

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 87 Communications Among the Branches of State Government

SPONSOR(S): Civil Justice Subcommittee; Soto

TIED BILLS: None **IDEN./SIM. BILLS:** SB 996

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Billmeier	Bond
2) Rulemaking & Regulation Subcommittee	11 Y, 1 N	Rubottom	Rubottom
3) Judiciary Committee			

SUMMARY ANALYSIS

This bill requires the Florida Supreme Court or any district court of appeal that declares a statute, regulation, or government practice unconstitutional, recommends statutory or regulatory changes, or finds that the meaning of a statute is unclear to submit a copy of the opinion to the Speaker, the Governor, and the President of the Senate within 30 days after the opinion is published by the court.

This bill appears to have a minimal negative recurring fiscal impact on state government expenditures payable from the General Revenue Fund. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Opinions issued by the Florida Supreme Court and the five district courts of appeal are available on each of the courts' websites.¹ In addition, opinions are published by various private publishing companies. The courts routinely provide copies of the opinion to the parties that participated in the litigation. Such opinions are not routinely provided to nonparties.

Appellate court opinions sometimes declare a statute invalid. Often an executive branch agency is a party to the litigation and receives a copy of the opinion. However, a statute can be declared invalid in cases where no government entity is a party to the litigation. For example, in *Massey v. David*, 979 So. 2d 931 (Fla. 2008), the Florida Supreme Court declared s. 57.071(2), F.S., unconstitutional because it impermissibly encroached on the rulemaking authority of the court. The *Massey* case was a legal malpractice case between an attorney and a former client; no government entity was involved.

Courts occasionally issue opinions which recommend statutory changes or identify drafting issues in statute. For example, a Florida court noted an issue with Florida's Good Samaritan Act:

Given the current state of Florida's Good Samaritan Act, F.S. 768.13, we have some public policy concerns regarding the potential impact of our ruling in this case. The Good Samaritan statute, which purports to insulate from liability those who assist injured parties in an emergency, in truth, provides very little protection. See *Botte v. Pomeroy*, 438 So. 2d 544, 545 (Fla. 4th DCA 1983). The immunity given under the Act to a person who gratuitously renders aid to an injured person is conditioned upon that person rendering aid "as an ordinary reasonably prudent person." Because this is no different than the common law standard of care that applies without this so-called immunity, the protection under the act is illusory.

Thus, a business owner who has no legal duty to provide CPR to an injured invitee in a medical emergency might consider himself better off not undertaking to administer CPR. This is because he risks liability only if he voluntarily undertakes to administer CPR and then performs the procedure negligently. As our court did many years ago in *Botte*, we place the blame for this quandary on the legislature's failure to update the Good Samaritan Act. As written, the Act does not adequately protect individuals from civil liability for negligent acts committed while voluntarily providing emergency care. It thus discourages individuals from performing specialized skills, such as CPR, on injured persons when they have no duty to do so.²

Similarly, the Fourth District Court of Appeal recently issued an opinion noting the difficulty the courts have had interpreting the expert witness provisions of s. 766.102, F.S., and noting that a statute purporting to provide immunity to volunteer team physicians provides little protection:

Section 768.135 appears to provide no more protection (save the "similarly licensed" requirement) than general tort law. The statute purports to provide immunity, but its protection is illusory. If the legislature intended to provide some additional layer of protection to those physicians who volunteer their services, then perhaps the statute needs another look.³

¹ The opinions of the Florida Supreme Court are found here: <http://www.floridasupremecourt.org/decisions/opinions.shtml>. In addition, the webpage contains a link to the opinions of each of the five district courts of appeal.

² *L.A. Fitness International, LLC v. Mayer*, 980 So. 2d 550, 561 n.2 (Fla. 4th DCA 2008).

³ *Weiss v. Pratt*, Case Nos. 4D08-2179 and 4D10-562 (Fla. 4th DCA February 16, 2011), Slip Opinion at 8.

This bill requires the Florida Supreme Court or any district court of appeal⁴ which issues an opinion which declares a statute, regulation, or government practice unconstitutional, recommends statutory or regulatory changes, or finds that the meaning of a statute is unclear must submit a copy of the opinion to the Speaker, the Governor, and the President of the Senate within 30 days after the opinion is published by the court. The bill requires that the clerk of the court transmit the opinion.

The bill takes effect on July 1, 2011.

B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Judicial Opinion Communications Act."

Section 2 creates s. 25.079, F.S., relating to court opinions of the Supreme Court.

Section 3 creates s. 35.079, F.S., relating to court opinions of a district court of appeal.

Section 4 provides that the bill takes effect on July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Supreme Court and the district courts of appeal may incur minimal recurring additional costs in reviewing opinions and providing notice to the appropriate persons. The costs of the notices would be payable from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁴ The bill's reporting requirements do not apply to circuit or county courts.

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill provides that Florida Supreme Court and the district courts of appeal must provide copies of certain opinions to the Speaker, the Governor, and the President of the Senate. Article V, section 2(a), of the Florida Constitution, provides that the Florida Supreme Court "shall adopt rules for the practice and procedure" in all courts. The Florida Supreme Court has interpreted this provision to mean that the court has the exclusive power to create rules of practice and procedure and statutes that do so are invalid. If the court were to determine that the provisions of this bill created a procedural rule, the court could hold the statute invalid or adopt it as a rule of court.

Despite any Article V, section 2(a) concerns, Article II, section 3, sets forth an express separation of powers in Florida that prevents any branch from directing the conduct of another. Thus, it is difficult to determine how the provisions of the bill might be enforced, except by voluntary compliance by the courts in the interests of comity. Moreover, the actions required by the bill might be undertaken as a matter of comity without its enactment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered the bill on March 8, 2011, and adopted an amendment. The amendment removed a requirement that the Speaker, Governor, and President of the Senate acknowledge receipt of the opinions provided by the courts. The subcommittee reported the bill, as amended, favorably as a committee substitute.