

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 634

INTRODUCER: Rules Committee; Commerce and Tourism Committee; and Senator Bradley

SUBJECT: Judicial Notice

DATE: February 3, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 634 creates a process for a court to take “judicial notice” of certain information taken from mapping services, such as Google Maps. Under Florida law, judicial notice may generally be declared for certain facts “not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned” or “because they are generally known within the territorial jurisdiction of the court.”¹

The bill provides a process separate from the above standards for any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or Internet mapping tool so long as the information in question indicates the date that it was created.

For civil cases, the bill provides a presumption that the information sought to be judicially noticed should be judicially noticed. This presumption may be overcome if the court finds that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code. In a criminal case, the court must instruct the jury that the jury may or may not accept this information as conclusive.

The bill provides an effective date of July 1, 2022.

¹ Section 90.202(11) and (12), F.S.

II. Present Situation:

The Florida Evidence Code

Florida statutes, such as the Florida Evidence Code (Code) as enacted by the Legislature, contain both procedural and substantive law for the courts to apply. Depending on the type of proceeding, the Code is generally applicable to all proceedings in Florida courts,² including actions based on federal claims.³ However, statutes that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under article v, section 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for expert witnesses in medical negligence cases on the grounds that the statute was procedural.⁵

Judicial Notice

Judicial notice allows a court to make a finding that a certain piece of evidence is true without any formal introduction for that basis.⁶ Generally, this may involve undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice may be used to save time and resources, as presenting evidence for certain situations may prove too much of an unnecessary burden.⁷ Courts warn though, that judicial notice "should be exercised with great caution" and "must be of common and general knowledge [and] authoritatively settled and not doubtful."⁸ A famous example occurred in Ohio where a trial court took judicial notice that "Bud Lite is beer" in a case involving the sale of beer to an underage person.⁹ The conviction was eventually vacated by the Ohio Supreme Court, consistent with an appellate court finding that despite Bud Lite meeting the "common, everyday understanding" of the term "beer," this did not align with the statutory language as enacted by Ohio Legislature, which included that the beverage contain "between one-half of one percent and twelve percent alcohol by volume."¹⁰ The conviction was

² Section 90.103, F.S.

³ *Byrd v. BT Foods, Inc.*, 26 So. 3d 600, 605 (Fla. 4th DCA 2009) ("[S]tate evidence codes control evidentiary questions presented in state court. This is so even where federal claims are litigated, unless the state rules would affect substantive federal rights.").

⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

⁶ Legal Information Institute, *Cornel Law School*, https://www.law.cornell.edu/wex/judicial_notice (last visited January 21, 2022).

⁷ For example, soliciting testimony from members of the Governor, the Secretary of State, and members of the Legislature to verify that an act of the Legislature was enacted into Florida law would put a large burden on those officials in addition to any parties seeking evidence of any Legislative act.

⁸ *State v. Coleman*, 5 So. 2d 60, 62 (Fla. 1941).

⁹ *State v. Kareski*, 2012 WL 1717976, *2 (Ohio 9th Dist. Ct. App. 2012), *vacated*, 998 N.E.2d 410, (Ohio 2013).

¹⁰ Ohio Rev. Code Ann. § 4301.01(6)(b).

thus vacated because the government failed to prove that the Bud Lite in question contained required percentage of alcohol.

There are practical considerations when asking a court to take judicial notice of something. In the above referenced case, for example, judicial notice likely allowed the prosecutor to avoid testing a sample of Bud Lite to determine the alcoholic content. The Bud Lite in question did not contain an official marker identifying the amount of alcohol.¹¹ The Code differentiates between when a court *may* or *shall* take judicial notice upon request of a party.

Under s. 90.201, F.S., a court *shall* take judicial notice of:

- Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States,
- Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court, and
- Rules of court of the United States Supreme Court and of the United States Courts of Appeal.¹²

Under s. 90.202, F.S., a court *may* take judicial notice of:

- Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature,
- Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States,
- Contents of the Federal Register,
- Laws of foreign nations and of an organization of nations,
- Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States,
- Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,
- Rules of court of any court of this state or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States,
- Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies,
- Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies,
- Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies,
- Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court,
- Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned, and

¹¹ *Kareski*, 998 N.E.2d at 411.

¹² Section 90.201, F.S.

- Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.¹³

When presented with a request under s. 90.202, F.S., a court is required to take judicial notice after the court:

- Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request, and
- Is furnished with sufficient information to enable it to take judicial notice of the matter.¹⁴

III. Effect of Proposed Changes:

The bill creates a process to allow a court to take judicial notice of certain information from widely accepted web mapping services, such as street information from Google Maps. Specifically, the bill will allow a court to take judicial notice of any image, map, location, distance, calculation, or other information taken from any widely accepted web mapping service, global satellite imaging site, or internet mapping tool so long as the information in question indicates the date that it was created.

In order for a court to take judicial notice of this type of information, the bill requires a party to file notice within a reasonable time, or as required by a court order. This notice must include a copy of the information and specify the Internet address or pathway where it may be inspected.

The bill provides a process for a party to object to a request for judicial notice of such information. In a civil case, there is a rebuttable presumption that the information sought to be judicially noticed should be judicially noticed, which may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove, or that it otherwise should not be admitted into evidence under the Florida Evidence Code. In a criminal case, the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

The bill provides that this section “does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.”

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹³ Section 90.202, F.S.

¹⁴ Section 90.203, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may enable parties in litigation to avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool.

C. Government Sector Impact:

The bill may enable government parties to litigation avoid costs that they would otherwise incur to produce, verify, and authenticate information from web mapping service, a global satellite imaging site, or an Internet mapping tool. The bill may also reduce costs to the judiciary by reducing the judicial time and resources that would otherwise be required in litigation over the admissibility of such information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 90.2035, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 3, 2022:

The underlying CS limited the rebuttable presumption that a court should take judicial notice of any image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool to only apply in civil cases. While this information may still be used in criminal cases, the CS by the Rules Committee provides that the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

CS by Commerce and Tourism on January 24, 2022:

The CS limits the presumption that a court may take judicial notice of information from web mapping services, global satellite imaging sites, or an Internet mapping tool to those that are “widely accepted.” The CS also rewords provisions of the bill without making substantive changes.

B. Amendments:

None.