

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/CS/HB 1269	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Government Operations Subcommittee; Insurance & Banking Subcommittee; McBurney	113 Y's	0 N's
COMPANION BILLS:	CS/CS/CS/HB1267; CS/CS/SB 1320	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1269 passed the House on April 30, 2014, as CS/CS/SB 1320.

The bill creates a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to family trust companies (FTCs), licensed FTCs, and foreign licensed FTCs. The bill is linked to SB 1238. The linked bill authorizes families to form and operate any of these three family trust company types, subject to varying regulatory requirements. In general, a FTC is an entity which provides trust services similar to those that can be provided by an individual or financial institution. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A Florida FTC must be owned exclusively by family members and may not provide fiduciary services to the public.

The bill treats the following as confidential and exempt from public disclosure: personal identifying information appearing in records relating to a registration, an application, annual certification, or examination of any FTC type, reports of examinations, operations, or conditions (including working papers), which the bill defines; names of shareholders or members of any FTC type; and information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government. The bill authorizes release of confidential and exempt information to specified persons, and provides a criminal penalty for willful disclosure of such information.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

This bill and CS/CS/CS/HB 1267 were approved by the Governor on June 13, 2014, ch. 2014-97 and ch. 2014-102, L.O.F., and will become effective October 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

CS/SB 1238 – Family Trust Companies

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes (chs. 655-667, F.S., “the Codes”), which includes the regulation of trust companies, which are for-profit business organizations authorized to engage in trust business and to act as a fiduciary for the general public. Section 655.057, F.S., exempts certain records relating to the OFR’s investigations and examinations of trust companies (and other financial institutions) from public records disclosure.

A few states allow families to form and operate *private or family trust companies (FTCs)*, which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private FTCs are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of FTCs

CS/SB 1238 creates the Florida Family Trust Company Act to authorize families to form and operate any of these three FTCs in this state, subject to varying regulatory requirements. The bill prohibits all three FTC types from advertising and conducting trust business with the public. CS/SB 1238 authorizes the OFR to investigate applications for licensure or registration, require annual certifications and other regulatory filings from licensees and registrants, and to conduct periodic examinations of all three family trust company types.

Effect of the Bill

The bill, which is linked to the passage of SB 1238, creates s. 662.148, F.S., a public records exemption for:

- Any personal identifying information appearing in records relating to a registration, an application, or annual certification of any FTC types;
- Any personal identifying information appearing in records relating to an examination of any FTC type;
- Any personal identifying information appearing in reports of examinations, operations, or conditions of any FTC type;
- Any portion of a list of names on the shareholders or members of any FTC type;
- Information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government; and
- An emergency cease and desist order issued under s. 662.143, F.S., until the emergency order is made permanent, unless the OFR finds that such confidentiality will result in substantial risk of financial loss to the public.

The bill defines the terms “reports of examinations, operations, or conditions” and “working papers.”

The bill authorizes release of the confidential and exempt information:

- To the authorized representative of the family trust company, licensed family trust company, or foreign licensed family trust company under examination;
- To a fidelity insurance company, upon written consent of the board of directors or its managers;
- To an independent auditor, upon written consent of the board of directors or its managers;
- To a liquidator, receiver, or conservator for the trust company in the event of the appointment of a liquidator, receiver, or conservator;

- To any other state, federal, or foreign agency responsible for the regulation or supervision of the trust company;
- To a law enforcement agency in the furtherance of its official duties and responsibilities;
- To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity; and
- Pursuant to a legislative subpoena.

The bill provides that it does not prevent or restrict the publication of certain information. Further, the bill provides that it is a third-degree felony for willful disclosure of such confidential and exempt information.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide protection for high net worth families' assets, as well as the methodologies and practices of their family-owned businesses, which could otherwise be subject to security risks and criminal activity.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on OFR, because OFR staff would be responsible for complying with public records requests and may require training related to the creation of the public records exemption. In addition, OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of OFR.