LITIGATION

HB 145 — Damage Apportionment/Civil Actions

by Rep. Brown and others (SB 2006 by Senators Webster, Dockery, Sebesta, Pruitt, and Posey)

This bill (Chapter 2006-6, L.O.F.) largely abolishes the application of joint and several liability for economic damages in negligence cases. As a result of the bill, a defendant's liability for damages will be based on the defendant's percentage of fault for an injury. Previously, under certain circumstances a defendant could be liable for up to $2 million in economic damages attributed to others.

These provisions became law upon approval by the Governor on April 26, 2006.
Vote: Senate 27-13; House 93-27

HB 7259 — Class Action Lawsuits

by Judiciary Committee and Rep. Simmons and others (CS/SB 2304 by Judiciary Committee and Senator Baker)

This bill generally prohibits nonresidents from participating as plaintiffs in class action lawsuits filed in Florida courts. However, a nonresident may be included in the plaintiff class if the nonresident's claim is recognized in the nonresident's home state and the nonresident's state lacks personal jurisdiction over the defendant or defendants. Additionally, a nonresident may be included in a plaintiff class if the conduct giving rise to the cause of action occurred in or emanated from this state.

Under the bill, class action plaintiffs must allege and prove actual damages if seeking statutory penalties under chs. 320, 501, 520, and 521, F.S. These chapters pertain to motor vehicles, consumer protection, retail installment sales, and motor vehicle lease disclosure. This requirement appears to prohibit class actions for monetary relief for technical violations of the law that do not cause an injury.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 40-0; House 115-0

HB 841 — Supersedeas Bonds

by Rep. Attkisson and others (CS/SB 2250 by Judiciary Committee and Senator Webster)

Where a money judgment is entered by a court, the prevailing party may enforce the judgment even though an appeal is pending. In order to prevent collection on that judgment during the appeal process, an appealing party may post a supersedeas bond. A supersedeas bond also protects a prevailing party by insuring that a judgment can be enforced against the nonprevailing party.

The bill places an upper limit on a supersedeas bond at $50 million dollars per appellant regardless of the type of appeal or case, except for certified class actions subject to s. 768.733, F.S. The $50-million figure shall be adjusted annually to reflect changes in the Consumer Price Index. A party seeking a stay of execution pending review of a judgment may move the court to reduce the amount, which the court may grant, unless the appellant has an insurance or indemnification policy applicable to the case.

If bond is posted for less than the amount for an automatic stay under the Florida Rules of Appellate Procedure, the appellee may engage in certain limited discovery. If the court determines that an appellant has dissipated or diverted assets or is in the process of doing so, the court may take certain actions to protect the judgment, including requiring the appellant to post a supersedeas bond in an amount up to the amount that would be required for an automatic stay pursuant to Rule 9.310(b)(1), Florida Rules of Appellate Procedure.

If approved by the Governor, these provisions take effect July 1, 2006, and apply to judgments rendered on or after that date.
Vote: Senate 40-0; House 119-0

SB 542 — Birth-Related Neurological Injury

by Senators Jones and Lynn

This bill (Chapter 2006-8, L.O.F.) provides that under the Florida Birth-Related Neurological Injury Compensation Plan (the plan) addressed in ss. 766.301-766.316, F.S., the administrative law judge (ALJ) presiding over a claim for compensation has the exclusive jurisdiction to make the factual determination of whether the statutory notice provision has been met. The plan's notice provision under s. 766.316, F.S., requires participating hospitals and physicians to provide notice to an obstetrical patient as to the plan's limited no-fault alternative for birth-related neurological injuries. Except under certain circumstances, a lack of notice to the patient allows the patient to file a lawsuit in circuit court where damages are not limited to the plan's coverage.

There is currently a conflict among the state District Courts of Appeal as to whether it is within an ALJ's or a circuit court judge's jurisdiction to decide whether the patient received the statutorily required notice that a physician or hospital participates in the plan. In order to address

this conflict and to provide for uniform application of the law as it relates to notice, the revision to statute explicitly states that the ALJ has sole jurisdiction to decide this matter.

Additionally, the revision to statute authorizes the Florida Birth-Related Neurological Injury Compensation Association (NICA), which administers the plan, to contract with the State Board of Administration to invest and reinvest plan funds. NICA already has the authority to invest plan funds, and the bill is clarifying that the State Board of Administration is one of the entities with whom NICA may contract for this service.

These provisions became law upon approval by the Governor on May 2, 2006.
Vote: Senate 40-0; House 116-0

REAL PROPERTY, PROBATE, AND TRUSTS

HB 1567 — Eminent Domain

by Rep. Rubio and others (CS/SB 2168 by Judiciary Committee and Senators King and Haridopolos)

This bill heightens the safeguards of private property rights by providing certain restrictions on the use of eminent domain and limiting the transfer of property that has been taken by eminent domain.

Restrictions on the Use of Eminent Domain

The bill eliminates the authority to take property for the purpose of abating or eliminating a public nuisance. The bill also prohibits the use of eminent domain for the purpose of preventing or eliminating slum or blight conditions. The bill repeals s. 163.375, F.S., which granted broad eminent domain power to counties, municipalities, or community redevelopment agencies, with the delegated authority of eminent domain, for community redevelopment and related activities. However, the use of eminent domain in a community redevelopment area (CRA) for a traditional public purpose is permitted in the same way as permitted outside the CRA. The bill prohibits a county or municipality from delegating the power of eminent domain to a community redevelopment agency.

Restrictions on the Transfer of Property Taken by Eminent Domain

The state, any political subdivision, or any other entity to which the power of eminent domain is delegated is prohibited from transferring property acquired by eminent domain to another private entity for 10 years with certain exceptions. The exceptions include transfers for: private entities engaged in common-carrier services; roads open to the public for transportation, whether at no charge or by toll; operating a public or private utility; or public infrastructure. The bill also has an exception for transferring surplus property. If property is acquired via eminent domain and is

not needed for the original purpose, and it has been less than 10 years, it can be transferred if the original owner is first given a chance to repurchase the property at the price that the government paid him or her for the property. The bill provides for public notice and competitive bidding for the disposition of property taken by eminent domain.

The Legislature also passed a joint resolution that proposes to amend the State Constitution to limit the conveyance of private property taken by eminent domain to a natural person or private entity with certain exceptions. For a full description of this joint resolution, see HJR 1569 under the Senate Committee on Community Affairs section of this *Summary of Legislation Passed*.

If approved by the Governor, these provisions take effect upon becoming law and apply to all property for which a petition of condemnation is filed on or after that date.
Vote: Senate 37-3; House 113-0

HB 521 — Probate

by Rep. Hukill and others (SB 1824 by Senator Aronberg)

This bill revises procedures relating to the administration of a decedent's estate. Statutes providing for access to a decedent's safe-deposit box are revised in both the Financial Institutions chapter and the Probate Code for consistency in application and to provide specific procedures relating to surviving co-lessees of a safe-deposit box. The bill modifies provisions relating to notice of administration of a decedent's estate, requiring additional information on filing deadlines to be included in the notice in order to clarify these deadlines for beneficiaries.

Additional clarification is provided in sections on elective shares and exempt property (property that is protected from creditors' claims against the estate and given to beneficiaries) to allow for claims "on or *before*" certain filing deadlines. The revisions to statute address an interpretation at common law that effectively barred claims filed *prior* to certain events and allows for filing on or before filing deadlines provided in statute. The revisions to statute would allow interested parties to file on or before a filing deadline in the following instances:

- **Estate Administration** – Filing any objection that challenges the validity of a will, the qualifications of a personal representative, the venue, or the jurisdiction of the court;
- **Exempt Property** – Filing a petition for determination of exempt property; and
- **Elective Share** – Filing and withdrawing an election to take an elective share.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 38-0; House 116-0

CS/SB 1170 — Florida Trust Code
by Judiciary Committee and Senator Aronberg

The bill creates a comprehensive, new Florida Trust Code (code). The new code is a product of the Ad Hoc Trust Code Revision Committee, which was comprised of members of various sections of the Florida Bar, including Real Property, Probate and Trust Law; Elder Law; and Tax Law. The committee also included liaisons to the Probate and Trust Litigation Committee and the Probate Law Committee and representatives of the Florida Bankers Association and the Florida Institute of Certified Public Accountants.

The new code is based in part upon the Uniform Trust Code (UTC) with revisions to account for distinctions found in current Florida statutory and case law. Several of these distinctions are retained in the new code; however, changes put forth in the new code will affect trust administration as follows:

- **Representation –** expands the provision dealing with representation by a holder of a power of appointment and adds a new provision permitting a trust settlor (person who creates a trust) to designate a representative for the trust (e.g., a trust protector).
- **Trust Creation** – affirms the requirement that trusts containing land be evidenced by a signed writing; limits the unique Florida requirement that the testamentary aspects of trusts be executed with the formalities required for a will to revocable trusts; and specifies that the capacity needed to create a revocable trust is the same as that required for the execution of a will.
- **Trust Modification –** revises provisions relating to trust creation and termination proposed in the UTC while retaining Florida's existing trust modification provisions.
- **Charitable Trusts** – codifies the authority that the Attorney General has at common law to enforce charitable trusts and extends standing to enforce charitable trusts to the settlors who create them and to charitable organizations designated in an instrument to receive distributions from them.
- **Creditors' Rights –** provides that, for trusts created after the effective date of the code, a spendthrift clause must restrain both voluntary and involuntary alienation and slightly modifies the "last resort" principle established in *Bacardi v. White*. (The "last resort" principle allows the garnishment of trust distributions from a spendthrift trust to enforce orders such as child support and alimony as a last resort for fulfilling these financial obligations.)
- **Revocable Trusts –** provides that trusts are revocable by default, that a method of revocation expressed in an instrument is exclusive, and that while a trust is revocable, the trustee owes duties only to the settlor. The trustee's duties to the settler also apply to beneficiaries who have a right of withdrawal over trust property (i.e., holders of a right of withdrawal are treated as a settlor while the power is exercisable).

- **Miscellaneous and Conforming** – replaces the existing antilapse statute for inter vivos trusts with a new provision more broadly applicable to the descendibility of future interests in both testamentary and inter vivos trusts; creates new provision in ch. 518, F.S., to allow for fiduciary investment of funds in investment instruments owned by the trustee or its affiliate; abolishes the Worthier Title Doctrine; makes s. 731.103, F.S. (evidence of death or status), and s. 731.201, F.S. (definitions), now apply to chapter 736, F.S.; adds definition of "power of appointment" to s. 731.201, F.S.; makes s. 731.303, F.S. (representation), no longer applicable to proceedings involving trusts; and makes s. 732.603, F.S. (antilapse), now apply only to outright devises and appointments.

Section 736.1303, F.S., provides that the new code applies retroactively to all trusts, whenever created, except where stated otherwise in the text of the bill. The advantage to including this provision in the code is that it avoids the maintenance of two systems of trust law for extended periods of time, but in some instances retroactive application can be constitutionally impermissible (e.g., where it impairs vested rights) or unfair. To address issues that might arise if all provisions of the new code were to apply retroactivity, there are some sections that provide for differing dates of application (e.g., new requirement that testamentary aspect of a revocable trust must be executed in the manner of a will does not apply to trusts created before the bill's effective date). In addition, the court is provided with discretion in its retroactive application of the new code in situations where retroactive application might interfere with judicial proceedings or prejudice the rights of the parties to proceedings.

If approved by the Governor, these provisions take effect July 1, 2007.
Vote: Senate 39-0; House 113-0

CS/SB 1956 — Florida Land Trust Act

by Banking and Insurance Committee and Senator Aronberg

This bill modernizes the land trust statute, s. 689.071, F.S., and codifies case law on land trusts. Specifically, the bill provides that:

- A trustee of a land trust is no longer required to be qualified to act as a fiduciary;
- Beneficiaries of a land trust generally are not liable for the liabilities of a land trust;
- The authority of a trustee of a land trust is not affected by encumbrances of a beneficiary's interest;
- The power of direction of a land trust may be vested in a person other than a beneficiary; and
- A person's principal residence held in a land trust is entitled to a homestead exemption.

Lastly, the bill creates procedures for the appointment of a successor trustee to a land trust.

If approved by the Governor, these provisions take effect October 1, 2006.
Vote: Senate 39-0; House 120-0

HB 65 — Foreclosure Proceedings

by Rep. Porth and others (CS/CS/CS/SB 166 by Justice Appropriations Committee; Banking and Insurance Committee; Judiciary Committee; and Senators Campbell and Crist)

Surplus funds may exist after a foreclosure sale, if property is sold for more than the amount of all disbursements required by a foreclosure order. Under existing law, the surplus belongs to the property owner at the time of the foreclosure sale. The bill creates a presumption that surplus funds belong to the owner of the real property on the date of the filing of the *lis pendens*. A *lis pendens* is a notice, filed in the official records, indicating that the title to property is in litigation. The presumption, however, can be rebutted with a properly executed assignment of the funds. The bill requires that information regarding surplus funds be included in the final judgment, certificate of sale, and certificate of disbursements. The surplus funds will be paid to the former owner of the property, unless another person files a claim for the funds within 60 days after a foreclosure sale. If a person other than the owner of record on the date of the filing of the *lis pendens* files a claim, a court must determine who is entitled to the surplus funds.

The bill creates the position of surplus trustee to find the owner of real property as of the *lis pendens* date, if no claims of surplus funds are made. The surplus trustee is entitled to 12 percent of the surplus upon obtaining a court order disbursing the surplus to the owner of record. The bill also authorizes penalties of up to $15,000 for conduct that "victimizes or attempts to victimize" a homeowner during the course of a residential foreclosure proceeding.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 36-0; House 117-0

HB 1141 — Conveyances of Land

by Rep. Stargel and others (CS/SB 1434 by Banking and Insurance Committee and Senator Atwater)

An individual retirement account (IRA) is an investment tool that permits qualified individuals to save and invest for retirement, with certain federal income tax advantages. Although IRAs have long been able to invest in real estate, it was not until recently that there has been significant interest in placing real estate investments into an IRA. Current Florida law is unclear as to how an IRA can take title to real property. The bill specifies how retirement investment plans, such as IRAs and other qualified plans, may accept, hold, and transfer title to real property.

The bill also provides for validation of conveyances to a custodian or trustee of an IRA or qualified plan which were recorded before July 1, 2006, the effective date of the bill. This

language is intended to provide a cure for previous conveyances into an IRA or other qualified plan which may not have otherwise been honored if the statute of frauds had been interpreted to preclude an IRA's or other qualified plan's investment in real property.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 40-0; House 117-0

FAMILY LAW

CS/CS/SB 118 — Temporary Child Custody

by Children and Families Committee; Judiciary Committee; and Senator Fasano

Under the bill and existing s. 751.01, F.S., an award of temporary custody is needed to consent to medical treatment, obtain records, make decisions for a child's education, and to do other things necessary for the child's care. Temporary custody may be awarded with the consent of a parent or if a parent has abused, neglected, or abandoned the child. Under existing law, family members that can petition for temporary custody are limited to a sibling, grandparent, aunt, uncle, or cousin of a minor. Additionally, in some circumstances, a putative father can petition for temporary custody. This bill expands the group of relatives who may petition for temporary custody of a child to include relatives within the third degree by blood or marriage to the parent. Additionally, a stepparent of a minor, under certain circumstances, may petition for temporary custody. However, the bill provides that putative fathers are no longer permitted to petition for temporary custody.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 40-0; House 120-0

CS/CS/SB 2184 — Parental Relocation with a Child

by Children and Families Committee; Judiciary Committee; and Senator Campbell

This bill establishes procedures for a primary custodial parent to relocate with a minor child. Under the bill, relocation can be permitted as the result of the following:

- An agreement between the primary residential parent and those with visitation rights;
- By the failure of a person with visitation rights to object to a proposed relocation after receiving notice of the proposed relocation; and
- By order of a court.

When a court evaluates a petition to relocate with a child, it must consider the following factors:

- The child's relationships with others;
- The age or developmental stage of the child, the child's needs, and the impact of the relocation on the child;
- The feasibility of preserving the relationship between the nonrelocating parent or other persons through substitute arrangements;
- The child's preference;
- Whether the relocation will enhance the quality of life of both the relocating parent and the child;
- The reasons for opposing or seeking relocation;
- Whether the relocation is necessary to improve economic circumstances of the relocating person;
- Whether the relocation is sought in good faith;
- The career opportunities available to the objecting parent;
- Whether a party has a history of substance abuse or domestic violence; and
- Any other factor affecting the best interest of the child.

If approved by the Governor, these provisions take effect October 1, 2006.
Vote: Senate 38-0; House 120-0

HB 7111 — Interference with Custody/OGSR

by Governmental Operations Committee and Rep. Rivera (CS/SB 708 by Criminal Justice Committee; Judiciary Committee; and Senator Lynn)

The criminal offense of interference with custody occurs when certain persons take or conceal a child or an incompetent person from someone with lawful custody. The bill revises the interference-with-custody statute, s. 787.03, F.S., to:

- Expand an existing exception for a spouse who takes a child in order to seek shelter from domestic violence or to protect the welfare of the child. The bill expands the exception beyond spouses to include a person having a legal right to custody of the child. The bill also includes the taking of an incompetent person within the coverage of the exception and within the procedural steps that a person must follow to avail himself or herself of the exception. (Under existing law, s. 787.03(6), F.S., a spouse who takes a child to flee domestic violence may be able to avoid prosecution if he or she, among other requirements, reports their whereabouts to the sheriff or state attorney.)

- Revise an existing defense for victims of domestic violence, to require the defendant to establish that he or she reasonably believed it was necessary to take the child or incompetent person in order to escape the violence or to protect the child or incompetent person from being exposed to the violence.
- Revise an existing defense for cases in which the child or incompetent person instigates his or her own taking, to require the defendant to establish that it was reasonable to rely on the instigating actions of the child or incompetent person.

The bill also clearly makes the offense of interference with custody applicable to the taking of a minor, replacing the term "child 17 years of age or under" with the term "minor."

The interference-with-custody statute was the subject of Senate Interim Project Report 2006-142 by the Committee on Judiciary. An accompanying public records exemption passed as HB 7113.

If approved by the Governor, these provisions take effect October 1, 2006.
Vote: Senate 38-0; House 119-0

HB 7113 — Interference with Custody/OGSR

by Governmental Operations Committee and Rep. Rivera (CS/SB 710 by Governmental Oversight and Productivity Committee and Judiciary Committee)

This bill saves from repeal an existing public records exemption for certain information provided to a sheriff or a state attorney by a person who seeks shelter with a child and wants to utilize an exception afforded under the state's interference with custody statute. The bill is the public records companion to HB 7111, relating to the criminal offense of interference with custody, which occurs when certain persons take or conceal a child or an incompetent person from someone with lawful custody. Under existing law, s. 787.03(6), F.S., a spouse who takes a child to flee domestic violence may be able to avoid prosecution if he or she, among other requirements, reports their whereabouts to the sheriff or state attorney. Currently, the name of the person taking the child and the current address and telephone number of that person and the child, contained in the report, are confidential and exempt from public disclosure.

This bill:

- Expands the public records exemption to include address and telephone information for an incompetent person who is taken, in addition to the same information for a child.
- Narrows the public records exemption by no longer providing confidential-and-exempt status for the name of the person who does the taking.
- Authorizes the confidential information to be shared with an agency in furtherance of the agency's duties.

- Provides a statement of public necessity offering a rationale for expansion of the public records exemption.

If approved by the Governor, these provisions take effect October 1, 2006, provided HB 7111 becomes law.
Vote: Senate 40-0; House 119-0

GUARDIANSHIP/COURT MONITORS

HB 457 — Guardianship

by Rep. Sands and others (CS/CS/SB 472 by Children and Families Committee; Judiciary Committee; and Senator Saunders)

This bill makes numerous changes to guardianship law. These changes:

- Reduce the amount of personal information that must be included in a professional guardian's registration;
- Empower the executive director of the Statewide Public Guardianship Office to suspend or revoke a professional guardian's registration;
- Revise the law permitting a court to appoint a guardian ad litem to represent a minor's interest in a legal claim;
- Require emergency temporary guardians to file reports and extend the length of an appointment of an emergency temporary guardian;
- Increase the number of credit and criminal history record checks to which a guardian must submit;
- Expand the rights of an incapacitated person to include services and rehabilitation necessary to maximize quality of life;
- Provide that an incapacitated person's right to marry is subject to court approval if an incapacitated person's right to contract has been removed;
- Require training for guardians, examining committee members, and court appointed guardianship attorneys;
- Require each member of an examining committee to report his or her findings;
- Require reports of voluntary guardians to include a certification from a physician that a ward is competent;
- Require professional and public guardians or their staff to visit their wards quarterly;

- Create separate requirements for guardianship plans for adults and minors;
- Authorize guardians to amend revocable trusts and create irrevocable trusts;
- Permit the appointment of a surrogate guardian to take the place of a guardian for up to 30 days;
- Repeal a provision that prohibits a person from filing a suggestion of capacity within 90 day of having been found incapacitated;
- Require the Statewide Public Guardianship Office to investigate each office of public guardian; and
- Make numerous technical changes.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 38-0; House 119-0

HB 459 — Guardianship Office/Direct-Support Organization

by Rep. Sands (CS/SB 474 by Governmental Oversight and Productivity Committee and Senator Saunders)

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the fund-raising efforts of the direct-support organization.

If approved by the Governor, these provisions take effect July 1, 2006, if HB 457 becomes law.
Vote: Senate 40-0; House 113-0

HB 191 — Guardianship/Court Monitors

by Rep. Bogdanoff and others (SB 356 by Senator Campbell)

This bill prohibits a court from appointing a guardian for an incapacitated person if sufficient alternatives to guardianship exist, such as a trust or durable power of attorney. Under existing law, if a court finds that a person is incapacitated, a guardian must be appointed. However, the bill provides that a trust or durable power of attorney is not an alternative to guardianship if an interested person files a verified statement indicating that the trust or durable power of attorney is invalid.

Additionally, the bill permits a guardian to challenge the validity of a ward's revocable trust if a court finds that such an action appears to be in the ward's best interests during the ward's probable lifetime. As such, the bill creates an exception to the general rule that an action to

contest the validity of a trust may not be commenced until the trust become irrevocable. Typically, revocable trusts used to manage a person's assets during his or her life and to distribute property upon his or her death do not become irrevocable until the person's death.

Lastly, the bill strengthens a court's ability through court monitors to investigate guardianships and enter any necessary orders to protect a ward's health, safety, or property. The bill permits the appointment of an emergency court monitor without notice to interested parties when immediate action is necessary to protect the ward.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 116-0

HB 193 — Court Monitors/Public Records

by Rep. Bogdanoff (SB 358 by Senator Campbell)

This bill makes the following records relating to court monitors confidential or exempt from public records laws that would otherwise require their disclosure:

- Orders appointing a court monitor or emergency court monitor;
- Reports of a court monitor or emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward; and
- Court determinations relating to a finding that no further action is needed to protect a ward.

The orders appointing a court monitor and reports of a court monitor lose their confidential or exempt status if a court determines that probable cause exists to take further action to protect a ward. Those records, however, may remain confidential or exempt under other statutes. Additionally, a court may make the court monitor or emergency court monitor reports available for inspection upon good cause shown.

If approved by the Governor, these provisions take effect on the same date as HB 191, provided HB 191 becomes law.
Vote: Senate 36-0; House 116-0

JUDICIARY/CLERK OPERATIONS

HB 849 — Foreign Language Court Interpreters

by Rep. Flores and others (SB 1128 by Senator Villalobos)

This bill directs the Florida Supreme Court to establish standards and procedures to certify, discipline, and train foreign language interpreters who are appointed by a court. Additionally, the bill permits the Court to charge fees to persons who apply for certification or renewal of their certification as an interpreter. The bill provides that the fee revenues will be used to offset the costs of administering the certification process. Further, the bill authorizes the Court to employ personnel necessary to administer the procedures authorized by the bill.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 39-0; House 119-0

HB 1563 — Court Files/Public Records

by Rep. Kendrick and others (CS/CS/SB 2366 by Governmental Oversight and Productivity Committee; Judiciary Committee; and Senator Argenziano)

This bill revises the responsibilities of court clerks and county recorders to protect certain confidential and exempt information from disclosure. Specifically, the bill:

- Extends the current deadline of January 1, 2007, by one year to January 1, 2008, by which clerks of court must automatically redact social security, bank account, credit, and debit card numbers from court records;
- Provides court clerks with immunity from liability for inadvertent release of social security numbers and financial account numbers in court records filed before January 1, 2008;
- Permits the county recorder to continue to allow inspection and copying of official records without redaction of social security numbers and financial account numbers until January 1, 2008, unless the county recorder has received a request to redact specific information; and
- Requires a county recorder that stores official records electronically to use his or her best efforts, which may be satisfied through an automated program, to redact confidential or exempt information from electronic records.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 40-0; House 114-3

MISCELLANEOUS

HB 567 — Notaries Public

by Rep. Kyle and others (CS/SB 1312 by Governmental Oversight and Productivity Committee and Senator Fasano)

This bill requires notaries, except for notaries who are attorneys or who are employed by an attorney or title insurance agency, to make a record of their notarial acts in a journal that must be maintained by a notary for at least five years. The journal must be maintained in a sequential paper journal or on a computer or electronic storage device. The journal must include the:

- Date, time, and type of notarial act;
- Title or name of the document or transaction;
- Signer's printed name and signature;
- Signer's address and telephone number;
- Identification presented by the signer.

Further, the bill requires notaries to notify the Governor's Office in writing of the circumstances of a lost, destroyed, misplaced, stolen, or unusable journal of notarial acts. Moreover, the bill provides that a notary's failure to keep a journal and notify the Governor's Office as required above is grounds for suspension or non-renewal of a notary's commission.

Existing law provides that a notary may charge a fee of $10 per notarial act. This bill provides that a notarial act is evidenced by the affixing of a notary seal to a document accompanied by a written certificate or jurat. Additionally, the bill prohibits notaries employed by a state agency from charging a fee to notarize certain documents for military veterans, firefighters, or law enforcement officers.

If approved by the Governor, these provisions take effect January 1, 2007.
Vote: Senate 34-5; House 115-0

HB 1325 — Controlled Substances

by Rep. Culp and others (CS/CS/SB 2356 by Criminal Justice Committee; Judiciary Committee; and Senators Baker and Crist)

This bill revises existing Florida Statutes and creates new provisions of law relating to the manufacture of controlled substances. The creation of controlled substances like methamphetamines, for example, creates toxic waste, endangering first responders and others who are exposed to the sites of methamphetamine laboratories. In addition, the combustibility of the components of methamphetamines creates a fire hazard. The bill addresses concerns related to children and first responders being exposed to the hazards of manufacturing controlled substances like methamphetamine, including:

- Adding arrest for certain drug-related activities to the list of factors considered “high-risk” in a child protective investigation, requiring the Department of Children and Family Services to file a petition for dependency in child protective investigations;
- Expanding language providing criminal penalties for persons who injure a first responder as a result of a violation of law (under ch. 893, F.S.) involving controlled substances to include firefighters, emergency medical technicians, paramedics, and other specified persons;
- Prohibiting insurers from canceling or not renewing a health or life insurance policy for specified first responders solely on the basis of exposure to toxic chemicals, injury, or disease resulting from the exposure to chemicals as the result of performing duties related to another’s violation of ch. 893, F.S.; and
- Adding the manufacture of controlled substances to the list of crimes for which pretrial detention may be ordered and requiring the court to order pretrial detention when it finds that there is a substantial probability that a defendant charged with a drug-related offense committed that crime and that there are no conditions of pretrial release that are reasonably sufficient to protect the community from harm.

If approved by the Governor, these provisions take effect July 1, 2006.
Vote: Senate 40-0; House 119-0