 1614**.

## **HB 1565 Pub. Rec./Consumer Data Privacy**

Fiona McFarland (R-Sarasota)

**HB 9**, in part, authorizes the Department of Legal Affairs (“DLA”) to bring an action under the Florida Unfair or Deceptive Trade Practices Act related to unlawful uses of consumers’ personal information. **HB 1565** exempts and makes confidential all information received by the DLA pursuant to a notification of a violation of **HB 9** or an investigation by the DLA or a law enforcement agency. Exempt information may be released during an investigation to notify the public of a data breach or in the furtherance of the duties and responsibilities of an investigating agency. The exemption does not apply once an investigation is complete or ceases to be active. However, the following information remains exempts after the completion of an investigation: information to which another public records exemption applies; personal information; a computer forensic report; information that would reveal weaknesses in data security; and information that would disclose proprietary information. The House Judiciary committee unanimously approved **HB 1565**.

## **HB 7045 OGSR/Office of Insurance Regulation\***

Reinstates Fla. Stat. § 663.416(2), exempting personal identifying information of customer or prospective customer of an international trust entity appearing in the books and records of an International Trust Company Representative Office (“ITCRO”), an off-shore trust company with

offices in Florida, and Fla. Stat. § 663.540(2), exempting personal identifying information of customers of an international trust entity appearing in the books of a qualified limited service affiliate held by the Office of Financial Regulation. Reinstates Fla. Stat. § 655.057(1), which exempts and makes confidential records and information relating to an investigation by OFR until the investigation is completed or ceases to be active. Reinstates exemption for reports of examinations, including working papers, prepared by the OFR or any state or federal agency responsible for regulating financial institutions. Reinstates exemption for confidential documents supplied to the OFR by other state or federal government agencies.

The staff analysis for the Senate version, **SB 7020**, notes that the OFR has never received a request for information made exempt by sections 663.416 and 663.540. Based on the OFR's statements, FAF recommends sunseting these two provisions of the statute. No public purpose is served by maintaining these exemptions. The House State Affairs Committee unanimously approved the bill.

### **HB 1445 Pub. Rec./Dependent Eligibility Verification Services**

Mike Giallombardo (R-Cape Coral)

Reinstates exemption for records collected by the Department of Management Services for purposes of dependent eligibility verification services conducted for the state group insurance program. Adds to the list of documents that may be requested to verify a dependent's eligibility. The State Affairs Committee unanimously approved **HB 1445**.

### **HB 7057 Pub. Rec. and Meetings/Cybersecurity**

Mike Giallombardo (R-Cape Coral)

Exempts and makes confidential coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems or data of an agency. Also exempts and makes confidential information



relating to critical infrastructure, defined as existing and proposed information technology and operational technology systems and assets, which if destroyed or disabled, would negatively affect security, economic security, public health or safety. Exempts and makes confidential network schematics, hardware or software configurations, or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity breached. Finally, closes meetings at which confidential or exempt

information is discussed. Agencies may report information about cyber security incidents in the aggregate. The State Affairs Committee unanimously approved **HB 7057**.

## HEALTH RECORDS

### **HB 1523/SB 590 Public Records and Meetings/Professional Counselors Licensure Compact**

Traci Koster (R-Safety Harbor), Ana Maria Rodriguez (R-Doral)

**HB1521/SB 358** create a professional counselors licensure compact, permitting licensed professional counselors to apply to practice in another member state. Member states must submit licensure, adverse action, and investigative information on all licensed professional counselors to a shared database created pursuant to the compact. **HB 1523/SB 590** exempt a counselor's personal identifying information, other than the counselor's name, licensure status and number. The House version exempts meetings of the Counseling Compact Commission, the executive committee of the Commission, or other committees of the commission at which matters exempted from federal and state law are discussed. **SB 590** is more specific. It exempts meetings of the Commission or executive committee if the chair of the commission declares the specific reasons it is necessary to close the meeting to discuss enumerated topics: pending litigation; negotiations of contracts under competitive solicitation; disclosure of trade secrets or commercial information that is privileged or confidential; records made exempt under the bill; and matters specifically exempted by federal or compact member state law. The House unanimously approved **HB 1523**. The Senate temporarily postponed **SB 590**.

### **HB 955 Pub. Rec. and Meetings/Psychology Interjurisdictional Compact**

Christine Hunschofsky (D-Coconut Creek)

HB 953 creates the Psychology Interjurisdictional Compact, which permits psychologists to practice in member states. Member states join the Psychology Interjurisdictional Compact Commission and provide information to a shared database. **HB 955** exempts the personal identifying information, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated licensure information system. Meetings of the Psychology Interjurisdictional Compact Commission are exempt from the Sunshine Law if the commission must discuss matters exempt by federal or state statutes. The House placed **HB 955** on the Special Order Calendar for second reading by the chamber (bills must be read three times on separate days to be passed, unless waived by 2/3 majority). The bill is set for third and final reading Friday, Feb. 25.