

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 225 Self-Authentication of Documents

SPONSOR(S): Justice Appropriations Subcommittee; Civil Justice Subcommittee; Fitzenhagen

TIED BILLS: None **IDEN./SIM. BILLS:** SB 352

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Civil Justice Subcommittee | 13 Y, 0 N, As CS | Malcolm | Bond |
| 2) Justice Appropriations Subcommittee | 11 Y, 0 N, As CS | Smith | Lloyd |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Evidence, such as a document, must be authenticated before it can be admitted in the course of litigation. Florida law currently considers a number of documents, such as a certified copy of an official public record, to be self-authenticating and thus admissible without further proof of authenticity.

The bill allows for the self-authentication of court filings and government records available on the internet.

The bill also provides that a certified copy of a self-authenticating, official public record may be filed electronically.

The bill would have an indeterminate fiscal impact.

The bill provides that it is effective upon becoming law

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Authentication of Documents

Section 90.901, F.S., requires that potential evidence, including documents, be authenticated before it may be admitted into evidence in a court proceeding. To authenticate a document, the proponent must provide prima facie evidence showing that the proffered document is what the proponent claims.¹ A trial court's determination of authenticity does not mean that the court has ruled that the proffered evidence is genuine; the opposing party may challenge its genuineness, and the jury will ultimately determine as a matter of fact whether the document is genuine.² An authenticated document remains subject to inadmissibility under any exclusionary rule, such as the hearsay rule.³

Authentication of Electronic Records and Websites

Like other evidence, electronic records and website contents must be authenticated with extrinsic evidence of authenticity before being admitted into evidence.⁴ Generally, an electronic record may be authenticated by the testimony of a person who created the record, another person who witnessed the record being composed and transmitted, or circumstantial evidence, such as appearance, contents, and distinctive characteristics of the evidence.⁵ To authenticate a printout of a website, it is not enough to prove that the printout of the website is accurate; rather, there must be prima facie evidence that the contents of the site are authentic and that the purported contents of the website as indicated on the printout were what appeared on the website on the relevant date.⁶ To authenticate printouts from a website, "the party proffering the evidence must produce 'some statement or affidavit from someone with knowledge of the website, for example a web master or someone else with personal knowledge would be sufficient.'"⁷

Self-Authenticating Documents

Section 90.902, F.S., sets forth a list of documents that are considered self-authenticating; that is, the document has sufficient guarantees of genuineness and is admissible into evidence without proof of extrinsic evidence of authenticity.⁸ Documents considered to be self-authenticating under s. 90.902, F.S., include documents bearing official seals of governments, copies of official public records, documents issued by governmental authorities, newspapers, and commercial papers as provided in the Uniform Commercial Code.

Effect of Proposed Changes

The bill amends s. 90.902, F.S., to allow for the self-authentication of certain government records available on the internet. Specifically, the bill allows for certified copies to be filed electronically pursuant to s. 28.22205, F.S., and be admissible as evidence to the same extent as the original.

Electronic Filing of Court Documents

¹ Charles W. Ehrhardt, *FLORIDA EVIDENCE*, § 901.1 (2015 ed.).

² *Pace v. State*, 854 So. 2d 167, 182 (Fla. 2003) (quoting Ehrhardt at § 901.1).

³ Ehrhardt at § 901.1 (citing *Acre v. Wackenhut Corp.*, 40 So. 3d 813, 816 (Fla. 3d DCA 2010); *Dollar v. State*, 685 So. 2d 901, 903 (Fla. 5th DCA 1996)).

⁴ *Id.* at § 901.1a.

⁵ *Id.*

⁶ *Id.*

⁷ *St. Luke's Cataract & Laser Inst., P.A. v. Sanderson*, 2006 WL 1320242, 70 Fed. R. Evid. Serv. 174 (M.D. Fla. 2006).

⁸ Ehrhardt, at § 902.1. The provisions of s. 90.902, F.S., regarding self-authentication are available as an alternative to introducing evidence to meet the authenticity requirements of s. 90.901, F.S. Therefore, if a document fails to meet the requirements of one of the requirement of s. 90.902, F.S., and cannot be self-authenticated, then it may be authenticated under other procedures for authentication. *Id.*

Section 28.22205, F.S., requires each clerk of court to implement an electronic filing process (known as e-filing). According to the Florida Bar, all clerks of court in Florida now require all court documents to be filed electronically.⁹ Because of this e-filing requirement, some clerks will not accept a physical certified copy of a document into the court file as contemplated by s. 90.902, F.S., thus hindering a party's ability to file self-authenticating public records with the court.¹⁰

The bill amends s. 90.902(4), F.S., to provide that a certified copy of a self-authenticating, official public record may be filed electronically.

The bill provides that it is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 90.902, F.S., related to self-authentication.

Section 2 amends s. 90.803, F.S., related to hearsay exceptions; availability of declarant is immaterial.

Section 3 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The impact is indeterminate because the Clerks were not able to accurately articulate the revenue stream of certified copies used as court documents. Although we were able to receive data on certified copies, it did not provide information on certified copies submitted as court documents. Clerks currently receive a fee for certifying copies. Under this bill, which allows a certified copy of a self-authenticating official record to be filed electronically, there will be no fees paid to the Clerks. The number of certified copies purchased across the state in recent years has not been determined, neither has the percentage of copies which were used as evidence in court cases.

2. Expenditures:

The bill would likely have a minimal impact on reducing workload.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

⁹ Real Property, Probate, and Trust law Section of the Florida Bar, *White Paper, Proposed changes to Fla. Stat. 90.902, concerning authentication of electronic records*, 1 (on file with the Civil Justice Subcommittee).

¹⁰ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

There is a balance between the powers of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.¹¹

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Justice Appropriations Committee favorably recorded an amendment to HB 225. The amendment deleted the provision in the bill allowing for electronic public documents from the courts and agencies of the federal government, other states, or U.S. territories to be self-authenticating. The amendment deleted the language listing additional requirements the party seeking self-authentication of a document must complete. The amendment deleted the guidelines by which the court should deem an electronic document authentic.

¹¹ See, e.g., *In re Florida Evidence Code*, 782 So.2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); compare *In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), clarified, *In re Florida Evidence Code*, 376 So.2d 1161 (Fla. 1979).