

By Senator Lee

rb01-6

1 A reviser's bill to be entitled
2 An act relating to the Florida Statutes;
3 amending ss. 90.803, 627.736, 752.01, and
4 924.07, F.S., and repealing s. 874.04, F.S., to
5 conform to judicial decisions holding said
6 provisions or parts thereof unconstitutional.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Subsection (24) of section 90.803, Florida
11 Statutes, is amended to read:

12 90.803 Hearsay exceptions; availability of declarant
13 immaterial.--The provision of s. 90.802 to the contrary
14 notwithstanding, the following are not inadmissible as
15 evidence, even though the declarant is available as a witness:

16 ~~(24) HEARSAY EXCEPTION; STATEMENT OF ELDERLY PERSON OR~~
17 ~~DISABLED ADULT.--~~

18 ~~(a) Unless the source of information or the method or~~
19 ~~circumstances by which the statement is reported indicates a~~
20 ~~lack of trustworthiness, an out-of-court statement made by an~~
21 ~~elderly person or disabled adult, as defined in s. 825.101,~~
22 ~~describing any act of abuse or neglect, any act of~~
23 ~~exploitation, the offense of battery or aggravated battery or~~
24 ~~assault or aggravated assault or sexual battery, or any other~~
25 ~~violent act on the declarant elderly person or disabled adult,~~
26 ~~not otherwise admissible, is admissible in evidence in any~~
27 ~~civil or criminal proceeding if:~~

28 ~~1. The court finds in a hearing conducted outside the~~
29 ~~presence of the jury that the time, content, and circumstances~~
30 ~~of the statement provide sufficient safeguards of reliability.~~
31 ~~In making its determination, the court may consider the mental~~

1 ~~and physical age and maturity of the elderly person or~~
2 ~~disabled adult, the nature and duration of the abuse or~~
3 ~~offense, the relationship of the victim to the offender, the~~
4 ~~reliability of the assertion, the reliability of the elderly~~
5 ~~person or disabled adult, and any other factor deemed~~
6 ~~appropriate; and~~

7 2. ~~The elderly person or disabled adult either:~~

8 a. ~~Testifies; or~~

9 b. ~~Is unavailable as a witness, provided that there is~~
10 ~~corroborative evidence of the abuse or offense. Unavailability~~
11 ~~shall include a finding by the court that the elderly person's~~
12 ~~or disabled adult's participation in the trial or proceeding~~
13 ~~would result in a substantial likelihood of severe emotional,~~
14 ~~mental, or physical harm, in addition to findings pursuant to~~
15 ~~s. 90.804(1).~~

16 (b) ~~In a criminal action, the defendant shall be~~
17 ~~notified no later than 10 days before the trial that a~~
18 ~~statement which qualifies as a hearsay exception pursuant to~~
19 ~~this subsection will be offered as evidence at trial. The~~
20 ~~notice shall include a written statement of the content of the~~
21 ~~elderly person's or disabled adult's statement, the time at~~
22 ~~which the statement was made, the circumstances surrounding~~
23 ~~the statement which indicate its reliability, and such other~~
24 ~~particulars as necessary to provide full disclosure of the~~
25 ~~statement.~~

26 (c) ~~The court shall make specific findings of fact, on~~
27 ~~the record, as to the basis for its ruling under this~~
28 ~~subsection.~~

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30 Reviser's note.--The Florida Supreme Court in
31 Conner v. State, 748 So.2d 950 (Fla. 1999),

1 held s. 90.803(24) unconstitutional as it
2 violates the defendant's constitutional right
3 to confrontation.
4

5 Section 2. Paragraph (c) of subsection (5) of section
6 627.736, Florida Statutes, is amended to read:

7 627.736 Required personal injury protection benefits;
8 exclusions; priority; claims.--

9 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

10 (c) ~~Every insurer shall include a provision in its~~
11 ~~policy for personal injury protection benefits for binding~~
12 ~~arbitration of any claims dispute involving medical benefits~~
13 ~~arising between the insurer and any person providing medical~~
14 ~~services or supplies if that person has agreed to accept~~
15 ~~assignment of personal injury protection benefits. The~~
16 ~~provision shall specify that the provisions of chapter 682~~
17 ~~relating to arbitration shall apply. The prevailing party~~
18 ~~shall be entitled to attorney's fees and costs.~~For purposes
19 of the award of attorney's fees and costs, the prevailing
20 party shall be determined as follows:

21 1. When the amount of personal injury protection
22 benefits determined by arbitration exceeds the sum of the
23 amount offered by the insurer at arbitration plus 50 percent
24 of the difference between the amount of the claim asserted by
25 the claimant at arbitration and the amount offered by the
26 insurer at arbitration, the claimant is the prevailing party.

27 2. When the amount of personal injury protection
28 benefits determined by arbitration is less than the sum of the
29 amount offered by the insurer at arbitration plus 50 percent
30 of the difference between the amount of the claim asserted by
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1 the claimant at arbitration and the amount offered by the
2 insurer at arbitration, the insurer is the prevailing party.

3 3. When neither subparagraph 1. nor subparagraph 2.
4 applies, there is no prevailing party. For purposes of this
5 paragraph, the amount of the offer or claim at arbitration is
6 the amount of the last written offer or claim made at least 30
7 days prior to the arbitration.

8 4. In the demand for arbitration, the party requesting
9 arbitration must include a statement specifically identifying
10 the issues for arbitration for each examination or treatment
11 in dispute. The other party must subsequently issue a
12 statement specifying any other examinations or treatment and
13 any other issues that it intends to raise in the arbitration.
14 The parties may amend their statements up to 30 days prior to
15 arbitration, provided that arbitration shall be limited to
16 those identified issues and neither party may add additional
17 issues during arbitration.

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19 Reviser's note.--The Florida Supreme Court in
20 Nationwide Mutual Fire Insurance Company v.
21 Pinnacle Medical, Inc., 753 So.2d 55 (Fla.
22 2000), held portions of s. 627.736(5)(c)
23 unconstitutional as violative of the right of
24 medical providers to access to courts as
25 provided for in s. 21, Art. I of the Florida
26 Constitution. The Court also held the attorney
27 fee provision of s. 627.736(5) unconstitutional
28 as violative of the due process rights of
29 medical providers as provided for in s. 9, Art.
30 I of the Florida Constitution.

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1 Section 3. Subsection (1) of section 752.01, Florida
2 Statutes, is amended to read:

3 752.01 Action by grandparent for right of visitation;
4 when petition shall be granted.--

5 (1) The court shall, upon petition filed by a
6 grandparent of a minor child, award reasonable rights of
7 visitation to the grandparent with respect to the child when
8 it is in the best interest of the minor child if:

9 (a) The marriage of the parents of the child has been
10 dissolved; or

11 (b) A parent of the child has deserted the child; ~~or~~

12 ~~(c) The minor child was born out of wedlock and not~~
13 ~~later determined to be a child born within wedlock as provided~~
14 ~~in s. 742.091.~~

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16 Reviser's note.--The Florida Supreme Court in
17 Saul v. Brunetti, 753 So.2d 26 (Fla. 2000),
18 held s. 752.01(1)(d) [redesignated as s.
19 752.01(1)(c) by s. 2, ch. 2000-156, Laws of
20 Florida] unconstitutional.

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22 Section 4. Section 874.04, Florida Statutes, is
23 repealed.

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25 Reviser's note.--The Florida Supreme Court in
26 State v. O.C., 748 So.2d 945 (Fla. 1999), held
27 s. 874.04 unconstitutional as violative of
28 substantive due process.

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30 Section 5. Subsection (1) of section 924.07, Florida
31 Statutes, is amended to read:

- 1 924.07 Appeal by state.--
- 2 (1) The state may appeal from:
- 3 (a) An order dismissing an indictment or information
- 4 or any count thereof or dismissing an affidavit charging the
- 5 commission of a criminal offense, the violation of probation,
- 6 the violation of community control, or the violation of any
- 7 supervised correctional release.
- 8 (b) An order granting a new trial.
- 9 (c) An order arresting judgment.
- 10 (d) A ruling on a question of law when the defendant
- 11 is convicted and appeals from the judgment. Once the state's
- 12 cross-appeal is instituted, the appellate court shall review
- 13 and rule upon the question raised by the state regardless of
- 14 the disposition of the defendant's appeal.
- 15 (e) The sentence, on the ground that it is illegal.
- 16 (f) A judgment discharging a prisoner on habeas
- 17 corpus.
- 18 (g) An order adjudicating a defendant insane under the
- 19 Florida Rules of Criminal Procedure.
- 20 (h) All other pretrial orders, except that it may not
- 21 take more than one appeal under this subsection in any case.
- 22 (i) A sentence imposed below the lowest permissible
- 23 sentence established by the Criminal Punishment Code under
- 24 chapter 921.
- 25 (j) A ruling granting a motion for judgment of
- 26 acquittal after a jury verdict.
- 27 (k) An order denying restitution under s. 775.089.
- 28 ~~(l) An order or ruling suppressing evidence or~~
- 29 ~~evidence in limine at trial.~~
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1 Reviser's note.--The Florida Supreme Court in
2 State v. Gaines, 25 Fla. L. Weekly S987 (Fla.
3 Nov. 2, 2000), held s. 924.07(1)(1)
4 unconstitutional as violative of s. 4(b)(1),
5 Art. V of the Florida Constitution, which vests
6 exclusive power in the Florida Supreme Court to
7 authorize nonfinal appeals.
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