

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1304

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Public Records/Trust Proceedings

DATE: February 9, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1304 creates a public records exemption for certain trust proceedings and other filings held by a court. The bill provides that, in trust proceedings in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party, the identities of those who establish, administer, or benefit from a trust and any information relating to the trust are confidential and exempt from public inspection and copying. The court may not release to the public any of the sealed documents or information contained therein but must make them available to the settlor, a fiduciary or beneficiary and his or her attorney, or any other person if the court determines there is a compelling need for releasing the information requested.

This exemption is not subject to the Open Government Sunset Review Act because it applies solely to judicial branch records.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect July 1, 2022.

II. Present Situation:

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another

person. A trust arises as a result of a manifestation of an intention to create it.¹ Trusts are governed by statute.²

Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. A family may form and operate private or family trust companies that provide trust services similar to those that can be provided by an individual trustee or a financial institution. However, these family trust companies are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies 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. In 2014, Florida statutes were amended to authorize the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.³ The Florida Office of Financial Regulation may investigate applications for licensure or registration, require annual renewals and other regulatory filings from licensees and registrants, and conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

The books and records of a family trust company, licensed family trust company, or foreign licensed family trust company are confidential, with limited exceptions.⁴ Willful violation of the confidentiality is a third degree felony.⁵

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁶ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.⁷

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.⁸ Chapter 119,

¹ 55A Fla. Jur 2d Trusts § 1.

² *See generally*, ch. 736, F.S.

³ Chapter 2014-97, L.O.F., creating chapter 662, F.S.

⁴ Section 662.146, F.S.

⁵ Section 662.146(2)(c), F.S.

⁶ FLA. CONST. art. I, s. 24(a).

⁷ *Id.*

⁸ *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

F.S., known as the Public Records Act, provides requirements for public records held by executive agencies⁹. Chapter 119, F.S., does not apply to judicial branch records.¹⁰

Public Access to records of the judicial branch is governed by Florida Rule of Judicial Administration 2.420.¹¹

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹² (the Act), prescribe a legislative review process for newly created or substantially amended¹³ public records or open meetings exemptions, with specified exceptions. The Act does not apply to an exemption that applies solely to the State Court System.¹⁴

III. Effect of Proposed Changes:

This bill creates a public records exemption for certain trust proceedings and other filings held by a court. The bill provides that, in trust proceedings in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party, the identities of those who establish, administer, or benefit from a trust and any information relating to the trust are confidential and exempt from article I, section 24(a) of the State Constitution and must be protected in any court proceeding or filing related to the trust. The court must seal any document filed with the court in the trust proceeding, including, but not limited to, the instrument on which the trust is based; any petitions, briefs, or inventories; any statement or report filed by a fiduciary; any court orders; and any other document in the court case file.

The court may not release to the public any of the sealed documents or information contained therein, but shall make them available to the following individuals:

- The settlor;
- Any fiduciary for the trust;
- Any beneficiary of the trust;
- An attorney for the settlor, a fiduciary, or a beneficiary of the trust; and
- Any other person if, upon a showing of a specific interest in the trust or a transaction relating to the trust or an asset held or previously held by the trust, the court determines there is a compelling need for releasing the information requested.

This bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

⁹ Section 119.011(2), F.S., defines “agency to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁰ *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995).

¹¹ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

¹² Section 119.15, F.S.

¹³ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁴ Section 119.15(2)(b), F.S.

The Legislature finds that it is a public necessity that trust proceedings involving family trust companies, licensed family trust companies, or foreign licensed family trust companies be made confidential and exempt from s. 24(a), Article I of the State Constitution. Public disclosure in trust proceedings of information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company would vitiate other protections granted by law to such companies and their constituents. In addition, trust proceedings often involve large sums of money or vulnerable people who could be targeted for exploitation or abuse. Public disclosure of sensitive family and financial information in trust proceedings can result in specific harm to beneficiaries and other interested parties in such cases. Therefore, the Legislature finds that the need to protect the identities of beneficiaries of trusts and the sensitive financial information contained in such proceedings is sufficiently compelling to override the state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for certain court records related to a family trust company, licensed family trust company, or foreign licensed family trust company, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect (i) information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company; and (ii) sensitive family and financial information in trust proceedings.

The bill makes exempt from public inspection and copying requirements the identities of those who establish, administer, or benefit from a trust and *any* information relating to the trust in a trust proceeding in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party. “*Any information* related to the trust” seems to reach a broad range of topics beyond that necessary to accomplish the stated purpose—protecting sensitive family and financial information. Thus, the exemption may sweep too broadly such that it prohibits access to records beyond the stated purpose of the law.¹⁵

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

¹⁵ See *Halifax Hosp. Med. Ctr. v. News-Journal Corp.*, 724 So. 2d 567, 569-70 (Fla. 1999) (holding that an exemption as to “strategic plans” was unconstitutional under article I, section 24(c) where there was no “justification for the breadth of the exemption”).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 662.1465 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Technical Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 31, 2022:

The committee substitute narrowed the exemption by clarifying that it only applies to the three forms of family trust companies, not to all trusts.

- B. **Amendments:**

None.