

STORAGE NAME: h0131.cjcl
DATE: February 4, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 131

RELATING TO: Foreign Records of Regularly Conducted Business Activity

SPONSOR(S): Representative Lacasa

STATUTE(S) AFFECTED: s. 92.60, F.S.

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 131 would amend s. 92.60, F.S., by modifying the foreign business records exception to the hearsay rule. Currently, this exception only applies in criminal proceedings.

HB 131 would allow courts to admit records of foreign business enterprises in civil proceedings. However, it would require a signed certification attesting to the reliability of the records. Duplicates of the original record would also be admissible. A party seeking to offer a foreign business record at a civil trial would need to provide written notice to the other parties at least 60 days before the trial.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Unless an exception applies, hearsay evidence is inadmissible in civil and criminal proceedings. Section 90.801, F.S., defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." For the purposes of hearsay, "statements" include written materials. Absent an exception to the hearsay rule, business records, if offered to prove the truth of their contents, would not be admissible at trial.

Several exceptions mitigate the effects of the hearsay rule. Section 90.803(6), F.S., provides an exception for "records of regularly conducted business activity." This exception is available in civil and criminal proceedings. Section 92.60, F.S., contains a similar exception for "foreign records of regularly conducted business activity." Both exceptions contain similar reliability requirements. However, s. 92.60, F.S., unlike s. 90.803(6), F.S., does not require testimony by the custodian of the record or a qualified witness. Instead, s. 92.60, F.S., allows admission on the basis of a "foreign certification" -- a document signed by the custodian of the record. The exception provided by s. 92.60, F.S., only applies to criminal proceedings.

B. EFFECT OF PROPOSED CHANGES:

HB 131 would change the "foreign records of regularly conducted business activity" hearsay exception, to permit the admission of such records in civil proceedings. As noted above, the current exception only applies to criminal proceedings. HB 131 would establish identical admissibility requirements in civil and criminal trials.

The party wishing to introduce a foreign business record must meet several criteria aimed at ensuring reliability. The party must submit a signed certification attesting that:

- The record is timely; it was made at or near the occurrence of the matter recorded;
- The record memorializes the personal knowledge of the information recorder or information provider; and
- The record was systematically kept during the course of regularly conducted business activity.

Section 90.801 allows the admission of duplicates of original records if no factors indicate a lack of trustworthiness.

According to HB 131, a party seeking to gain admission of foreign business records at a civil trial, must notify the other parties, in writing, at least 60 days prior to trial.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

NA.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

NA.

(2) service providers?

NA.

(3) government employees/agencies?

NA.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 Amends s. 92.60, F.S. to extend the hearsay exception, for foreign records of regularly conducted business activity, to civil proceedings; provides criteria for admissibility; requires 60 days' written notice of a parties intention to offer such records.

Section 2. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

HB 131 could facilitate bringing particular claims or establishing certain defenses. It would allow the introduction of a slightly greater range of evidence than is currently admissible. The bill would primarily affect litigation involving international business transactions.

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3. Effects on Competition, Private Enterprise and Employment Markets:

By making litigation more efficient, this bill would aid private enterprise.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Art. VII, s. 18, of the state constitution.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

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Charles R. Boning