

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 Judiciary

BILL: CS/SB 1526

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Public Records/Annuity Contract Payees

DATE: February 4, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Schrader</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | <u>Bond</u> | <u>Cibula</u> | <u>JU</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1526 creates a public records exemption for the personal identifying information and annuity contract numbers of a payee of a structured settlement, and the names of family members, dependents, and beneficiaries of such payee, contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights. Such records are exempt until six months after a final judgment is entered on the transfer application.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Structured Settlements

A structured settlement is an agreement for the periodic payment of damages for personal injuries, the payments of which are established by a settlement or judgment in resolution of a tort claim.¹ This arrangement typically involves one party paying a lump-sum premium to an insurance company to purchase an annuity in the name of the injured victim (the payee). Once the annuity is purchased, the insurance company begins to make periodic payments to the payee for a negotiated period of time.

¹ See s. 626.99296(2)(m), F.S.

Instead of making the payments itself, the insurance company may instead decide to assign its payment obligations to a structured settlement company. In exchange for accepting its new payment obligations, the structured settlement company typically receives from the insurance company a lump-sum payment equivalent to the present value of the future payments that are owed to the payee.² In order to obtain the necessary liquidity to make its newly-obligated periodic payments, the structured settlement company may use this lump-sum to purchase an annuity from a life insurance company.³

After the establishment of a structured settlement, the payee's financial circumstances may change. For example, the payee's periodic payments may be insufficient to pay for an immediate, large financial need, or the payee may see the benefit of a one-time cash infusion to alleviate an incurred obligation. As such, instead of receiving payments under a structured settlement plan, the payee may wish to transfer his or her rights to payments to another organization—known as a transferee—in exchange for a lump sum payout of all or part of the structured settlement. In 2001, the Legislature created s. 626.99296, F.S., to protect recipients of structured settlements during the transfer process.⁴ Fundamentally, the statute requires such transfers to receive prior court approval.⁵ This approval must be conditioned upon statutorily-enumerated factors, including the payee establishing that the transfer is in their own best interests—taking into account the welfare and support of the payee's dependents.⁶

The transferee contracting to receive structured settlement rights must, at least 20 days before the scheduled hearing on an application for such a transfer, file with the court (and provide to all interested parties) a notice of the proposed transfer and the application for its authorization.⁷ Interested parties in this circumstance includes:

- The payee;
- The current party obligated to make continuing periodic payments to the payee;
- An insurer that has issued an annuity contract to be used to fund these periodic payments;
- Any beneficiary irrevocably designated under said annuity contract to receive payments following the payee's death (or, if such designated beneficiary is a minor, the designated beneficiary's parent or guardian); and
- Any other party to the structured settlement who has continuing rights or obligations to receive or make payments pursuant to said settlement.

The notice must include:

- A copy of the transferee's application to the court;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;

² Gregg D. Polsky and Brant J. Hellwig, *Taxing Structured Settlements*, 51 B.C. L. REV. 39, 41-2 (January 2010).

³ *Id.*

⁴ Section 626.99296, F.S.

⁵ *Id.* at subsection (3); and *Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275, 1276-77 (Fla. 4th DCA 2006) (affirming lower court decision to deny petition, noting that “[t]ransfers of structured settlement rights are regulated by statute and court approval is required before a transfer may go forward.”)

⁶ Section 626.99296(3), F.S.

⁷ *Id.* at (4).

- A statement that interested parties may support, oppose, or otherwise respond to the transferee's application, in person or by counsel, by submitting written comments to the court or by participating in the upcoming hearing; and
- The time and place of the hearing and the manner in which, and the time by which, a written response to the application must be filed in order to be considered by the court.

2016 Revisions to Structured Settlement Law

In 2016, the Legislature revised s. 626.99296, F.S., for the purpose of improving the protection of recipients of structured settlements. As part of these revisions, s. 626.99296, F.S., expanded the information that must be provided to the court about the payee in a transfer application. This information includes:⁸

- The payee's name, age, and county of domicile and the number and ages of the payee's dependents;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;
- An explanation of reasons as to why the payee is seeking approval of the proposed transfer; and
- A summary of each of the following:
 - Any transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer agreement.
 - Any transfers within the 3 years preceding the date of the transfer agreement made by the payee to any person or entity other than the transferee or an affiliate, or an assignee of a transferee or an affiliate, to the extent such transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee.
 - Any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, for which an application was denied within the 2 years preceding the date of the transfer agreement.
 - Any proposed transfers by the payee to any person or entity other than the transferee, or an assignee of a transferee or an affiliate, to the extent such proposed transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee, for which applications were denied within the year preceding the date of the transfer agreement.

Structured Settlement Transfer Fraud

The large amount of personal and financial information about the payee, and, potentially, information about the payee's dependents, that must be submitted to a court to approve a structured settlement transfer may increase the risk of such persons being targeted by fraud relating to the transfer. The potential for such fraud, and the incentives for fraud, is increased by the revelation that:

- The payee potentially has a substantial sum of money due to him or her, with the specified amount due to them contained within the transfer agreement submitted to the court;

⁸ *Id.* at (4)(d).

- The payee may be experiencing a financial hardship and have an immediate need for funds (s. 626.99296(4)(d), F.S., requires the submission of an explanation of reasons as to why the payee is seeking approval of the proposed transfer);⁹
- The payee may have recently experienced a serious negative life event, such as a serious injury or the death or serious injury of a loved one, (which could be the reason for the tort claim that gave rise to the structured settlement to begin with);¹⁰ and
- A transfer of funds is imminent.

Fraudulent actors, and other companies engaging in misleading marketing tactics, are able to search court records looking for orders and other information relating to the transfer of a structured settlement. Using the substantial publicly available information, such a person can approach a payee with a customized solicitation via mail, email, text message, or other medium, that appears to be from a legitimate source (such as a court official or representative of the transferee). The person can then engage with the payee and obtain all, or a portion of, that payees structured settlement through fraud or deceit.

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹¹ 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.¹²

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.¹³ Florida Rule of General Practice and Judicial Administration 2.420 governs public access to judicial branch records.¹⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

⁹ Persons having significant debt concerns, experiencing job loss, or having had a negative change in financial status are more likely to be victims of fraud. See: Federal Trade Commission, *Consumer Fraud in the United States* (March 2013), available at: https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf, and D Shadel, K Pak & J Sauer 2014, *Caught in the scammer's net: Risk factors that may lead to becoming an internet fraud victim*, AARP RESEARCH (2014), available at: https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2014/Caught-Scammer-Net-Indiana.doi.10.26419%252Fres.00076.007.pdf.

¹⁰ Persons having experienced recent serious negative life events, such as a serious injury or the death or serious injury of a loved one, are more likely to be victims of fraud. *Id.*

¹¹ FLA. CONST. art. I, s. 24(a).

¹² *Id.*

¹³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

¹⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁶

General exemptions from the public records requirements are contained in the Public Records Act.¹⁷ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁸

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁹ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.²⁰ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.²¹

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act²² (the Act), prescribe a legislative review process for newly created or substantially amended²³ public records or open meetings exemptions, with specified exceptions.²⁴ The Act does not apply to an exemption that applies solely to the State Court System.²⁵

Public Records and the Judicial Branch

In *Locke v. Hawkes*, 595 So. 2d 32, at 36-37 (Fla. 1992), the Florida Supreme Court found that the Legislature, and its members, are not an “agency” as specified in the Public Records Act. Thus, the Public Records Act would not apply to records of the Legislature. Further, looking at the history of the legislation, the court found that if the Legislature intended to include itself

¹⁵ FLA. CONST. art. I, s. 24(c).

¹⁶ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹⁷ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁸ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁹ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁰ *Id.*

²¹ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

²² Section 119.15, F.S.

²³ 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.

²⁴ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁵ Section 119.15(2)(b), F.S.

within the definition of ch. 119, F.S., it would have done so (but it did not).²⁶ Instead, the court found that the Public Records Act only applied to “executive branch agencies and their officers and to local governmental entities and their officers;” entities over which the Legislature has some means of control. As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”²⁷ Similarly, as with similar reasoning used regarding the Legislature in *Locke*, the Public Records Act would not also apply to judicial records.²⁸

However, the judicial branch is required to maintain access to public records pursuant to article 1, section 24(a) of the Florida Constitution.²⁹ To meet its constitutional obligation, the judicial branch adopted Florida Rule of General Practice and Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records” which states that the public is to have access to all records of the judicial branch of government, except as provided in that rule. These exceptions include:

- All records made confidential under the Florida and United States Constitutions and Florida and federal law; and

²⁶ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

²⁷ *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 11, (Vol. 43, 2021 Ed.), *available at* [http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/\\$file/sunshinemanual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/$file/sunshinemanual.pdf).

²⁸ *See Times*, *supra* note 27, which states that “chapter 119 does not apply to judicial records nor to the clerk of the circuit court in his capacity as the court’s record keeper.”

²⁹ *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 27. Even before Article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). *See also* William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

- All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission.

The judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.³⁰

Public Record Exemptions for Certain Court Records and Files

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers³¹ and bank account numbers,³² contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of General Practice and Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in several places including:

- Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii), regarding Social Security, bank account, charge, debit, and credit card numbers;
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xiii), regarding protected information regarding victims of child abuse or sexual offenses; and
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xxiii), in formation that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.0714(1), F.S., to make exempt from public records disclosure requirements, if not already closed by order of a court, the following information in a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights:

- Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2), F.S.; and
- The names of family members, dependents, and beneficiaries of such a payee.

The bill limits this exemption to the pendency of the transfer proceeding and for six months after the final order approving, or not approving, the transfer is entered. The section also provides that this new exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will be repealed, unless saved from repeal by the Legislature, on October 2, 2027.

Section 2 of the bill provides the public necessity statement, required pursuant to article I, section 24(c) of the State Constitution, for the public records exemption. It states, in part, that recipients of structured settlements have been targets of criminal and fraudulent acts based upon

³⁰ See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). The court in *Florida Pub. Co.*, did, however, decline to rule on whether the courts *must* adopting legislative statements or expressions of policy as part of rules governing matters within the jurisdiction of the judiciary. Rather, the court, only ruled that it is not precluded from doing so.

³¹ Section 119.0714(1)(i), F.S.

³² Section 119.0714(1)(j), F.S.

publicly available identifying information. Further, it states that protecting the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information.

Section 3 of the bill specifies an effective date of the bill of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 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 the protection of personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 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, s. 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 personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee. This bill exempts only this information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 25, 2022:

The CS narrows the proposed public records exemption to include only court files relating to a proceeding for the approval of the transfer of structured settlement payment rights. It also limits the duration of the exemption to be during the pendency of the transfer proceeding and for six months after a final judgment on the transfer. Finally, the CS revises the public necessity statement for the exemption.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
