

STORAGE NAME: h4017s1.jud

DATE: March 13, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 4017

RELATING TO: Florida Statutes/Repeals

SPONSOR(S): Committee on Judiciary, Committee on Rules & Calendar and Rep. Byrd

TIED BILL(S): None

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

(1) JUDICIARY YEAS 8 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

CS/HB 4017 repeals certain statutes that are considered to be outdated, obsolete, unnecessary, or impliedly superseded.

The bill repeals the following sections of the Florida Statutes:

- 13.90-13.996, relating to the Florida Legislative Law Revision Council
- 16.58(2)(g), relating to a court reporter pilot program.
- 25.074, relating to the assignment of judges to geographical areas.
- 25.081, relating to the Supreme Court seal.
- 27.0055(1) and (4), relating to official court reporters.
- 34.01(1)(c)1.-3. and a portion of paragraph 4., relating to the jurisdictional amounts for county court actions.
- 35.09, relating the district courts of appeal seal.
- 46.015(4), relating to covenants not to sue.
- 46.051(6)(b), relating to the joinder of parties in products liability cases.
- 57.111(6)(b), relating to civil actions initiated by state agencies.
- 60.02, relating to injunctions.
- 68.091(2), relating to a severability clause.
- 92.55(1), relating to victims and witnesses.
- 112.3217(4), relating to lobbying.

The fiscal impact of the bill is indeterminate.

The bill shall take effect on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Sections 13.90-13.996, F.S., create the Florida Legislative Law Revision Council. This organization is no longer in operation. As such, these provisions are unnecessary.

Section 16.58(2)(g), F.S., directs the Florida Legal Resource Center, a unit of the Department of Legal Affairs, to develop a pilot project to provide court reporting services to state agencies. The recommendations from that project were due to the Governor, the Speaker of the House and the President of the Senate by January 1, 1994. This section is therefore obsolete.

Section 25.074, F.S., allows the Supreme Court of Florida to require, by rule, a circuit or county court judge to regularly perform his or her services in a certain county or geographical area within the territorial jurisdiction of his or her court. The law also states that until the Supreme Court adopts a relevant rule, the statutory residence requirements in existence on April 26, 1972 shall control. Section 26.021, F.S., provides for certain residence requirements for judges in the Fifth, Seventh, and Sixteenth Judicial Circuits. Article V, Section 7 of the Florida Constitution allows a circuit or county court to hold trials and hearings in "any place within the territorial jurisdiction of the court as designated by the chief judge of the circuit." Moreover, Article V, Section 2 of the Florida Constitution places with the Supreme Court the authority to adopt rules for practice and procedure in all courts. Therefore, the Court should have constitutional authority to promulgate a rule governing the assignment of judges. Such assignment is contemplated in s. 25.074, F.S. As such, s. 25.074, F.S., is unnecessary.

Section 25.081, F.S., states that the official seal of the Supreme Court shall be provided by rules of the court. Article V, Section 1 of the Florida Constitution provides that the "judicial power shall be vested in a supreme court..." In addition, Article V, Section 2 authorizes the Supreme Court to adopt rules of practice and procedure in all state courts. These two provisions constitute sufficient constitutional authority for the Supreme Court to adopt a rule creating an official seal. The Florida Constitution cloaks the court with sufficient power to make a seal for its official use.

Section 27.0055(1), F.S., defines the term "official court reporter" as a person who had been appointed as an official court reporter under former Chapter 29, F.S. That chapter has since been repealed. Section 27.0055(4), F.S., creates a grandfather clause that will apply the official court reporter law to those persons who had been appointed as official court reporters prior to the effective date of s. 27.0055, F.S. Staff has contacted the Florida Association of Court Reporters and the Office of State Courts Administrator, who have indicated that there are no longer any "official court reporters" in this state. Consequently, s. 27.0055, F.S., is obsolete.

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Section 34.01, F.S., sets the jurisdictional dollar amounts for county courts. Subsection (1)(c) contains jurisdictional amounts for cases filed from July 1, 1980 through July 1, 1990. Effective on July 1, 1992, the jurisdictional amount changed. Consequently, subsections (c)1.-3. and a short portion of subsection (c)4. relating to an effectiveness date are obsolete.

Section 35.09, F.S., creates authority for the Supreme Court to prescribe an official seal for the district courts of appeal. See discussion of s. 25.081, *supra*.

Section 46.015, F.S. relates to covenants not to sue. Subsection (4) of that section provides that the law will apply only to written releases or covenants not to sue executed after June 23, 1980. This subsection is likely unnecessary, since there are probably no remaining covenants executed prior to June 23, 1980. The exact number cannot be determined however.

Section 46.051, F.S., governs the joinder of products liability insurers. Subsection (6)(b) of that section provides that the law is applicable only to causes of action accruing on or after October 1, 1978. The likelihood that there are causes of action for products liability which accrued prior to October 1, 1978 is extremely low. Therefore, this subsection is unnecessary.

Section 57.111, F.S., governs civil actions and administrative proceedings initiated by state agencies and is commonly known as the Florida Equal Access to Justice Act. The Act allows a prevailing small business entity to receive attorney's fees arising out of a civil or administrative action initiated by a state agency. Subsection (6)(b) provides that the Act will only apply to actions initiated by state agencies after July 1, 1984. Since it is unlikely that there are any existing civil or administrative actions dating from before July 1, 1984, this subsection is unnecessary.

Section 60.02, F.S., provides jurisdiction for "chancery courts" to enjoin persons from cutting trees, removing logs, or boxing or scraping trees for the purpose of making turpentine. This law was enacted in 1889, and the last reported case on s. 60.02 (formerly s. 64.08, F.S.) is Baker v. McKinney, 54 Fla. 495, 44 So. 944 (Fla. 1917). It is a tenet of the law of equity that a court has jurisdiction to enter an injunction if the moving party shows a likelihood of irreparable harm; the lack of an adequate remedy at law; a substantial likelihood of success on the merits of the underlying claim; and consideration of the public interest. Spradley v. Old Harmony Baptist Church, 721 So.2d 735 (Fla. 1st DCA 1998). As such, this law is unnecessary.

Section 68.091, F.S., contains construction and severability provisions relating to the Florida False Claims Act (ss. 68.081-68.09, F.S.). Subsection (2) of s. 68.091, F.S., contains a generic severability clause. A severability clause is not determinative of whether portions of a statute may be severed from the remainder of the statute. Barndollar v. Sunset Realty Corp., 379 So.2d 1278 (Fla. 1979). In order for an invalid portion of a law to be severable, a court must be able to conclude that the Legislature would have been content to enact the law without the invalid provision. Barndollar, *supra* at 1280 (citing State ex rel. Limpus v. Newell, 85 So.2d 124 (Fla. 1956)). While the existence of a severability clause may be persuasive, Moreau v. Lewis, 648 So.2d 124 (Fla. 1995), it is not necessary to ensure the viability of the statute at issue.

Section 92.55(1), F.S., requests the Supreme Court to enact rules relating to the protection of child and mentally retarded witnesses in criminal, civil, and juvenile proceedings. The Office of State Courts Administrator reports that such rulemaking has been accomplished by the Court and that this section is therefore unnecessary.

Section 112.3217, F.S., relates to contingent fees for lobbying the executive branch. Subsection (4) of that section provides that the section will not apply to any contract providing for compensation by contingency fee which was in existence on the date the act became law and which did not provide for compensation by contingency fee for lobbying after December 31, 1993. Since the law clearly contemplated that no contingency fee contracts could be in use after December 31, 1993, it is doubtful whether any lobbyist is engaged by such contract at this time. Therefore, repeal of subsection (4) is in order as it is unnecessary.

C. EFFECT OF PROPOSED CHANGES:

The bill will repeal the following sections of the Florida Statutes:

- 13.90-13.996, relating to the Florida Legislative Law Revision Council
- 16.58(2)(g), relating to a court reporter pilot program.
- 25.074, relating to the assignment of judges to geographical areas.
- 25.081, relating to the Supreme Court seal.
- 27.0055(1) and (4), relating to official court reporters.
- 34.01(1)(c)1.-3. and a portion of paragraph 4., relating to the jurisdictional amounts for county court actions.
- 35.09, relating the district courts of appeal seal.
- 46.015(4), relating to covenants not to sue.
- 46.051(6)(b), relating to the joinder of parties in products liability cases.
- 57.111(6)(b). relating to civil actions initiated by state agencies.
- 60.02, relating to injunctions.
- 68.091(2), relating to a severability clause.
- 92.55(1), relating to victims and witnesses.
- 112.3217(4), relating to lobbying.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate

2. Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate

2. Expenditures:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

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

The bill does not affect the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

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C. OTHER COMMENTS:

Representatives of the Florida Bar office of general counsel have indicated that the Bar does not oppose the bill. The Office of State Courts Administrator has also indicated that it does not oppose the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 8, 2000, the Committee on Judiciary adopted a strike-everything amendment and made the bill a committee substitute. The bill retains the bulk of its original provisions, however the strike-everything removes ss. 44.201(7), 120.574, and 120.695 and adds repeal of ss. 13.90-13.996, relating to the Florida Legislative Law Revision Council. It also restores the repeal of s. 16.58(2)(g) to the bill. This provision was erroneously left out of the draft.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.