

EVIDENCE CODE AND CIVIL ACTIONS

SB 528 — Attorney's Fees

by Senator Campbell

This bill amends s. 57.105, F.S., which provides for attorney's fees as sanctions for filing frivolous pleadings in civil actions or for delays in discovery. The bill provides that a party seeking sanctions under this section must give the opposing party 21 days to correct the offending action prior to filing the motion for sanctions or presenting the motion to the court.

If approved by the Governor, these provisions take effect July 1, 2002.

Vote: Senate 40-0; House 117-0

CS/HB 795 — Wrongful Death/Surviving Spouse

by Smarter Government Council and Rep. Seiler and others (SB 2144 by Senator Campbell)

This bill amends s. 768.21(3), F.S., which provides for damages that children may recover in a wrongful death action for the death of a parent. Currently, adult children of a deceased parent may not recover damages for mental pain and suffering, loss of parental companionship, guidance and instruction when the deceased parent leaves a surviving spouse. This bill provides that, if both spouses die within 30 days of one another as the result of the same wrongful act or series of acts arising out of the same incident, then each spouse is considered to have been predeceased by the other. Accordingly, in such situations, adult children of the deceased parents will be able to recover damages for mental pain and suffering arising from the death of both parents.

If approved by the Governor, these provisions take effect upon becoming law and will apply to any action accruing on or after such date.

Vote: Senate 30-1; House 119-0

SB 1946 — Premises Liability/Burden of Proof

by Senators Sebesta and Brown-Waite

This bill creates s. 768.0710, F.S., to provide standards relating to the standard of care and burden of proof in premises liability cases involving an injury to a business invitee that is caused by a transitory foreign object or substance. Specifically, the bill states that a person in possession or control of a business premises owes a duty to business invitees to exercise reasonable care to

maintain the premises in a reasonably safe condition. The bill also provides that the injured business invitee has the burden of proof to prove by a greater weight of the evidence that:

- The business premises owner or operator owed a duty to the claimant;
- The person or entity in possession or control of the business premises acted negligently by failing to exercise reasonable care in the maintenance, inspection, repair, warning, or mode of operation of the business premises; and
- The failure to exercise reasonable care was the legal cause of loss, injury, or damage.

Actual or constructive notice of the transitory foreign object or substance is not a required element of proof to the claim. However, evidence of notice or lack of notice offered by any party may be considered together with all of the evidence.

The provisions of this act apply to all causes of action pending on or after the effective date of the act.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 118-0

SB 2158 — Sexually Violent Offenders

by Senator Crist

This bill amends the “Jimmy Ryce Act,” which provides for the post-sentence civil commitment of a sexually violent predator subsequent to his or her release from custody or termination of the sentence. It specifies a statutory mechanism for a sexually violent predator to raise habeas corpus claims based on challenges to the conditions, terms and location of confinement in an action other than the involuntary civil commitment proceeding, provided all administrative remedies have been exhausted. It also accords employees and officers of the Department of Legal Affairs the same immunity from civil liability as other agency, legal and professional staff for good faith conduct during the civil commitment process.

If approved by the Governor, these provisions take effect July 1, 2002.

Vote: Senate 37-0; House 117-0

FAMILY LAW

CS/SB 268 — Persons/Trust and Confidence Position

by Finance & Taxation Committee and Senator Carlton

This bill implements a number of measures relating to the authority and responsibility of persons who are in positions of trust and confidence, and the conduct of such persons as it affects the particularly vulnerable sector of the population of the elderly, minors, and physically and mentally disabled persons. Specifically, the bill:

- Creates another civil cause of action and a criminal theft offense based on the exploitation of an elderly person or disabled adult;
- Clarifies that the medical proxy provisions are applicable to allow someone to exercise health care decisions on behalf of a developmentally disabled person in the absence of an health care advance directive or surrogate designation, and any medical proxy authority can be amended or revoked by a person who regains his or her legal ability to exercise a health care decision;
- Authorizes the court to take action to protect a ward when a fiduciary has breached his or her duty to the ward;
- Expands a natural guardian's (i.e., a parent's) authority to settle a minor's claim from \$5,000 to \$15,000 without court approval or formal appointment of a legal guardian or guardian ad litem;
- Enhances the accountability of a professional guardian by requiring registration with the Statewide Public Guardianship Office (SPGO) by January 2003, who may in turn contract with the clerks of the court in each county to perform the administrative functions associated with registration, and by extending credit and background screening requirements to the professional guardian's employees except if the guardian is a financial institute; and
- Amends provisions governing public guardians by authorizing the establishment and professional staffing of local offices under the SPGO, by reducing the period from 10 years to 5 years in which unclaimed funds held by guardians escheat to the state for deposit into the Department of Elderly Affairs Trust Fund; by clarifying that those escheated funds are to be used for the benefit of public guardianships as now represented by the SPGO; and by creating a non-profit fundraising organization for the SPGO.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 115-0

SB 1222 — Public Records/Parents ID/Newborns

by Senator Saunders

This bill accords the same public records exemption for the identity of a parent who leaves a newborn infant at an emergency medical services station as already exists for the identity of a parent who leaves a newborn infant at a hospital or fire station in accordance with s. 383.50, F.S., relating to abandoned newborn infants. This bill is tied to substantive changes that were enacted last year in Chapter 2001-53, L.O.F., which expanded the types of facilities and personnel that may accept abandoned newborns.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 37-0; House 109-0

CS/SB 1236 — Marital Assets and Liabilities

by Judiciary Committee and Senators Jones and Crist

This bill amends s. 61.075(5), F.S., which provides for the equitable distribution of marital assets and liabilities in dissolution of marriage proceedings. The bill provides that nonmarital assets and liabilities include any liability incurred by forgery or the unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party who committed the forgery or affixed the unauthorized signature. The court may award attorney's fees and costs occasioned by the forgery or unauthorized signature. The provisions of this subsection do not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

If approved by the Governor, these provisions take effect July 1, 2002.

Vote: Senate 34-0; House 118-0

CS/HB 549 — Child Custody Jurisdiction/Enforcement

by Smarter Government Council and Rep. Cantens and others (CS/SB 1312 by Judiciary Committee and Senator Campbell)

This bill amends provisions relating to child custody matters. It repeals the outdated Uniform Child Custody Jurisdiction Act (ss. 61.1302- 61.1348, F.S.) and enacts an updated Uniform Child Custody Jurisdiction and Enforcement Act (ss. 61.501- 61.542, F.S.), which has been adopted in more than 27 states. This Act attempts to facilitate the resolution and enforcement of interstate child custody matters by addressing ambiguities and inconsistencies arising from court interpretations and applications and subsequently adopted federal and international law over the last 25 years. Specifically, it establishes priority court jurisdiction based on the child's home state, provides mechanisms for granting temporary emergency jurisdiction, and sets forth procedures for the enforcement of out-of-state custody orders and the location of children, including assistance from law enforcement and prosecutors.

This bill also gives the court the discretion in child custody and visitation proceedings, where there is a risk a parent may remove or conceal a child out of the state or country, to impose one or more preemptive measures including requiring a bond or security to be posted. The court may only order one or more of these measures if there is competent substantial evidence of such risk or by stipulation of the parties. This court discretion may not be exercised in those cases involving a person who qualifies as an actual or threatened victim of domestic violence. When determining whether there is a risk of flight, the court may consider a number of factors but must consider a parent's financial resources if ordering the posting of a bond. Upon a material violation of an order against removal or concealment, the court may order that the bond be forfeited. The proceeds must then be used solely to reimburse costs and damages incurred for enforcement, for the location and recovery of a child, and for reasonable attorney's fees and costs in such enforcement and recovery. Any remaining funds are to be held as further security, to pay child support arrears or allocated by the court in the best interest of the child.

If approved by the Governor, these provisions take effect October 1, 2002.

Vote: Senate 35-2; House 119-0

CS/CS SB 1656 — Rape Crisis Centers

by Children & Families Committee; Judiciary Committee; and Senators Burt, Saunders, and Crist

This bill amends s. 90.5035, F.S., to provide that information provided to a trained volunteer providing services through a rape crisis center is privileged and confidential in the same manner as information provided to a sexual assault counselor.

Section 794.024, F.S., is amended to allow government employees or officers to provide rape crisis centers or sexual assault counselors with personal information related to victims or alleged victims of sexual offenses. This allows the rape crisis centers or the sexual assault counselors to then offer services to the victim.

If approved by the Governor, these provisions take effect July 1, 2002.

Vote: Senate 35-0; House 116-0

BUSINESS LAW

CS/SB 1066 — Secured Transactions - Uniform Commercial Code

by Judiciary Committee and Senators Campbell and Crist

Article 9 of the Uniform Commercial Code governs the process of establishing and foreclosing liens against personal property. Article 9 is found at ch. 679, F.S., entitled "Uniform Commercial

Code: Secured Transactions.” In the 2001 legislative session, the Revised Article 9 of the Uniform Commercial Code, as prepared by the National Conference of Commissioners on Uniform State Laws, with Florida modifications, passed and was subsequently enacted into law as Chapter 2001-198, L.O.F. This bill corrects errors in that enactment and clarifies the relationship between fixtures filings and Florida real property law.

Some of the more significant aspects of the bill include:

- The bill creates a new subsection (10) to s. 679.2031, F.S., that provides that a security interest in an account consisting of a right to payment of a monetary obligation for the sale of real property that is the debtor’s homestead under the laws of this state is not enforceable unless certain conditions are satisfied.
- The bill adds a new subsection (5) to s. 679.3011, F.S., which provides that Florida law governs the perfection of a security interest in goods that are, or are to become, fixtures in this state by the filing of a fixture filing. Also, Florida law governs the effect of perfection or nonperfection and the priority of a security interest in goods that are or are to become fixtures in this state.
- The bill adds a new subsection (6) to s. 679.3171, F.S. This new subsection provides that an encumbrancer or owner, other than the debtor or a lien creditor, who acquires an interest in real property in which goods are or become fixtures, takes free of any security interest in the goods when the interest in the goods is perfected only with a financing statement that is not filed as a fixture filing. The interest is free of the security interest even if the encumbrancer or owner knows of the existence of the security interest.
- The bill also adds a new subsection (7) to s. 679.3171, F.S. This provision states that the holder of a mortgage or other lien against real property arising under the laws of Florida, other than ch. 679, F.S., has priority with respect to rents, issues, profits, and proceeds of the real property, including proceeds from the sale thereof, over a security interest in an account consisting of a right to payment of a monetary obligation for the sale of the real property.
- The bill amends s. 679.334(4), F.S., to clarify that only a security interest filed as a fixtures filing is sufficient to establish the priority of the security interest in goods, which are or become fixtures.
- The bill amends s. 679.5011(1), F.S., to specify that the filing office for collateral that is or is to become fixtures is the office of the clerk of the circuit court and to specify that the filing office for all other security is the Florida Secured Transaction Registry.
- The bill makes changes to the provisions in s. 627.527(2), F.S., which governs the relationship between the Department of State and the vendor selected to operate the

Florida Secured Transaction Registry. Specifically, the bill provides that the Department of State may immediately reclaim and take possession and control of the financing statements and other records from the vendor when the vendor is adjudicated a debtor in an insolvency proceeding.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 35-0; House 117-1

JUDICIARY AND BAR

CS/SB 434 — Jury Lists/Current Information

by Transportation Committee and Senators Smith, Pruitt, Campbell, and Sanderson

This bill amends s. 40.011(1), F.S., to require the Department of Highway Safety and Motor Vehicles (DHSMV) to deliver to the clerk of the circuit court in each county, on a quarterly basis, a list of persons qualified for jury duty in that county. Currently, s. 40.011(1), F.S., only requires DHSMV to provide the jury lists to the clerks once a year.

The bill also amends s. 40.022(4), F.S., to direct the Department of Law Enforcement to establish procedures to enable each clerk to submit monthly the names and other identifying information about persons selected for the jury list. The Department is instructed to search its databases and return an automated file of matching records that will assist the clerk in evaluating whether a member of the jury pool should be disqualified under the provisions of s. 40.013(1), F.S. Section 40.013(1), F.S., provides that no person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

The bill also amends ss. 322.051(1) and 322.08(2), F.S., to require the Department of Highway Safety and Motor Vehicles to capture county of residence information from each holder of a Florida driver's license or identification card.

If approved by the Governor, these provisions take effect October 1, 2002.

Vote: Senate 38-0; House 114-0

CS/HB 1679 — Study Commission on Public Records

by Smarter Government Council; State Administration Committee; and Rep. Brummer (CS/CS/SB 668 by Governmental Oversight & Productivity Committee; Judiciary Committee; and Senator Burt)

The bill addresses provisions relating to the public records law and privacy within the context of and as affected by the Internet and other advanced technologies. It creates a 22-member Committee on Public Records to conduct a study on this issue in two parts. The first part of the study must focus on information contained in court records (and in the custody of the clerks of court) and the second part must focus on information contained in official records. A committee report is due by January 1, 2003.

The bill also imposes a moratorium on the Internet publication of select records and files in the custody of the clerks of the court, i.e., military discharges, death certificates, and any and all records and documents governed by the Florida Rules of Family Law, Florida Rules of Juvenile Procedure, and the Florida Probate Rules. The clerks of the court are required to remove, upon an affected party's request, specific records if those records were published prior to the effective date of the moratorium. The clerks of the court must also post notices as to an affected party's right to request removal of such records. The bill leaves untouched the statutory directive requiring the clerks of the court to publish all other official records on the Internet website by January 1, 2006.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 27-7; House 112-0

PROBATE AND ESTATES

CS/SB 720 — Probate and Trusts

by Judiciary Committee and Senator Burt

This bill makes substantive and technical changes to the Florida Probate Code, which governs the process for distribution of assets and payment of obligations subsequent to a person's death and for the administration of an estate or trust. This bill reflects the continuing effort first begun in 1999 to modernize the Code. Specifically, the bill:

- Revises the elective share law to clarify the sources from which an elective share is payable and to accord surviving spouses who are ill the same right and treatment as spouses who are disabled under the provisions governing the qualified special needs trusts;

- Revises provisions governing estate proceedings to codify the statement that in will challenges “the presumption of undue influence” shifts the burden of proof, and to clarify the statute of limitations period in which a creditor may assert a claim against an estate;
- Revises provisions governing the duties and rights of a fiduciary, including a trustee, to clarify that the doctrine of virtual representation applies to the judicial and nonjudicial administration of a trust, and all of that which binds a sole- or co-holder of a power of appointment also binds those who may take by virtue of that representation. It also requires trustees to be on notice of their fiduciary duties and responsibilities under state and federal law, to allow trustees to recover improperly distributed assets, and to codify trust accounting standards as already exist in estate administrations;
- Expounds upon the 6-month statute-of-limitations period to provide a beneficiary notice regarding the short time in which to assert a claim against a trustee once a limitations notice accompanying a trust disclosure document is received and conforms a similar provision in the banking code as it relates to a beneficiary’s claim against a financial institute trustee; and
- Provides for the creation, validity, enforceability, and termination of trusts for the care of animals.

If approved by the Governor, these provisions take effect upon becoming, law except as otherwise provided.

Vote: Senate 36-0; House 117-0

HB 585 — Florida Uniform Principal and Income Act

by Rep. Goodlette and others (CS/CS/SB 1166 by Banking & Insurance Committee; Judiciary Committee; and Senator Posey)

This bill repeals the current provisions of ch. 738, F.S., and enacts the updated model Uniform Principal and Income Act, with several modifications specific to Florida. The Act embodies the underlying principle that a trust creator’s intent should govern the interpretation and construction of a trust or other governing instrument such that the Act acts as a default in the event a trust or other governing document is silent as to the trustee’s intent. The cumulative effect of the Act is to:

- Provide more precise procedures for trustees and personal representatives to follow in the administration of a trust or an estate, respectively;
- Specify more clearly what constitutes income and principal;
- Set forth the formulas for allocation of assets to principal and income;

- Ensure the proper amount of distribution to beneficiaries, heirs and devisees; and
- Change principal and allocation rules that are consistent and reflective of modern trust investment principles and practices.

If approved by the Governor, these provisions take effect January 1, 2003.

Vote: Senate 32-0; House 115-0