

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 360

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families and Elder Affairs Committee and Senator Stargel

SUBJECT: Public Records/Claim Settlement on Behalf of a Ward or Minor

DATE: April 17, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 360 creates an exemption from public records requirements relating to the settlement of a claim on behalf of a ward or minor. Any document associated with the settlement is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. The court may order partial or full disclosure of the confidential and exempt record to specified individuals upon a showing of good cause.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The fiscal impact of the bill on state and local government is expected to be minimal.

**II. Present Situation:**

**Settlements in Guardianship Cases**

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable.

However, a minor cannot settle a case valued in excess of \$15,000 without court approval.<sup>1</sup> The court approval process requires a petition setting forth the terms of the settlement and an order is eventually entered that also may contain the terms of settlement, or may refer to the petition.<sup>2</sup> The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

### **Public Records Requirements**

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>3</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>4</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act<sup>5</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>6</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup>

Only the Legislature may create an exemption to public records requirements.<sup>8</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>9</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

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<sup>1</sup> Section 744.301(2), F.S.

<sup>2</sup> Section 744.387, F.S.

<sup>3</sup> FLA. CONST. art. I, s. 24(a).

<sup>4</sup> *Id.*

<sup>5</sup> Chapter 119, F.S.

<sup>6</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "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." Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), review denied 575 So.2d 683 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen. Fla. 85-62 (1985).

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

substantive provisions<sup>10</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>11</sup>

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>12</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>13</sup>

### **Court Records**

Florida courts have consistently held that the judiciary is not an “agency” for purposes of ch. 119, F.S.<sup>14</sup> However, the Florida Supreme Court found that “both civil and criminal proceedings in Florida are public events” and that the court will “adhere to the well-established common law right of access to court proceedings and records.”<sup>15</sup> There is a Florida constitutional guarantee of access to judicial records.<sup>16</sup> The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.<sup>17</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward’s or minor’s claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian, the guardian’s attorney, the ward, unless the ward is a minor or has been determined to be totally incapacitated, and the ward’s attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that the guardianship report or any court record relating to the settlement of a claim may also be disclosed to the guardian ad litem, if one has been appointed, related to the settlement, to the ward if he or she is 14 years of age or older and has not been declared totally incapacitated, the minor if he or she is at least 14 years of age, and to the attorney representing the minor. The record may also be disclosed as ordered by the court.

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<sup>10</sup> *Id.* The bill, however, may contain multiple exemptions that relate to one subject.

<sup>11</sup> FLA. CONST. art. I, s. 24(c).

<sup>12</sup> Section 119.15, F.S.

<sup>13</sup> Section 119.15(3), F.S.

<sup>14</sup> See *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

<sup>15</sup> See *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988).

<sup>16</sup> FLA. CONST. art. I, s. 24(a).

<sup>17</sup> FLA. CONST. art. I, ss. 24(c) and (d).

**Section 2** provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records.

**Section 3** provides that the bill will take effect on the same date as SB 318 or similar legislation takes effect if such legislation is adopted in the same session. As filed, SB 318 has an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **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 newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to certain settlements, and therefore it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption related to certain settlements, and it includes a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to certain settlements. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

##### **C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices 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 the court system and clerks. The Office of the State Courts Administrator indicates that SB 360 will require the courts to make a determination as to whether good cause exists to release a guardianship report or record related to the settlement of a claim and this may result in an increase in judicial workload. The extent of such workload increase is not known, but it is expected to be manageable within existing resources.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Open Government Sunset Review Act is not applicable to an exemption that applies solely to the State Court System.<sup>19</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following s. 744.3701 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

**CS/CS by Governmental Oversight and Accountability on April 7, 2015:**

The committee substitute amends section 3 of the bill and provides that the bill will become effective the same date that SB 318 or similar legislation takes effect.

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<sup>18</sup> Office of the State Courts Administrator 2015 Judicial Impact Statement dated April 4, 2015, on file with the Governmental Oversight and Accountability Committee.

<sup>19</sup> Section 119.15(2), F.S.

**CS by Children, Families on February 19, 2015:**

The Committee Substitute:

- Clarifies that it is the court records relating to the settlement of a ward's or minor's claim that are confidential and exempt.
- Adds the bill number of the linked bill.

**B. Amendments:**

None.

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

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