

THE FLORIDA SENATE  
2011 SUMMARY OF LEGISLATION PASSED  
**Committee on Judiciary**

**CS/CS/CS/HB 1111 — Family Law**

by Judiciary Committee; Health and Human Services Committee; Civil Justice Subcommittee; and Rep. Mayfield (CS/SB 1622 by Children, Families, and Elder Affairs Committee and Senator Flores)

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Maintenance Convention). The 2008 UIFSA amendments affect existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Maintenance Convention. The bill builds on previously existing Florida law providing uniform standards for interstate enforcement of support orders to include enforcement procedures internationally. The bill designates the Department of Revenue as the support enforcement agency of the state, and it directs the department to apply for a waiver from the Federal Office of Child Support Enforcement pursuant to the state plan requirement under the Social Security Act upon passage of the bill.

In addition, the bill revises Florida law relating to alimony to:

- Provide that the court determine the proper type and amount of alimony or maintenance pursuant to statutory provisions that contain descriptions of the different types of alimony;
- Specify that durational alimony can be awarded following a long-term marriage if there is no need for permanent support;
- Require a showing of clear-and-convincing evidence to award permanent alimony in the case of a marriage of moderate duration;
- Require written findings of exceptional circumstances to award permanent alimony after a short-term marriage;
- Require the court to find that no other form of alimony is fair and reasonable before awarding permanent alimony;
- Specify that an alimony award may not leave the paying party with significantly less income than the receiving party unless there are written findings of exceptional circumstances; and
- Specify that these provisions apply to all initial awards of alimony and modifications of awards of alimony entered after the effective date, but do not serve as a basis to modify awards entered before the effective date. The provisions are applicable to all cases pending on or filed after the effective date.

If the bill is approved by the Governor, the support provisions take effect upon the earlier of 90 days following Congress amending federal law to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a

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waiver of its state plan requirement under the Social Security Act. The provisions in the bill amending guidelines for the determination of alimony awards take effect July 1, 2011.

*Vote: Senate 35-0; House 117-0*

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**SB 1142 — Adverse Possession**

by Senator Dockery

Under the statute governing adverse possession, a person who occupies land continuously without color of title (i.e., without any legal document to support a claim for title) may seek title to the property. The person must file a return with the county property appraiser's office within one year of entry onto the property and pay all property taxes and any assessed liens during the possession of the property for seven consecutive years. The adverse possessor may demonstrate possession of the property by showing that he or she protected the property by a substantial enclosure (typically a fence) or cultivated or improved the property.

The bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title. Specifically, the bill:

- Includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim;
- Requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made;
- Specifies that the Department of Revenue must develop a uniform adverse possession return;
- Requires the adverse possessor to provide a "full and complete" legal description of the property on the return;
- Requires the adverse possessor to attest to the truthfulness of the information provided in the return under penalty of perjury;
- Requires an adverse possessor to describe, on the return, how he or she is using the property subject to the adverse possession claim;
- Includes emergency rulemaking authority for the Department of Revenue related to the adverse possession return;
- Prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property, or against property that does not currently have a unique parcel identification number;
- Specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll;
- Requires property appraisers to include a notation of an adverse possession claim in any searchable property database maintained by the property appraiser;
- Provides for priority of property tax payments made by owners of record by allowing for refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record; and
- Provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

If approved by the Governor, these provisions take effect July 1, 2011. The provisions apply to adverse possession claims in which the return was submitted on or after that date, except for the procedural provisions governing the property appraiser's administration of the adverse possession claims included in proposed s. 95.18(4)(c) and (d) (requiring the property appraiser to add a notation of the adverse possession filing and maintain a copy of the return) and (7), F.S. (delineating when the property appraiser shall remove the adverse possession notation). These latter provisions will apply to adverse possession claims in which the return was submitted before, on, or after July 1, 2011.

*Vote: Senate 39-0; House 117-0*

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**CS/HJR 1471 — Religious Freedom**

by Judiciary Committee and Rep. Plakon and others (SJR 1218 by Senator Altman)

The joint resolution amends s. 3, Art. I, of the State Constitution relating to religious freedom.  
The resolution:

- Repeals a limit on the power of the state and its subdivisions to spend funds “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.” The repealed provision is often cited as a “Blaine Amendment.”
- Provides that government may not deny the benefits of any program, funding, or other support on the basis of religious identity or belief, except to the extent required by the First Amendment to the United States Constitution.

If approved by at least 60 percent of the electors voting on the measure at the November 2012 general election, the constitutional amendment will take effect January 8, 2013.

*Vote: Senate 26-10; House 81-35*

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**HB 4067 — Residence of the Clerk of the Circuit Court**

by Rep. McBurney (SB 1100 by Senator Detert)

The State Constitution provides for there to be an elected clerk of the circuit court in each county. The constitution also requires, in every county, that there be a county seat at which the principal offices and permanent records of the county are located.

Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat. The Legislature enacted the law in 1871. The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within three months, and it allowed the court to fine the clerk between \$100 and \$500 for noncompliance.

This bill (Chapter 2011-10, L.O.F.) repeals the statutory requirement for the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat.

These provisions were approved by the Governor and take effect July 1, 2011.

*Vote: Senate 38-0; House 118-0*

**Committee on Judiciary**

**HB 7081 — Open Government Sunset Review/Statewide Public Guardianship Office**

by Government Operations Subcommittee and Rep. Bileca (CS/SB 572 by Governmental Oversight and Accountability Committee and Judiciary Committee)

The bill saves from repeal the public-records exemption under s. 744.7082(6), F.S., for the identity of donors or potential donors to the direct-support organization affiliated with the Statewide Public Guardianship Office. The exemption currently is scheduled for repeal on October 2, 2011, unless retained by the Legislature following a review under the Open Government Sunset Review Act.

If approved by the Governor, these provisions take effect October 1, 2011.

*Vote: Senate 36-0; House 114-0*

## Committee on Judiciary

### **HB 7083 — Open Government Sunset Review/Interference with Custody** by Government Operations Subcommittee and Rep. Young (SB 570 by Judiciary Committee)

This bill is the result of the Legislature's Open Government Sunset Review of a public-records exemption for information submitted to the sheriff or state attorney for the purpose of obtaining immunity from prosecution for the offense of interference with custody.

Under the offense of interference with custody, it is a third-degree felony for any person – without legal authority – to knowingly or recklessly take a minor or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian. It is also a third-degree felony – in the absence of a court order determining custody or visitation rights – for a parent, stepparent, legal guardian, or relative who has custody of a minor or incompetent person to take or conceal the minor or incompetent person with a malicious intent to deprive another person of his or her right to custody.

There is an exception, however, in cases in which a person is the victim of domestic violence, has reasonable cause to believe he or she is about to become the victim of domestic violence, or believes that the action was necessary to preserve the minor or the incompetent person from danger. For the exception to apply, a person who takes a minor or incompetent person must, within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the minor or incompetent person resided. The report must include the name of the person taking the minor or incompetent person, the current address and telephone number of the person and the minor or incompetent person, and the reasons the minor or incompetent person was taken.

Currently, the public-records exemption protects from disclosure the current address and telephone number of the person who takes a minor or incompetent person, as well as the address and telephone number of the minor or incompetent person, contained in the report to the sheriff or state attorney. The bill retains the public-records exemption by deleting language providing for the scheduled repeal of the exemption. The exemption will expire on October 2, 2011, unless the reenactment by the Legislature becomes law.

If approved by the Governor, these provisions take effect October 1, 2011.

*Vote: Senate 38-0; House 114-0*



## Committee on Judiciary

### **HB 7085 — Open Government Sunset Review/Court Monitors in Guardianship Cases**

by Government Operations Subcommittee and Rep. Young (SB 568 by Judiciary Committee)

Court monitoring is a mechanism courts use to review a guardian's activities, assess the well-being of the ward, and ensure that the ward's assets are being protected. Court monitors may be appointed by a court, on a nonemergency or an emergency basis, upon inquiry by an interested person or upon its own motion. A court monitor has the authority to investigate, seek information, examine documents, and interview the ward. The court monitor's findings must be reported to the court, and if it appears from the monitor's report that further action by the court is necessary to protect the ward's interests, the court must hold a hearing and enter any order necessary to protect the ward.

In conjunction with the creation of the court monitor system in guardianship proceedings, the Legislature created exemptions from public access to judicial records related to court monitors. This bill is the result of the Legislature's Open Government Sunset Review of the public-records exemptions for orders appointing nonemergency and emergency court monitors, monitors' reports, and orders finding no probable cause in guardianship proceedings.

The bill retains the public-records exemptions and makes organizational changes for clarity. The bill also removes the confidential status of court orders appointing nonemergency court monitors and makes these orders exempt rather than confidential and exempt. In addition, the bill eliminates a reference to "court determinations" in the public-records exemption relating to determinations and orders finding no probable cause for further court action because, in practice, the probable cause determination is typically contained in a written order included in the guardianship file.

These public-records exemptions stand repealed on October 2, 2011, unless the reenactment by the Legislature becomes law.

If approved by the Governor, these provisions take effect October 1, 2011.

*Vote Senate 38-0; House 113-0*

*Vote: Senate 38-0; House 113-0*

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**Committee on Judiciary**

**CS/HJR 7111 — Judiciary**

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Eisnaugle and others (SJR 2084 by Judiciary Committee)

The joint resolution revises Art. V of the State Constitution, relating to the Judiciary, as follows:

- Currently, justices of the Florida Supreme Court are selected by the Governor from a list of qualified candidates nominated by a judicial nominating commission. This joint resolution adds a requirement that a Supreme Court justice appointed by the Governor must be confirmed by the Senate to take office. Under the proposed constitutional amendment, the Senate is authorized to meet for purposes of the confirmation regardless of whether the House of Representatives is in session. If the Senate fails to vote on the appointment within 90 days, the justice is deemed confirmed. If the Senate votes to not confirm the appointment, the judicial nominating commission shall reconvene but may not renominate the same person to fill that same vacancy.
- Currently, the Constitution authorizes the Supreme Court to adopt rules for the practice and procedure in all courts. Court rules may be repealed by a two-thirds vote of the membership of each house of the Legislature. This proposed amendment authorizes repeal of a court rule by general law (a simple majority), provided that the general law expresses the policy rationale for the repeal. The Court may not readopt a rule without conforming the rule to the expressed policy reasons for the repeal. If the Legislature repeals a readopted rule, the Court may not readopt the rule again without prior legislative approval.
- Currently, the Constitution authorizes the House of Representatives to investigate charges against a judge and allows the House to request information in the possession of the Judicial Qualifications Commission (JQC) “for use in consideration of impeachment.” Accordingly, the House of Representatives cannot review the JQC files in general. This joint resolution would allow the House of Representatives, at the Speaker’s request, to review all files of the JQC without regard to whether the request is specifically related to impeachment considerations. The information would remain confidential during any investigation and until the information is used in the pursuit of impeachment.

The joint resolution includes three different ballot summaries. The joint resolution directs that the first summary will be placed on the ballot, and that each subsequent summary will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed.

If approved by at least 60 percent of the electors voting on the measure at the November 2012 general election, the constitutional revision will take effect January 8, 2013.

*Vote: Senate 24-11; House 80-38*