

Committee on Judiciary

CS/CS/CS/HB 5 — Guardianship Proceedings

by Judiciary Committee; Justice Appropriations Subcommittee; Civil Justice Subcommittee;
Rep. Passidomo and others (CS/CS SB 318 by Appropriations Committee; Judiciary Committee;
and Senators Diaz de la Portilla, Detert, Sobel, and Stargel;)

This bill revises the power of attorney and guardianship statutes to add due process protections to guardianship proceedings, preserve and protect a ward's quality of life, and clarify some ambiguities in current law. The specific statutory changes by the bill:

- Generally give an alleged incapacitated person and his or her attorney at least 24-hours advance notice of a hearing to appoint an emergency temporary guardian.
- Limit the automatic suspension of an alleged incapacitated person's power of attorney held by a close family member to circumstances in which neglect or wrongdoing is alleged.
- Ensure that alleged incapacitated persons who in fact have capacity are not responsible for paying the fees of an examining committee.
- Generally, require courts to explain why a particular guardian is chosen for a ward if the court does not use a rotation system to select guardians.
- Require a court to specify in its orders whether or to what extent a guardian's authority supersedes the authority of a health care surrogate. The bill also requires a guardian who displaces a ward's surrogate to follow any instructions the ward made in the designation of health care surrogate.
- Allow a court to appoint the office of criminal conflict and civil regional counsel to act as a court monitor if the ward is indigent.
- Provide that certain for-profit corporations are qualified to act as a guardian of a ward.
- Establish a code of prohibited conduct for guardians and a code of performance standards for guardians.
- Require a guardian to give a ward as much freedom as possible and assist a ward in regaining capacity.
- Allow family members of a ward to petition a court if a guardian is denying visitation between the ward and the ward's family.
- Recognize that the appointment of a guardian ad litem is not necessary to represent a minor's interest in the settlement of a claim, if the court has already appointed a guardian to represent the minor.
- Require annual guardianship plans to be filed with the court in advance of the plan year.
- Clarify that attorneys for the ward, whether court appointed or otherwise, are entitled to compensation from the guardianship estate.
- Clarify that expert testimony is not necessary to establish compensation for the guardian or the guardian's attorney. This change will benefit wards by, in many cases, eliminating charges for expert witness fees.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 113-0

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Committee on Judiciary

CS/CS/HB 149 — Rights of Grandparents

by Judiciary Committee; Children, Families and Seniors Subcommittee; Rep. Rouson and others (CS/SB 368 by Fiscal Policy Committee and Senators Abruzzo, Smith, and Gibson)

The bill authorizes a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state to petition the court for visitation with a grandchild. If only one parent is deceased, missing, or in a persistent vegetative state, before a grandparent may petition for visitation, the other parent must have been convicted of a felony or violent offense showing a substantial threat of harm to the child.

If the petitioning grandparent makes a prima facie showing that a parent is unfit or there is significant harm to the child, the bill requires the court to refer the case to family mediation and allows the court to appoint a guardian ad litem. If family mediation does not successfully resolve the issue of visitation, the court must proceed with a final hearing.

After a final hearing, the court may award visitation to a grandparent if it determines by clear and convincing evidence that:

- A parent is unfit or there is significant harm to the child;
- Visitation is in the best interest of the child, based on a number of factors; and
- Visitation will not materially harm the parent-child relationship, based on a number of factors.

If a minor child is adopted by a stepparent or close relative, the adoptive parent may petition the court to terminate an order granting grandparent visitation existing before the adoption.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 37-0; House 112-0

Committee on Judiciary

CS/CS/CS/HB 157 — Fraud

by Judiciary Committee; Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Rep. Passidomo and others (CS/CS/CS/SB 390 by Fiscal Policy Committee; Criminal Justice Committee; Judiciary Committee; and Senator Richter)

The bill amends ch. 817, F.S., to provide individuals and businesses greater protections against identity theft. In general terms, these changes affect individuals by allowing them to better identify when identity theft has been committed against them and by removing barriers to restoring their identity and credit after the crime has occurred. Additional forms of restitution are provided, which might allow the victims additional methods of recovering their financial losses. For business entities, the bill provides greater protections against fraud and identity theft.

More specifically, the most significant provisions of the bill:

- Prohibit a person from falsely personating or representing another person in a manner that causes damage to the other person's credit history or rating;
- Authorize a sentencing court to order restitution for costs and fees that an identity theft victim incurs in clearing his or her credit history or rating and establishes a civil cause of action against the defendant who has harmed the victim;
- Provide a process for an identity theft victim to obtain documentation of an alleged fraudulent transaction from a business entity and make the business entity immune from liability for disclosures made in good faith;
- Replace the term "corporation" with the term "business entity" to ensure that all businesses, regardless of their form, have the same protections against fraud;
- Prohibit the fraudulent transfer or issuance of a membership interest in a limited liability company;
- Prohibit the selling of counterfeit signs or decals with the name or logo of a security company without the express written consent of the company;
- Increase the criminal penalty for fraudulently obtaining goods or services from a health care provider;
- Make existing laws prohibiting the fraudulent use of an individual's personal identification information also applicable to the fraudulent use of a business' identification information;
- Specify criminal penalties for the fraudulent use of or intent to use the identification information of a dissolved business entity; and
- Specify criminal penalties for knowingly providing false information in a public record to facilitate the commission of another crime.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 115-0

Committee on Judiciary

HB 283 — Transfers to Minors

by Rep. Berman (CS/SB 630 by Banking and Insurance Committee and Senator Joyner)

This bill amends the Uniform Transfers to Minors Act to enable a person to make a gift to a minor which may be held by a custodian until the minor reaches the age of 25, and not 21, as provided under current law.

However, the bill requires that the minor have at least 30 days to compel the distribution of the custodial property on or about the minor's 21st birthday. The extended time periods apply to gifts or property held by a custodian which were directly transferred or given to the custodian by the donor, a holder of a power of appointment, or a personal representative or trustee pursuant to the terms of a trust or will. This bill does not apply to custodianships funded by fiduciaries or obligors which must be distributed to a minor at the age of 18.

Because financial institutions might not be aware that a custodianship does not terminate until a minor reaches the age of 25, they are shielded from liability under the provisions of this bill, if funds are distributed when the minor reaches the age of 21. The extension proposed by the bill does not authorize the extension of a custodianship for someone who has already reached the age of 21 years at the time for creation of the custodianship.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 117-0

Committee on Judiciary

CS/CS/HB 305 — Unlawful Detention by a Transient Occupant

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Harrison and others (CS/CS/SB 656 by Regulated Industries Committee; Judiciary Committee; and Senators Latvala and Stargel;)

The bill provides a simplified process for homeowners and rightful residents to remove a transient occupant who has no legal right to the property and for whom an eviction action is unavailable. A transient occupant is a person who, without a lease is authorized to reside in a dwelling on a transient basis for a brief period of time. Factors used to determine transient occupancy include whether the person has a legal interest in the property, has property utility subscriptions, receives mail at the property, and has personal belongings at the property.

A transient occupant unlawfully detains a residential property if the person does not leave after the party with rightful legal interest in the property asks the person to leave. The bill authorizes the party to provide a law enforcement officer with a sworn affidavit setting forth facts showing that the person asked to leave is a transient occupant who is unlawfully detaining the residence. Upon receipt of the affidavit, the law enforcement officer may direct the transient occupant to leave. If the person does not leave, the law enforcement officer may charge the transient occupant with criminal trespassing.

The bill also expressly authorizes the use of an unlawful detainer action to remove a transient occupant and a cause of action for wrongful removal by a person who is wrongfully removed from a property.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 110-5

Committee on Judiciary

CS/CS/CS/SB 342 — No Contact Orders

by Rules Committee; Criminal Justice Committee; Judiciary Committee; and Senator Simmons

The bill defines what is meant by an order of no contact in a court order granting the pretrial release of a criminal defendant. An order of no contact directs a defendant to have no contact with a victim. The bill provides that orders of no contact are immediately effective and enforceable through the duration of the pretrial release or until the order is modified by the court.

Under the bill, unless the court specifies otherwise, a defendant who is ordered to have “no contact” may not:

- Communicate orally or in writing with the victim in any manner, in person, telephonically, or electronically directly or through a third person, with limited exceptions provided to facilitate parental visitation through a third person or through an attorney for lawful purposes;
- Have physical or violent contact with the victim or other person named in a court order, or his or her property;
- Be within 500 feet of the victim’s or other identified person’s residence, even if the defendant shares the residence; and
- Be within 500 feet of the victim’s or other identified person’s vehicle, place of employment, or a place specified in the order as regularly frequented by the person.

The defendant must receive a copy of the order of no contact before he or she is released from custody on pretrial release.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 37-0; House 112-0

Committee on Judiciary

SB 408 — Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling

by Senator Simmons

This bill eliminates the requirement that a governmental entity obtain a consent form from the parent of a child who uses a public skate park or area set aside for skateboarding, inline skating, or freestyle bicycling as a condition of limiting the governmental entity's liability for damages or injuries. However, under the bill and current law, the governmental entity can be liable for gross negligence or for failing to guard against or warn of dangerous conditions that are not apparent, regardless of whether a parental consent form is obtained.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 116-0

Committee on Judiciary

CS/CS/CS/HB 435 — Administrative Procedures

by State Affairs Committee; Government Operations Appropriations Subcommittee; Rulemaking Oversight and Repeal Subcommittee; and Rep. Adkins (CS/SB 718 by Appropriations Committee and Senator Lee)

This bill makes a number of changes to the Administrative Procedure Act (APA), which relate to a state agency's reliance on unadopted or invalid rules and the provision of notices and information to the public. Among the most notable changes, the bill:

- Generally requires an agency that initiates rulemaking after a public hearing relating to an unadopted rule to file a notice of proposed rule within a time certain.
- Increases the amount of information relating to agency rulemaking which must be published in the Florida Administrative Register.
- Provides that the decision of an administrative law judge on the validity of the rule or unadopted rule is final agency action during a rule challenge that is asserted as a defense to agency action.
- Prohibits an administrative law judge from entering a summary final order with respect to a rule challenge asserted as a defense to agency action.
- Authorizes a the petitioner in a hearing that does not involve disputed facts to assert a rule challenge as a defense to agency action and have the rule challenge decided by an administrative law judge instead of the agency.
- Authorizes the rules ombudsman in the Executive Office of the Governor to require state agencies to review and designate rules the violation of which would be a minor violation.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 37-3; House 112-0

Committee on Judiciary

CS/CS/CS/HB 439 — Department of Legal Affairs

by Judiciary Committee; Justice Appropriations Subcommittee; Criminal Justice Subcommittee; and Rep. Eisnagle and others (CS/SB 1362 by Appropriations Committee and Senator Simmons)

The Department of Legal Affairs (department), led by the Attorney General, provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid and other fraud, defending the state in civil litigation cases, and representing the people of Florida when criminals appeal their convictions in state and federal courts.

- Expands the jurisdiction of the Office of Statewide Prosecution to include violations of ch. 787, F.S. (kidnapping, false imprisonment, and human trafficking), that were facilitated by or connected to the use of the Internet;
- Authorizes the department to spend no more than \$20,000 annually to support costs associated with the agency's Law Enforcement Officer of the Year and Victims Services recognition and awards program.
- Allows funds currently awarded to persons who report Medicaid fraud to also be used to fund the Department's Medicaid Fraud Control Unit;
- Expands the definition of the term "crime" for purposes of victim assistance awards;
- Expands the definition of the term "disabled adult" to include a person who has a mental illness or has one or more physical limitations;
- Prohibits victim assistance awards for "catastrophic injury" from being reduced;
- Authorizes the department to award a lifetime maximum of \$1,000 on all victim assistance claims relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life; and
- Creates s. 960.196, F.S., that addresses relocation assistance for victims of human trafficking.

The bill also creates part VII of ch. 501, F.S., entitled the "Patent Troll Prevention Act." The bill prohibits a person from making a bad faith assertion of patent infringement. It allows a defendant in a patent infringement proceeding to move that the proceeding involves a bad faith assertion of patent infringement and request that the court issue a protective order. If, based on factors set out in the bill, the court finds that the defendant has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target's expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

A person against whom a bad faith assertion of patent infringement is made also may bring an action in a court of competent jurisdiction for relief. If successful, the court may award a plaintiff equitable relief; damages; costs and fees, including reasonable attorney fees; and punitive

damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

A violation of the prohibition against making a bad-faith assertion of patent infringement also constitutes an unfair or deceptive trade practice and the department may bring an enforcement action for an injunction and to recover actual damages. An institution of higher education, a technology transfer organization owned by or affiliated with an institution of higher education, or a demand letter or assertion of patent infringement that includes a claim for relief relating to patents for pharmaceutical or biological products are exempt from the bill's provisions.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 115-0

Committee on Judiciary

SB 570 — Service of Process of Witness Subpoenas

by Senator Dean

The bill adds civil traffic cases to the types of court cases for which service of process may be made on a witness by United States mail. Other case types for which service of process of witness subpoenas may be made by United States mail are criminal traffic, misdemeanor, and second or third degree felony cases. To serve process by mail, the server must mail the subpoena to the witness's last known address at least 7 days before the witness's appearance is required.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 118-0

Committee on Judiciary

SB 672 — Service of Process

by Senator Dean

The bill reduces a requirement from 3 to 1 the number of attempts required by a process server to serve a subpoena for deposition in a criminal case before a process server may post the subpoena at a witness's residence. Under existing law, a process server must make three attempts, at different times of the day or night on different dates, to serve a criminal witness subpoena before the subpoena may be posted at the witness's residence. These requirements for three attempts at service before a process server may post a criminal witness subpoena continue to apply to a subpoena that commands a witness to appear in court.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 117-0

Committee on Judiciary

CS/CS/CS/HB 775 — Appointment of an Ad Litem

by Judiciary Committee; Justice Appropriations Subcommittee; Civil Justice Subcommittee; and Rep. Powell and others (CS/SB 922 by Judiciary Committee and Senator Latvala)

This bill authorizes a court to appoint an ad litem, which is an attorney, administrator, or guardian ad litem to represent the interests of an absent party to a legal action if the party is not otherwise represented. The court may not require the ad litem to post bond. The ad litem is entitled to reasonable fees and costs, to be paid by the party requesting the appointment of the ad litem, unless the court orders otherwise. State funds may not be used to pay for ad litem services unless state funds would have been expended for ad litem services before the effective date of the bill.

If the ad litem discovers that the interest for which he or she serves is already represented, the ad litem must petition the court for discharge from that interest. If the ad litem discovers that the person he or she serves is deceased and there is no representative, the ad litem must:

- Reasonably attempt to locate spouses, heirs, devisees, or beneficiaries of the decedent;
- Report contact information for all persons located, and
- Petition for discharge as to any interest of the person located.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 113-0

Committee on Judiciary

CS/CS/HB 779 — Rental Agreements

by Judiciary Committee; Civil Justice Subcommittee; and Rep. M. Jones and others (CS/CS/SB 524 by Rules Committee; Banking and Insurance Committee; and Senator Soto)

The bill addresses situations in which a tenant occupies a residential premises at the same time that a new owner acquires title to the property after a foreclosure sale. The bill authorizes the purchaser to provide a notice to the tenant which terminates the rental agreement upon delivery of the notice and terminates the occupancy of the tenant 30 days after the notice is delivered.

During the 30-day period, the new owner may collect rent. The owner, however, may not engage in practices that are prohibited in landlord and tenant relationships, such as terminating utilities or preventing the tenant from having access to the property.

If the tenant fails to vacate the property within the 30-day period, the owner may petition the court for a writ of possession. A writ of possession entitles the owner to possession of the property 24 hours after notice is conspicuously posted on the premises.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 114-0

Committee on Judiciary

CS/CS/SB 872 — Estates

by Banking and Insurance Committee; Judiciary Committee; and Senator Hukill

This bill amends the Florida Probate Code and the Florida Trust Code to revise provisions governing the areas of attorney fees and costs, personal representatives and notices of administration, and the apportionment of estate taxes. Among the revisions, the bill:

- Authorizes a court to assess attorney fees and costs against one or more persons' part of an estate or trust in proportions it finds just and proper in estate and trust proceedings and to direct payment for assessments against a portion of an estate from a trust under certain circumstances.
- Provides factors that a court may consider when assessing costs and attorney fees against a person's share of an estate or trust in estate and trust proceedings.
- Revises requirements regarding the time to make objections to the validity of a will, qualifications of a personal representative, the venue, or jurisdiction of a court in estate proceedings.
- Requires that personal representatives who are not qualified at the time of appointment resign or be removed by the court and have their letters of administration revoked.
- Extends personal liability for attorney fees and costs in a removal proceeding to personal representatives who do not know but should have known of facts requiring them to immediately resign or provide notice of ineligibility to serve as personal representative to interested persons.
- Substantially revises current law regarding the allocation and apportionment of estate taxes to update the statute for consistency with changes in federal estate tax laws, codify case law governing estate tax apportionment, and address gaps in the current statutory apportionment framework.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

CS/CS/CS/HB 889 — Health Care Representatives

by Judiciary Committee; Health Quality Subcommittee; Civil Justice Subcommittee; and Rep. Wood (CS/CS/SB 1224 by Rules Committee; Judiciary Committee; and Senator Joyner)

Current law provides several methods for a person to make health care decisions, and in some instances access health information, on behalf of another person. One such method is the designation by an adult person of another adult person to act as a health care surrogate. A health care surrogate is authorized to review confidential medical information and to make health care decisions in the place of the principal. Generally, a determination of incapacity of the principal is required before the health care surrogate may act.

Because a principal may regain capacity or vacillate in and out of capacity, a redetermination of incapacity is often necessary to authorize the health care surrogate to act. This process can hinder effective and timely assistance and is cumbersome. Further, some competent persons desire the assistance of a health care surrogate with the sometimes complex task of understanding health care treatments and procedures and with making health care decisions.

This bill amends the health care surrogate law to allow a person to designate a health care surrogate, who may act at any time, including while an adult is competent and able to make his or her own decisions. This bill also creates a means for designating a health care surrogate for the benefit of a minor when the parents, legal custodian, or legal guardian of the minor cannot be timely contacted by a health care provider or are unable to provide consent for medical treatment. Lastly, the bill creates sample forms that may be used to designate health care surrogates for adults and minors.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 39-0; House 116-0

Committee on Judiciary

CS/CS/HB 1069 — Defendants in Specialized Courts

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Perry and others (CS/SB 1170 by Fiscal Policy Committee and Senator Bradley)

The bill authorizes cases pending in a veterans' court or a mental health court to be transferred to another county. The bill also defines the term "problem-solving court" to include drug courts, veterans' courts, and mental health courts. Specialty drug courts, veterans' courts, and mental health courts already exist in a number of circuits around the state.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 116-0

Committee on Judiciary

CS/SB 1312 — Strategic Lawsuits Against Public Participation

by Judiciary Committee; and Senators Simmons, Gaetz, and Negron

A strategic lawsuit against public participation, a SLAPP suit, is one ostensibly brought to redress a wrong, but actually brought to silence critics. Under existing s. 768.295, F.S., government entities are prohibited from filing SLAPP suits in retaliation against those who exercise their rights to participate in governmental activities. The statute also provides for the expedited resolution of lawsuits alleged to violate the anti-SLAPP statute.

The bill expands the application of the anti-SLAPP statute by more broadly prohibiting lawsuits filed in retaliation against a person who engaged in otherwise protected free speech. Specifically, the bill protects “free speech in connection with public issues,” which it divides into two categories of protected speech:

- Speech made before a governmental entity in connection with an issue under consideration or review by a governmental entity, and
- Speech in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

The latter category does not require that the speech have any connection or relationship to any government proceeding or any issue before any government entity to be protected by the bill.

The bill also prohibits SLAPP suits from being filed by anyone, not just governmental entities as under current law. Consistently, the bill entitles a defendant to the expeditious resolution of a lawsuit claimed to be a SLAPP suit regardless of who files the suit.

If approved by the Governor, these provisions take effect July 1, 2015.

Vote: Senate 40-0; House 114-1

Committee on Judiciary

SB 7016 — OGSR/Minor Identifying Information

by Judiciary Committee

The bill reenacts and continues an existing public record exemption. The exemption protects certain information that might be used to identify a minor petitioning for a judicial waiver of parental notice under the Parental Notice of Abortion Act. The exemption protects from disclosure any identifying information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission. These offices are in possession of the information when either the office of criminal conflict and civil regional counsel represents the minor in a court proceeding or the Justice Administrative Commission processes payments for a court-appointed private attorney who represents the minor.

It is essential that any identifying information of a minor held by either of these agencies be exempted from public disclosure or the Parental Notice of Abortion Act will not meet constitutional requirements as determined by the U.S. Supreme Court.

The original exemption was enacted in 2010 and is scheduled for repeal on October 2, 2015, unless saved through reenactment by the Legislature.

If approved by the Governor, these provisions take effect October 1, 2015.

Vote: Senate 40-0; House 116-0