

**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 Appropriations Committee on Criminal and Civil Justice

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BILL: CS/SB 1652

INTRODUCER: Judiciary Committee and Senator Grall

SUBJECT: Public Records/Pleading, Request for Relief, or Other Document Stricken by a Court

DATE: April 9, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1652 creates a public records exemption for certain information in a document stricken by a court in a noncriminal case. For the exemption to apply, the court must find that the matter is immaterial, impertinent, or sham and would defame or cause unwarranted damage to an individual's good name or reputation or jeopardize his or her safety. This kind of information often appears in court proceedings involving a "vexatious litigant." A vexatious litigant is a person who has filed multiple lawsuits that are meritless; however, these individuals are also known to submit documents that are considered scandalous or harassing.

The bill also contains a statement of public necessity as required by law. The statement recounts that it is a public necessity that an immaterial, impertinent, or sham matter that has been stricken by a court in a noncriminal case be made confidential and exempt from public records laws. This is necessary because the matter would cause unwarranted damage and ongoing harm to an individual and perhaps jeopardize the individual's safety. The potential harm that could result from the release of the stricken matter outweighs the public benefit that could be derived from the information if it were disclosed.

The bill is expected to have an insignificant negative fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill will take effect July 1, 2025.

## II. Present Situation:

### Vexatious Litigant

A “vexatious litigant” is defined in general terms to be a person or entity who, in the immediate past 5 years, has commenced, prosecuted, or maintained, pro se,<sup>1</sup> five or more civil actions in any court in the state except in small claims court, and all of the cases were decided adversely against the person or entity.<sup>2</sup>

In 2000, the Florida Vexatious Litigant Law was enacted to deter vexatious litigants from repeatedly filing lawsuits that were determined to be frivolous.<sup>3</sup> These filings consume a considerable amount of the court system’s time as well as the time and financial resources of the person being taken to court. Although the law has been challenged in court as denying a person access to the court system as guaranteed in the State Constitution,<sup>4</sup> the law has been upheld on appeal as being constitutional.<sup>5</sup> Courts have noted that, while the State Constitution does provide a right of access to the courts, the right is not without limits and may be properly restricted when a litigant abuses the legal process with repeated and frivolous pleadings.<sup>6</sup>

In 2021, an initial “Workgroup on Sanctions for Vexatious and Sham Litigation” was established by the Chief Justice of the Florida Supreme Court to make recommendations on rule and statutory amendments that would effectively address vexatious or sham litigation in noncriminal cases.<sup>7</sup> Three years later, another workgroup was established. In 2024, the Chief Justice of the Florida Supreme Court established the “Workgroup on Vexatious Litigants.”<sup>8</sup> The purpose of the workgroup was to recommend ways the law could be improved and address the public disclosure of “improper matters stricken from noncriminal court filings” that could defame individuals and harm their reputations. Among the recommendations made by the workgroup was the recommendation to create a public records exemption for the damaging material described above that could harm, defame or endanger a person in a noncriminal action filed by a vexatious litigant.<sup>9</sup>

### Public Records Requirements

The State Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the state, except for records

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<sup>1</sup> A pro se litigant is someone who represents himself or herself in a judicial proceeding without a lawyer. BLACK’S LAW DICTIONARY (12th ed. 2024).

<sup>2</sup> See s. 68.093, F.S. The law has not been amended since it was enacted 25 years ago.

<sup>3</sup> Ch. 2000-314, s. 1, Laws of Fla.

<sup>4</sup> FLA. CONST. art. I, s. 21.

<sup>5</sup> *Smith v. Fisher*, 965 So. 2d 205 (Fla. 4th DCA 2007) and *Brown v. Miami-Dade County*, 319 So. 3d 81 (Fla. 3rd DCA 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *In re: Workgroup on Sanctions for Vexatious and Sham Litigation*, Fla. Admin Order No. AOSC21-62 (Dec. 9, 2021) (<https://supremecourt.flcourts.gov/content/download/813326/file/AOSC21-62.pdf>).

<sup>8</sup> *In re: Workgroup on Vexatious Litigants*, Fla. Admin. Order no. AOSC24-19 (April 26, 2024), (<https://supremecourt.flcourts.gov/content/download/2424918/file/AOSC24-19.pdf>).

<sup>9</sup> *Workgroup on Vexatious Litigants, Final Report and Recommendations*, The Florida Supreme Court, (Sept. 6, 2024) <https://www.flcourts.gov/content/download/2446359/file/Workgroup%20on%20Vexatious%20Litigants%20Final%20Report%209-6-24.pdf>.

exempted under the Constitution. This right of access to inspect or copy records encompasses records of the judicial branch.<sup>10</sup>

### ***Separation of Powers and the Judicial Branch***

However, under the doctrine of separation of powers found in Article II, section 3 of the State Constitution, the Florida Supreme Court has the authority to regulate the public's access to judicial records and bears the responsibility to protect records of the judicial branch.<sup>11</sup> To implement this "inherent authority," the Court adopted what is now referred to as Rule of General Practice and Judicial Administration 2.420.<sup>12</sup> The rule governs public access to judicial branch records and provides which records are exempt from the public.

In its report, the workgroup noted that under existing law, "even the most inflammatory and palpably false allegations struck by the court remain in the public record." The workgroup further noted that its authority to seal records has its limitations and concluded that the "only tool available to prevent the ongoing publication" of the defamatory remarks was a public records exemption.<sup>13</sup> Accordingly, the substance of that conclusion is contained in this bill.

### **Open Government Sunset Review Act – Exceptions for the Judicial Branch**

The "Open Government Sunset Review Act" contained in s. 119.15, F.S., provides for the review and repeal or reenactment of an exemption in the 5th year after the enactment of a new exemption or substantial amendment of an existing exemption. However, these requirements do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System. As such, public records exemptions enacted by the Legislature which apply solely to the State Court System are not subject to the 5 year review.

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

The bill exempts from public disclosure any matter in a pleading, a request for relief, or other document that has been stricken by the court in a noncriminal case pursuant to the rules of court if the court finds the matter:

- Is immaterial, impertinent, or sham; and
- Would defame an individual or cause unwarranted damage to that person's good name or reputation or jeopardize his or her safety.

The bill contains a statement of public necessity that must accompany a public records exemption. The statement recounts that it is a public necessity that an immaterial, impertinent, or sham matter that would defame or cause unwarranted damage to the good name or reputation of

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<sup>10</sup> FLA. CONST. art. I, s. 24.

<sup>11</sup> See *supra* note 9 which cites *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988) and *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

<sup>12</sup> See *supra* note 9. The rule is found here: <https://www.flcourts.gov/content/download/219096/file/RULE-2-420-Jan2014.pdf>.

<sup>13</sup> *Workgroup on Vexatious Litigants, Final Report and Recommendations*, The Florida Supreme Court, 42-43 (Sept. 6, 2024), <https://www.flcourts.gov/content/download/2446359/file/Workgroup%20on%20Vexatious%20Litigants%20Final%20Report%209-6-24.pdf>.

an individual or jeopardize his or her safety, and that has been stricken by a court in a noncriminal case be made confidential and exempt from public record provisions. This is necessary because the stricken matters would cause unwarranted and ongoing harm if they remain in the public record. These matters also serve no identifiable public purpose. The potential harm that could result from the release of the information outweighs the public benefit that could be derived from the information if it were disclosed.

The bill takes effect July 1, 2025.

#### **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 bill creating or expanding an exemption to the public records requirements. This bill creates a new exemption, therefore, the bill requires a two-thirds vote of each chamber for enactment.

###### **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 that an exemption to the public records requirements be no broader than necessary to accomplish the stated purpose of the law. This bill exempts from the public records requirements only specific matters in noncriminal cases. 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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the financial harm to individuals which results from defamatory information in court files.

C. Government Sector Impact:

Judges and court clerks may have additional workload resulting from the need to redact information in filed documents. However, the workload can likely be absorbed within existing resources.

**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 Judiciary on March 19, 2025:**

The committee substitute differs from the underlying bill by:

- Replacing the term “information in a document” with the expanded term “matter in a pleading, a request for relief, or other document ... pursuant to the rules of court.”
- Replaces the word “untrue” with the word “sham,” which is a term of art having a specific meaning.
- Deletes the retroactive provision.
- Deletes the 5-year legislative review process under the Open Government Sunset Review.
- Changes the effective date to July 1, 2025, and removes the reference to the bill being tied to SB 1650.

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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