

Committee on Judiciary

CS/HB 103 — Subpoenas

by Civil Justice Subcommittee; Reps. Gottlieb and Fernandez-Barquin (SB 1002 by Senator Rodriguez)

The bill expands the methods by which a law enforcement officer may effect service of an investigative subpoena, court order, or search warrant on an out-of-state corporation that provides electronic communication services or remote computing services. As expanded, service of the documents may be had on the corporation's registered agent under the laws of the state in which service will be effected. The bill also states that out-of-state corporations doing business in Florida through the Internet may be served at any location where the corporation regularly accepts service.

The bill also specifies the means to enforce a subpoena on an in-state or out-of-state corporation that provides electronic communication services or remote computing services. If a corporation fails to comply with a properly-served subpoena, the bill allows a court, upon petition from the authority seeking the subpoena, to hold the non-complying corporation in indirect criminal contempt, and subject the entity to fines.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 40-0; House 117-0

Committee on Judiciary

CS/HB 131 — Security in Trial Court Facilities

by Judiciary Committee and Rep. McClain (SB 118 by Senator Gruters)

The bill addresses the decision-making authority and responsibilities of the chief judge of a circuit court and the county sheriff in providing court security. In a recent opinion by the Second District Court of Appeal, the court resolved the competing claims of authority and responsibility at issue in the case by holding that a chief circuit judge may require a sheriff in the circuit, because the sheriff is an officer of the court, to comply with the judge's order requiring the sheriff to provide security at court facilities.

The bill reiterates that sheriffs are officers of the court, and requires each sheriff to coordinate with his or her local chief judge and county commissioners in developing a court security plan. However, the bill provides that sheriffs retain authority to implement and provide law enforcement services associated with the plan. Finally, the bill provides that the chief judge retains decision-making authority to carry out his or her administrative functions concerning the protection of due process rights and the scheduling and conduct of trials and other judicial proceedings.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

CS/SB 344 — Courts

by Judiciary Committee and Senator Bradley

The bill clarifies ambiguities in current law to better enable public guardians to meet the needs of their incapacitated wards. The bill clarifies that public guardians are exempt from paying any court-related fees or charges for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward.

In an effort to make the evaluation process more efficient, the bill allows a physician assistant or advanced practice registered nurse to complete a ward's annual medical evaluation and prepare and sign the report for the court, when the physician delegates that responsibility. Currently, only physicians are allowed to conduct the annual medical exams and prepare the reports.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 40-0; House 114-0

Committee on Judiciary

SB 374 — Housing Discrimination

by Senator Rouson

The bill “extinguishes” “discriminatory restrictions” from certain real estate documents, such as deeds, and clarifies that under the Florida Fair Housing Act a victim of housing discrimination is not required to exhaust administrative remedies before filing a civil action.

Current federal and state law prohibit discrimination on the basis of race and several other characteristics in the sale, lease, or use of real property. Nonetheless, discriminatory restrictive covenants and other instruments remain in the records of many counties and can still be found in a title search. Moreover, current law does not appear to provide a way to strike or otherwise disavow these provisions in the public records.

The bill “extinguishes” “discriminatory restrictions” from title transactions, such as deeds, and expressly states that the restrictions are unlawful, unenforceable, and null and void. The bill also provides for summary removal of discriminatory restrictions from the governing documents of a property owners’ association.

Additionally, the bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Alternatively, a victim may proceed directly to filing a petition with the Division of Administrative Hearings.

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

Vote: Senate 39-0; House 117-0

Committee on Judiciary

CS/HB 505 — Estates and Trusts

by Civil Justice Subcommittee and Rep. Driskell and others (CS/SB 358 by Judiciary Committee and Senator Berman)

The bill amends several sections of the probate code relating to compensation of attorneys who serve as personal representatives, who may sue to recover property for an estate, conflicts of interest by personal representatives, and notice in probate proceedings. The bill also amends the trust code regarding compensation of attorneys who serve as trustees.

More specifically, the bill:

- Prohibits an attorney who prepared or supervised the preparation of a will from being compensated as a personal representative of the estate unless the attorney is a relative of the decedent or makes specified disclosures to the testator before the will is prepared;
- Prohibits an attorney who prepared or supervised the preparation of a trust from being compensated as a trustee unless the attorney is a relative of the “settlor” (trust creator) or makes specified disclosures to the settlor before the trust is created;
- Provides that causes of action that a decedent held at death are estate property, and therefore subject to the control and possession of the personal representative (not the beneficiaries);
- Brings more types of transactions involving a personal representative’s conflict of interest under the statute that renders these transactions voidable by an interested person;
- Clarifies what constitutes sufficient notice for a court to exercise personal jurisdiction over a person in a probate proceeding; and
- Categorizes as tangible property bullion and coins that are not used as money, such as collectible coins.

If approved by the Governor, these provisions take effect October 1, 2020, except where otherwise provided.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

CS/CS/SB 580 — Uniform Partition of Heirs Property Act

by Community Affairs Committee; Judiciary Committee; and Senators Bracy and Broxson

This bill adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of “heirs property,” which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties, before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court appointed real estate broker, instead of an auction as the statutes currently require.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 38-0; House 116-0

Committee on Judiciary

CS/CS/CS/SB 664 — Verification of Employment Eligibility

by Rules Committee; Commerce and Tourism Committee; Judiciary Committee; and Senators Lee, Gruters, Harrell, and Simmons

The bill requires public employers, contractors, and subcontractors to use E-Verify, and requires private employers to use E-Verify or to use the Form I-9 and maintain copies of the documents used to complete the I-9 for 3 years. E-Verify is a free, Internet-based system through which an employer may quickly confirm that a newly hired employee is authorized to work in the United States. To use E-Verify, an employer inputs information from an employee's I-9 and, usually within seconds, obtains a result. In FY 2019, 98.5 percent of the persons run through E-Verify were automatically confirmed as "work authorized."

The bill requires a party to a public contract to terminate the contract if it believes in good faith that another party is employing an unauthorized alien or is not registered with and using E-Verify. The bill specifies that the termination is not a breach of contract. However, a contractor whose contract is terminated for failing to use E-Verify or for knowingly employing an unauthorized alien is liable for any additional costs incurred by the public employer resulting from the termination.

To enforce the eligibility-verification requirements for *private* employers, the bill requires an employer to provide an employee's eligibility-verification documents to any of several government agencies upon request. These agencies, in turn, must request the federal government to check the employee's work-eligibility status.

Moreover, if a private employer does not use E-Verify or the bill's I-9 procedure to verify and document an employee's eligibility for employment, the Department of Economic Opportunity must send the employer a notice, and the employer must terminate any unauthorized employees, begin using E-Verify or the bill's I-9 procedure, and respond with an affidavit of compliance within 30 days. If the employer does not do so, it faces the potential suspension of its business licenses. If an employer fails to properly respond to a DEO notice three times in any 36 month period, it could permanently lose its business licenses.

Employers and contractors have until January 1, 2021 to begin verifying employment eligibility as required in the bill.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 23-17; House 73-45

Committee on Judiciary

CS/CS/SB 698 — Reproductive Health

by Rules Committee; Criminal Justice Committee; and Senators Book and Stewart

The bill establishes protections for people who are dealing with infertility and seek medical assistance to artificially conceive a child.

Under the bill, the Department of Health, the Board of Medicine, or the Board of Osteopathic Medicine may take disciplinary action against the health care practitioner's license if he or she intentionally transfers an embryo or reproductive material into a recipient without the recipient's consent. Additionally, the Department of Health may issue an emergency order suspending the practitioner's license if he or she is found guilty of committing the felony of reproductive battery, which is discussed below.

The bill also requires a health care practitioner, a medical student, or any other student who is receiving training as a health care practitioner to obtain the written consent of a patient or a patient's representative before performing a pelvic exam. Written consent for the pelvic exam is not required if a court orders the exam to collect evidence or if the exam is necessary to avert a serious risk of irreversible impairment of a major bodily function of the patient.

The bill creates the crime of reproductive battery. It is a third degree felony for a health care practitioner to intentionally transfer human reproductive material into the body of a recipient or implant a human embryo of a donor, knowing that the recipient has not consented to the use of the reproductive material or embryo from that donor. If the health care practitioner is the donor of the reproductive material, the penalty is increased to a second degree felony.

The statute of limitations for prosecuting the crime of reproductive battery does not begin to run until the date that the violation is discovered and reported to a law enforcement agency or any other governmental agency. Additionally, it is not a defense to the crime that the recipient consented to the use of an anonymous donor.

If approved by the Governor, these provisions take effect July 1, 2020, except where otherwise provided.

Vote: Senate 39-0; House 117-0

Committee on Judiciary

CS/SB 738 — Jury Service

by Rules Committee and Senator Harrell

The bill allows students who are 18 to 21 years of age to be excused from a specific jury summons upon request if they are enrolled as a full-time student at a high school, state university, private post-secondary educational institution, Florida College System institution, or career center.

The bill will not affect jury service for students older than 21 years of age.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 37-2; House 113-1

Committee on Judiciary

CS/HB 783 — Uniform Commercial Real Estate Receivership Act

by Judiciary Committee and Rep. Beltran (CS/SB 660 by Commerce and Tourism Committee and Senator Berman)

The bill adopts the Uniform Commercial Real Estate Receivership Act and authorizes a court to appoint a receiver, who acting as the court's agent, takes possession of, manages, and, in some cases, transfers or sells property that is in danger of waste, loss, or diminution in value.

The bill covers interests in real property, as well as personal property related to the use or operation of real property. However, the bill does not apply to residential real property of an individual owner or the owner's family.

The bill in large part, codifies the common law of receivership, in some cases clarifying or providing more specific procedures for the rules governing receiverships.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 39-0; House 114-0

THE FLORIDA SENATE
2020 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

SB 886 — Errors in Deeds

by Senator Powell

The bill provides that, in certain instances, a deed containing a scrivener’s error in the legal description of property (and subsequent deeds containing the same error) may be corrected by the filing of a curative notice with a clerk of court.

The bill defines the errors or omissions that constitute “scrivener’s errors” and describes the circumstances under which such errors may be corrected by a curative notice. A curative notice corrects all deeds for the same property containing the same scrivener’s error, and releases any cloud or encumbrance that an erroneous deed may have created as to other properties.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 38-0; House 116-0

Committee on Judiciary

CS/HB 1049 — Office of the Judges of Compensation Claims

by Government Operations and Technology Appropriations Subcommittee and Rep. Stone and others (CS/SB 1298 by Appropriations Committee and Senator Simmons)

The bill requires judges of compensation claims to be paid “a salary equal to that of a county court judge,” which is currently \$27,258 higher than the salary of a judge of compensation claims. The bill sets the salary of the Deputy Chief Judge of Compensation Claims at \$1,000 more than that of a county court judge. County court judges are currently paid \$151,822 per year.

To fund these salary increases, the bill appropriates \$1,114,078 in recurring funds from the Division of Administrative Hearing’s Operating Trust Fund.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

CS/HB 1089 — Trusts

by Civil Justice Subcommittee and Rep. Caruso (CS/SB 1366 by Judiciary Committee and Senator Gruters)

The bill grants a trustee of a “grantor trust” sole discretion to use trust assets to pay the settlor’s (grantor’s) taxes on trust income. A grantor trust is one in which the grantor retains certain rights or powers over the trust such that federal tax law treats the grantor and the trust as one entity, thus making the grantor tax-liable for trust income.

Under current law, a trustee may pay the grantor’s trust-income taxes only if the trust instrument authorizes it. Under the bill, the trustee generally may pay these taxes unless the trust instrument prohibits it or the trustee is:

- A beneficiary of the trust;
- Treated as the owner of part or all of the trust under federal or state tax law; or
- A “related or subordinate party” with respect to:
 - o A person treated as the owner of all or part of the trust under federal or state tax law;
 - or
 - o A beneficiary of the trust.

Moreover, the bill specifies that a life insurance policy held in the trust, the policy’s cash value, or a loan secured by the policy may not be used to pay the grantor’s income taxes.

If approved by the Governor, these provisions take effect July 1, 2020.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

SB 1362 — Rental Agreements

by Senator Rodriguez

The bill provides for the protections of the federal Protecting Tenants at Foreclosure Act (PTFA) to take effect as a state law if the federal act is repealed.

Under the PTFA, a person who acquires a foreclosure property (“successor in interest”) must give the tenant at least 90 days’ notice before evicting him or her. And if the tenant had signed a “bona fide” lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days, unless the successor in interest sells to a person who intends to occupy the property as a primary residence.

Additionally, the bill repeals this state’s current statute that protects the rights of tenants of foreclosed properties, which affords less protection than the federal statute.

If approved by the Governor, these provisions take effect July 1, 2020, except where otherwise provided.

Vote: Senate 38-1; House 115-0

Committee on Judiciary

CS/CS/SB 1392 — Courts

by Appropriations Committee; Judiciary Committee; and Senator Simmons

The bill provides that a District Court of Appeal (DCA) judge who lives more than 50 miles from his or her DCA's courthouse or other headquarters is eligible to have an alternative official headquarters and to be reimbursed for trips between these locations. Additionally, the bill expands the list of work-travel expenses for which a Supreme Court justice may be reimbursed. Finally, the bill transfers much of the appellate jurisdiction of the circuit courts to the DCAs.

A DCA judge who is approved for an alternative headquarters is eligible for reimbursement of the cost of the travel, lodging, and meals necessitated by travel to the DCA courthouse. However, the bill prohibits the payment of state funds for use of the space.

As to Supreme Court justices, the bill provides for reimbursement of additional expenses incurred on work-related trips compared to current law and allows a justice, with approval of the Chief Justice, a choice in how his or her reimbursement amount is determined.

Finally, the bill changes the appellate jurisdiction of the circuit courts and DCAs by:

- Eliminating the authority of the circuit courts to hear appeals from county courts in civil and criminal cases; and
- Specifying that a county court's final judgment must be appealable to the circuit court for the county court to have the option to certify a question involved in the judgment to the DCA.

If approved by the Governor, these provisions take effect July 1, 2020, except where otherwise provided.

Vote: Senate 40-0; House 118-0