

Committee on Judiciary

CS/HB 35 — Legal Notices

by Judiciary Committee and Reps. Fine, Fischer, and others (CS/CS/SB 402 by Appropriations Committee; Judiciary Committee; and Senator Rodrigues)

The bill provides an option for governmental agencies required by law to publish certain legal notices to publish those notices on a newspaper's website in lieu of a paper-based publication. An agency wishing to exercise this option may only do so upon the agency finding, pursuant to a publicly noticed hearing, that such an Internet-based publication is in the public interest and that residents have sufficient access to the Internet in order to review any legal notices published in this format. This determination must be made by a majority vote of the governing body.

If a governmental agency exercises the option to publish legal notices on a newspaper website, the agency must provide an additional notice at least once per week in a print edition newspaper of general circulation. This notice must contain a statement that legal notices pertaining to the agency do not all appear in the print edition of the local newspaper and that a full listing may be accessed on the statewide legal notice website located at the website managed by the Florida Press Association.

The bill expands the types of publications that qualify to publish legal notices. Currently, a newspaper must, among other requirements, be "for sale to the general public" and be qualified to be admitted and entered as a periodical matter the local post office. By removing these two requirements, the bill will allow for legal notices to be published in some smaller publications that are free to the public.

The bill requires the Florida Press Association to ensure that minority populations throughout the state have equitable access to legal notices that are posted on the statewide website. Additionally, the association must publish a quarterly report with the following information:

- A list of all newspapers that placed notices on the statewide legal notices website;
- The number of unique visitors to the statewide legal notices website;
- The number of legal notices published in print;
- The number of legal notices published by Internet-only publication; and
- The statutory criteria that qualified each newspaper to publish legal notices and advertisements.

If approved by the Governor, these provisions take effect July 1, 2022.

Vote: Senate 39-0; House 105-9

Committee on Judiciary

HB 67 — Public Defender Duties

by Rep. Fernandez-Barquin (SB 752 by Senator Gruters)

The bill specifies that a court may not appoint a public defender when the defendant has already retained private counsel. However, the bill does not prohibit the appointment of a public defender in situations where a defendant is no longer represented by private counsel.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 39-0; House 116-0

Committee on Judiciary

CS/SB 72 — Civil Liability for Damages Relating to COVID-19

by Rules Committee and Senators Brandes, Perry, Baxley, and Hutson

The bill (Chapter 2021-1, L.O.F.) creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. The bill provides lesser liability protections to health care providers, who are defined in the bill, and provides procedures for civil actions against them.

Liability Protections for COVID-19-Related Claims

For a claim against a person, business, or other entity, but generally not a health care provider, the bill establishes preliminary requirements that a plaintiff must complete before the case may proceed. A court must determine whether:

- The complaint was pled with particularity.
- The complaint is supported by a physician's affidavit attesting to the physician's belief, within a reasonable degree of medical certainty, that the defendant caused, through acts of omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff may correct the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the actions accrued.

If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability. However, if the court determines that the defendant did not make the requisite good faith effort, the lawsuit may proceed.

If the defendant is not immune, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

Liability Protections for Health Care Providers

The liability protections for COVID-19-related claims against a health care provider mainly relate to claims:

- Arising from the diagnosis or treatment of a person for COVID-19;
- The provision of a novel or experimental COVID-19 treatment;
- The transmission of COVID-19; and
- The delay or cancellation of a surgery or medical procedure.

To prevail in a claim against a health care provider, the plaintiff must plead the claim with particularity and generally must prove by the greater weight of the evidence that the health care provider was grossly negligent or engaged in intentional misconduct.

A COVID-19-related lawsuit against any type of defendant must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

While the bill takes effect upon becoming a law, it applies retroactively. However, the bill does not apply in a civil action against a particular named defendant to a suit filed before the bill's effective date.

These provisions became law upon approval by the Governor on March 29, 2021.

Vote: Senate 24-15; House 83-31

Committee on Judiciary

CS/CS/CS/SB 88 — Farming Operations

by Rules Committee; Environment and Natural Resources Committee; Judiciary Committee; and Senators Brodeur, Baxley, Albritton, and Perry

The bill (Chapter 2021-7, L.O.F.) amends the Florida Right to Farm Act. The general purpose of the act is to protect reasonable agricultural activities conducted on farm land from nuisance lawsuits. The bill provides stronger liability protections to farms that comply with best management practices and environmental regulations.

The definition of “farm operations” is expanded to add “agritourism” activities to the list of farm operations that receive limited legal protections from nuisance suits and other similar civil actions. The definition is further revised to include the generation of “particle emissions” to the list of conditions or activities that constitute farm operations.

The bill defines “established date of operation” for an agritourism activity as the date the specific agritourism activity commenced, providing for a separate established date of operation for an agritourism activity than for the farm operation.

The bill defines “nuisance” to mean any interference with the reasonable use and enjoyment of land, including, but not limited to, noise, smoke, odors, dust, fumes, particle emissions, or vibration. The term also includes all legal claims that meet the requirements of the definition of nuisance, regardless of whether a plaintiff designates those claims as brought in an action for nuisance, negligence, trespass, personal injury, strict liability, or some other tort.

The burden of proof that a plaintiff must meet in a nuisance action is raised to the clear and convincing evidence standard if the claim is based upon allegations that the defendant’s conduct did not comply with state or federal environmental laws, regulations, or best management practices.

The bill limits those who may bring a nuisance action against a farm operation to people whose real property that is alleged to be damaged is located within one-half mile of the alleged source of the nuisance.

The bill limits compensatory damages in a private nuisance action to the reduction in the fair market value of the plaintiff’s property, which may not exceed the fair market value of the property.

The bill prohibits a plaintiff from recovering punitive damages for a farm operation in a nuisance action unless the alleged nuisance is based on substantially the same conduct that was subject to a civil enforcement judgment or criminal conviction and the conviction or judgment occurred within 3 years of the first action that formed the basis of the nuisance action.

A losing plaintiff is liable for a farm's litigation costs and expenses incurred defending a nuisance action if the farm operation has been in existence for 1 year or more before the legal action was instituted and the farm operation conforms to generally accepted agricultural and management practices or government environmental laws.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 37-1; House 110-7

Committee on Judiciary

HB 241 — Parents’ Bill of Rights

by Reps. Grall, Byrd, and others (CS/CS/SB 582 by Education Committee; Judiciary Committee; and Senators Rodrigues, Baxley, and Albritton)

The bill establishes the “Parents’ Bill of Rights.” The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires a school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.

The bill further requires a parent’s permission before a health care practitioner may provide services, prescribe medicine to the child, or perform a medical procedure, unless otherwise provided by law. The bill provides a misdemeanor penalty for a health care practitioner or similar person who violates the health care provisions and subjects these persons to disciplinary actions.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 24-15; House 78-37

Committee on Judiciary

CS/CS/HB 259 — Safety of Religious Institutions

by Judiciary Committee; Education and Employment Committee; and Reps. Williamson, Byrd, and others (CS/SB 498 by Criminal Justice Committee; and Senators Gruters, Brandes, Hutson, Baxley, Rodriquez, Rodrigues, Broxson, Albritton, Bradley, and Simpson)

The bill addresses the possession of a concealed weapon or firearm for defensive or other lawful purposes on property used by a religious institution that is co-located with a school. Under existing law, a person who has a concealed weapon or firearm license may legally carry a firearm inside a church, synagogue, or other religious institution. However, the person is generally prohibited from carrying a firearm on property that is located in an area where firearms are prohibited, such as a school. Under the bill, a person who has a concealed weapon or firearm license may carry a concealed weapon or firearm on the property of a religious institution regardless of whether the property is also used as a school.

The bill further states that it “does not limit the private property rights of a church, synagogue, or other religious institution to exercise control over property that the church, synagogue, or other religious institution owns, rents, leases, borrows, or lawfully uses.” Accordingly, religious institutions and owners of property borrowed or used by a religious institution may continue to regulate and prohibit firearms on their own property.

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

Vote: Senate 24-16; House 76-37

Committee on Judiciary

CS/CS/SB 354 — Restitution

by Rules Committee; Judiciary Committee; and Senator Harrell

The bill amends criminal law and juvenile delinquency law to provide that restitution owed to a victim must be determined on a fair market value basis unless the state, victim, or defendant shows that using another basis, including, but not limited to, replacement cost, purchase price less depreciation, or actual cost of repair, is equitable and better furthers the purposes of restitution. The bill specifies that the primary purpose of restitution is to compensate the victim, and that restitution also serves the rehabilitative and deterrent goals of the criminal and juvenile justice systems. The court may consider hearsay evidence for the purpose of determining restitution, provided that the hearsay evidence has a minimal indicia of reliability.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 114-1

Committee on Judiciary

CS/CS for HB 421 & HB 1101 — Relief from Burdens on Real Property Rights

by Judiciary Committee; Local Administration and Veterans Affairs Subcommittee; and Reps. Tuck, Persons-Mulicka, and others (CS/CS/SB 1876 by Rules Committee; Judiciary Committee; and Senator Albritton)

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act and the Florida Land Use and Environmental Dispute Resolution Act. Both acts provide procedures and remedies to land owners whose property is inordinately burdened by a local government regulation. In the Bert Harris Act, the definitions of an “action of a governmental entity” is revised to include government actions that affect “real property including acting on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.” The term “real property” is amended to mean, in part, land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including other relevant interests.

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

Additionally, the bill revises the Bert Harris Act to:

- Reduce the timeframe under which a claimant must notify the government before filing an action for compensation;
- Specify that written settlement offers are presumed to protect the public interest;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Extend the point in time from which a prevailing claimant may recover attorney fees and costs; and
- Authorize a property owner to pursue a claim for compensation in certain circumstances without first formally pursuing an application for a development order, development permit, or building permit when doing so is deemed to constitute a waste of resources.

The Bert Harris Act is also amended to provide that a real property owner who files a claim under the Act remains entitled to relief for that claim even if he or she subsequently relinquishes legal title to the real property in question before the conclusion of proceedings to resolve the claim. (This appears to reverse the holding in a recent Second District Court of Appeals case in which the plaintiff, who sold the property while litigating a claim, was determined to no longer be a “property owner” entitled to relief under the Act. The appellate court certified the issue raised in the case to the Florida Supreme Court as an issue of great public importance.)

The bill also allows a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. Current law defines a “prohibited exaction” as a condition imposed by a governmental entity on a property owner’s proposed use of real property that does not have an essential nexus to a legitimate public purpose and is not roughly proportionate to the

impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The bill revises the statutes relating to prohibited exactions to expressly allow a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. Additionally, the bill provides that the property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

If approved by the Governor, these provisions take effect October 1, 2021.

Vote: Senate 34-6; House 79-37

Committee on Judiciary

CS/HB 583 — Interception of Wire, Oral, or Electronic Communications Made in Violation of Protective Orders

by Judiciary Committee and Rep. Joseph and others (CS/SB 1802 by Criminal Justice Committee and Senator Pizzo)

The bill provides that it is lawful for a person who is protected by an injunction for repeat violence, sexual violence, dating violence, domestic violence, stalking, or any other court-imposed prohibition of conduct toward the person, to intercept and record a wire, oral, or electronic communication received in violation of the injunction or order. Therefore, the bill creates an exception to the general prohibition against interceptions of wire, oral, or electronic communications without the consent of all parties.

If the subject of the injunction or order has been served the injunction or is on notice that the conduct was prohibited, the bill allows a person to provide the recording only to a law enforcement agency, attorney, or a court for the limited purpose of proving a violation of the injunction or court order.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 118-0

Committee on Judiciary

CS/HB 625 — Attorney Compensation

by Judiciary Committee and Rep. Yarborough and others (CS/CS/SB 954 by Rules Committee; Judiciary Committee; and Senator Bean)

Under current law, the fee charged by an attorney for probate or trust administration services is presumed reasonable if it conforms to a statutory fee schedule based on the percentage of the value of an estate or trust. This fee structure is presumed reasonable regardless of the hours or complexity of work conducted for the estate or trust.

Under the bill, an attorney must provide a series of disclosures to the personal representative or trustee if the attorney intends to charge a fee using the statutory fee schedule. These disclosures state that:

- There is not a mandatory statutory attorney fee for estate or trust administration;
- The attorney fee is not required to be based on the size of the estate or trust and that the presumption of reasonableness may not be appropriate to every estate administration;
- The fee is subject to negotiation between the personal representative or trustee and the attorney;
- The selection of the attorney is made at the discretion of the personal representative or trustee;
- The personal representative or trustee is entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation.

Additionally, the attorney is required to obtain a timely signature acknowledging these disclosures. If the attorney does not make the disclosures required under the bill, the attorney may not be paid for legal services without prior court approval or the written consent of the interested parties to an estate proceeding or the written consent of the trustee and all qualified beneficiaries of a trust.

Under current law, an interested person may petition a court to increase or decrease an attorney's compensation for ordinary services or award additional compensation based on extraordinary services. Under the bill, a court may consider any agreement relating the attorney's compensation and whether the above disclosures were made to the personal representative or trustee in a timely manner in order to determine reasonable compensation.

Lastly, the bill provides that the complexity of an estate or trust may be considered when determining additional compensation based on an attorney's extraordinary services during the estate or trust administration.

If approved by the Governor, these provisions take effect October 1, 2021.

Vote: Senate 39-0; House 113-1

Committee on Judiciary

CS/CS/SB 838 — Clerks of the Circuit Court

by Appropriations Committee; Judiciary Committee; and Senators Boyd, Bracy, Wright, Torres, and Hooper

The bill amends laws related to the funding of the clerks of court to:

- Require the Clerk of Courts Operations Corporation to establish and maintain a budget reserve of up to 16 percent of the budget from the previous year;
- Specify that portions of certain service charges that are required to be transferred to the General Revenue Fund only apply for performing services related to a “court record”; and
- Change the procedure for clerks of the circuit court to receive payments for management of the jury process to a reimbursement basis.

The bill amends laws related to monies collectible by a clerk of court to:

- Specify that fines, costs, service charges, and court costs are due immediately upon assessment;
- Require that a person owing monies who cannot immediately pay must contact the clerk and set up a payment plan; except that a person incarcerated must contact the clerk within 30 days after release from incarceration to pay or set up a payment plan;
- Require that the clerks of court create a statewide uniform payment plan form for monies owed; and
- Require that notice of the availability of payment plans be given to a person when receiving a traffic infraction or a notice of suspension of driving privilege.

If approved by the Governor, the provisions regarding clerk’s budgeting take effect upon becoming law, the provisions regarding jury reimbursement and designation of court-related fees take effect July 1, 2021, and the remaining provisions take effect October 1, 2021.

Vote: Senate 40-0; House 117-0

Committee on Judiciary

CS/CS/SB 1060 — Limitation of Liability for Voluntary Engineering or Architectural Services

by Regulated Industries Committee; Judiciary Committee; and Senator Bradley

The bill creates immunity from civil liability for an engineer, architect, or structures specialist furnishing engineering or architectural services as a volunteer under the direction of, or in connection with, a community emergency response team, a local emergency management agency, the Division of Emergency Management, or the Federal Emergency Management Agency, in response to a declared federal, state, or local emergency. The liability protection does not apply to an act or omission that was done with gross negligence or willful misconduct. The liability protection applies only to services provided within 90 days after the first declaration of a particular emergency.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 118-0

Committee on Judiciary

CS/CS/SB 1070 — Estates and Trusts

by Community Affairs Committee; Judiciary Committee; and Senator Berman

The bill amends laws on the transfer of property through wills, probate, and trusts.

The bill creates a comprehensive statutory framework for the creation and operation of a directed trust. Directed trusts are authorized by current law. In a directed trust, someone other than a trustee is allowed to direct some actions of a trustee of the trust.

The bill creates a comprehensive statutory framework for the creation and operation of a community property trust. Community property trusts are not addressed in current law. A community property trust holds property owned by a married couple as if the property was in a community property state, which has certain tax and estate planning advantages.

The bill amends probate law to provide that, absent specific intent in the divorce judgment, an ex-spouse is not a beneficiary of the former spouse's will, regardless of when the will was signed. Currently, an ex-spouse remains as a beneficiary after divorce if the will was signed prior to the wedding and the deceased failed to change the will after divorce.

The bill also requires a probate court to allow a surety bond in lieu of the requirement to use a depository account; provides that the limitations periods for an action against a trust's trustee apply to directors, officers, and employees of the trustee; and applies homestead property law applicable to wills to homestead property held in a decedent's revocable trust.

If approved by the Governor, the provisions of the bill relating to the effect of divorce and depository accounts take effect upon becoming a law, and the remaining provisions take effect July 1, 2021.

Vote: Senate 40-0; House 117-0

Committee on Judiciary

CS/CS/SB 1108 — Education

by Appropriations Committee; Judiciary Committee; and Senator Diaz

The bill revises several areas of education law, primarily relating to graduation requirements and statewide standardized assessments. Specifically, the bill:

- Requires every school district, alternative school, and the Department of Juvenile Justice to offer either the SAT or ACT to every student in the 11th grade free of charge, subject to an appropriation for that purpose.
- Amends the civic literacy requirement for post-secondary education to include both an assessment and a course, as opposed to one or the other.
- Creates a process to allow students in high school to earn the civic literacy requirement before enrolling in a public college or university in this state.
- Requires the statewide, standardized math and English learning assessments in grades 3 through 6 to be paper-based.
- Deletes obsolete language relating to prior statewide standardized assessments, and updates the assessment publication requirement in anticipation of the implementation of new state standards.
- Authorizes the Department of Education (DOE) to hold certain intellectual property rights, including the right to patent, copyright, and trademark. This authority will allow the DOE to protect certain materials, such as state authored assessments, from being sold or distributed without authorization.
- Creates the Innovative Blended Learning and Real-Time Student Assessment Pilot Program, which involves the combination of in-person and remote students in the same classroom environment.
- Requires the character development curriculum for public school students in the 11th and 12th grades to include instructions on voting using the uniform primary and general election ballot.
- Allows certain students participating in the English for Speakers of Other Languages Program to demonstrate grade-level expectations on formative assessments in lieu of passing the grade 10 English Language Arts assessment.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 39-0; House 116-0

Committee on Judiciary

CS/HB 1197 — Courts

by Civil Justice and Property Rights Subcommittee and Rep. Aloupis and others (CS/CS/SB 748
by Appropriations Committee; Judiciary Committee; and Senator Brandes)

The bill revises a broad range of statutes that govern the operation of the court system. Some of the diverse changes are made to accommodate developments in technology, some reflect the impact that COVID-19 has had on the court system, and one change recognizes the effect of inflation on the monetary jurisdictional limit of the county courts.

- The bill updates provisions controlling the maintenance of appellate court records to allow the electronic storage of court records at a remote location. These provisions are updated to keep pace with electronic technology rather than require the court clerk to keep manual control of the records.
- The clerks of court, working with the Florida Courts Technology Commission, must prepare a plan to procure or develop a statewide electronic solution that identifies all civil and criminal mandatory financial assessments required by statute.
- The jurisdictional limit for county courts will be adjusted beginning in 2030, and every 10 years afterwards, to account for inflation based on changes in the Consumer Price Index. The jurisdictional limit must be rounded to the nearest \$5,000, but no lower than \$50,000. The Office of Economic and Demographic Research (EDR) must calculate the adjusted jurisdictional limit and certify it to the Chief Justice of the Supreme Court beginning January 31, 2030 and every 10 years thereafter. The EDR and the Office of the State Courts Administrator (OSCA) must publish the adjusted jurisdictional limit on their websites.
- The bill authorizes a person to postpone jury service for up to 1 year when a public health emergency or a state of emergency is declared.
- Finally, the bill revises three criminal statutes to authorize the taking and certification of fingerprints when a guilty judgment is entered in a proceeding that is conducted remotely. The fingerprints no longer must be taken in open court and in the judge's presence.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 114-0

Committee on Judiciary

CS/HB 6077 — Assets of an Estate in Administration

by Insurance and Banking Subcommittee and Rep. Robinson, W. (CS/SB 1288 by Judiciary Committee and Senator Boyd)

A court having jurisdiction over the administration of an estate may order that part or all of the personal assets of the estate be placed with a financial institution designated by the court. Currently, the financial institutions where a court may order assets placed are “a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state).” The Federal Savings and Loan Insurance Corporation (FSLIC) was created in 1934 in order to insure deposits of savings and loan associations. However, the FSLIC was abolished in 1989 after the savings and loan crisis of the 1980s. Savings and loan associations are now insured by the Federal Deposit Insurance Corporation, as are commercial banks.

The bill removes a statutory reference to the FSLIC along with other obsolete language.

The bill has no impact on local governments or the state. The bill has an indeterminate but likely positive impact on the private sector.

If approved by the Governor, these provisions take effect July 1, 2021.

Vote: Senate 40-0; House 118-0