

THE FLORIDA SENATE
2013 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/HB 77 — Landlords and Tenants

by Judiciary Committee; and Rep. Porter (CS/CS/SB 490 by Regulated Industries Committee; Judiciary Committee; and Senator Stargel)

The bill makes numerous changes to the Florida Residential Landlord and Tenant Act. Specifically, the bill makes the following changes:

- Authorizes the use of the eviction procedures under the Florida Landlord and Tenant Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant which describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents when the advance notice period commences without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limits the presumption to 1-months rent.
- Lessens the duty of landlords of single-family homes and duplexes to maintain screens on windows. A landlord must ensure that screens are installed in reasonable condition at the beginning of the tenancy and repaired once annually thereafter.
- Provides that a right or duty enforced by civil action under the Florida Landlord and Tenant Act does not preclude prosecution for a criminal offense related to a lease or leased property.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Provides that upon the re-occurrence within 12 months after the initial notice of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to nonrenew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that Saturdays, Sundays, and holidays do not stay the applicable notice period.
- Specifies additional grounds for which a landlord may not retaliate against a tenant.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 27-10; House 92-25

This summary is provided for information only and does not represent the opinion of any Senator, Senate Officer, or Senate Office.
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Committee on Judiciary

CS/CS/CS/SB 112 — Filing False Documents Against Real or Personal Property

by Rules Committee; Criminal Justice Committee; Judiciary Committee; and Senator Dean

The bill creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official record which contains materially false, fictitious, or fraudulent statements or representations that affect the owner's interest in property described in the document. A person who commits the new offense commits a third-degree felony. A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000. If a person commits this offense a second or subsequent time, the person commits a second-degree felony. A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000. The bill increases the felony degree of these offenses under circumstances outlined in the bill. The bill also provides that a person who files a fraudulent construction lien is subject to penalties under the Construction Lien Law, not the newly-created offense in the bill.

Under current s. 843.0855, F.S., a person commits a third degree felony by engaging in the following actions under color of law or through the use of simulated legal process:

- Deliberately impersonating or falsely acting as a public officer in connection with or relating to any legal process affecting persons and property, or otherwise taking action under color of law against persons or property.
- Simulating legal process, including but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent. The bill revises the definition of "legal process" to include documents recorded with any state or federal official governmental entity.
- Falsely under color of law attempting in any way to influence, intimidate, or hinder a public officer.

For purposes of the offenses under s. 843.0855, F.S., the bill defines public officer or employee to encompass more individuals. As a result, the application of the statute establishes a broader variety of crimes relating to impersonating public officers and employees and fraudulently simulating legal process.

The bill creates additional civil remedies to grant relief to public officers or employees affected by the offense of filing of false statements or claims.

If approved by the Governor, these provisions take effect October 1, 2013.

Vote: Senate 39-0; House 116-0

Committee on Judiciary

CS/HB 179 — Eminent Domain Proceedings

by Civil Justice Subcommittee; and Rep. Young and others (CS/SB 322 by Judiciary Committee and Senator Brandes)

This bill (Chapter 2013-23, L.O.F.) entitles a person whose property is taken through a quick taking to interest earned on a deposit made to secure a judgment of taking. A quick taking occurs when a governmental entity takes physical possession of property prior to a final judgment in an eminent domain case. Public entities that take possession and title before an entry of final judgment must file a declaration of taking with a good faith estimate of the value of the property. If the court determines that the governmental entity is entitled to take possession of the property before the final judgment is entered, the court must issue an order requiring the entity to deposit money in an amount that will fully secure and compensate the defendant. These monies are deposited into the court registry. The clerk is authorized to invest the deposit to earn the highest interest rate possible.

Previously, the clerk distributed 90 percent of any interest earned automatically to the governmental entity. The other 10 percent was retained by the clerk. This bill requires a clerk of court to allocate 90 percent of the earned interest according to ultimate ownership in the deposit.

These provisions were approved by the Governor and take effect July 1, 2013.

Vote: Senate 40-0; House 116-0

Committee on Judiciary

CS/CS/HB 229 — Land Trusts

by Judiciary Committee; Civil Justice Subcommittee; and Rep Rodriguez (CS/SB 1172 by Judiciary Committee and Senator Simmons)

The bill revises the laws relating to land trusts. In general, a land trust is a written instrument in which title to real property is vested in a trustee who has the authority to manage or dispose of the property.

More specifically, the bill:

- Clarifies the distinction between a land trust governed by s. 689.071, F.S., and other trusts governed by the Florida Trust Code.
- Defines a land trust based on the functional scope of the land trustee's duties, although the power to manage or dispose of property remains an essential element of a Florida land trust.
- Relocates provisions of s. 689.071, F.S., to a newly-created section, s. 689.073, F.S. These provisions generally state that purchasers and others can rely on a land trustee's authority over property as described in a recorded instrument. These provisions will remain equally applicable to any recorded instrument, created before or after the effective date of the bill, which conveys title to property and the power to manage or dispose of the property.
- Codifies a number of land trust practices and principles commonly used in Florida and Illinois which are derived from judicial precedents or treatises on land trusts.

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

Vote: Senate 34-0; House 114-1

Committee on Judiciary

CS/HB 267 — Real Property Liens and Conveyances

by Local and Federal Affairs Committee and Rep. Wood (CS/SB 404 by Judiciary Committee and Senator Stargel)

The bill removes the requirement that warranty deeds include a blank space for the grantee's social security number.

The bill also provides that a lien by a governmental or quasi-governmental entity for an improvement, service, fine, or penalty is valid against a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located. The bill specifies information that must be included in a lien by a governmental or quasi-governmental entity. The bill excludes liens for taxes, non-ad valorem or special assessments, or utilities from the recording requirement.

If approved by the Governor, these provisions take effect October 1, 2013.

Vote: Senate 38-0; House 112-3

Committee on Judiciary

CS/CS/SB 492 — Estates

by Banking and Insurance Committee; Judiciary Committee; and Senator Hukill

The bill makes a number of changes to the Florida Probate Code, which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes include:

- Retroactively eliminating a requirement that an estate file a tax return for an estate tax when no tax is due.
- Reducing from 5 years to 2 years the time period in which intangible property held in a trust is presumed to be unclaimed property and payable to the Department of Financial Services.
- Providing that a caveator is not required to serve notice on his or herself when he or she submits a petition for administration of an estate.
- Making void, with certain exceptions, any gift received by a lawyer, or a relative of the lawyer, from a written instrument that the lawyer prepared.
- Requiring that a clerk of court, upon receipt of a will, keep the will in its original form for 20 years.
- Expanding the long-arm jurisdiction of Florida courts to adjudicate trust disputes.
- Removing conflicts between the Florida Statutes and the Florida Rules of Civil Procedure pertaining to forum non conveniens.
- Requiring that a trustee provide a trust accounting to beneficiaries at least once a year.

If approved by the Governor, these provisions take effect October 1, 2013.

Vote: Senate 40-0; House 117-0

Committee on Judiciary

CS/SB 530 — Dispute Resolution

by Judiciary Committee and Senator Thrasher

The bill creates the Revised Florida Arbitration Code based on a 2000 revision of the Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws. The original act, the Florida Arbitration Code (FAC) was passed in 1957 and subsequently revised in 1967. Since 1967, the FAC has gone mostly unchanged. The bill addresses concepts that were not addressed in the original act, such as the ability of arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, required conflict disclosures by arbitrators, immunity of arbitrators, and other substantive issues. The bill lays out a detailed framework for arbitration conducted under Florida law and repeals sections of the existing FAC, the substantive concepts of which are subsumed by the revised act.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 39-0; House 118-0

Committee on Judiciary

CS/CS/CS/SB 556 — Clerks of the Court

by Appropriations Committee; Governmental Oversight and Accountability Committee; Judiciary Committee; and Senator Ring

This bill revises the duties and responsibilities of the clerks of courts. The changes made by the bill:

- Expand the duties of a clerk of court to include the storage and maintenance of electronic filings and authorize clerks to electronically affix stamps to filings.
- Require the clerk to charge for services rendered electronically.
- Require the county recorder to remove recorded court documents from official records pursuant to a sealing or expunction order.
- Increase the threshold required for the clerk to refund an overpayment from \$5 to \$10 without a request from the person who made the overpayment.
- Clarify that the clerk may electronically provide public records requested by entities eligible to access the records without cost. These entities include the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, and others.
- Require an individual or entity to specify the document type, name, identification number, and page number, if requesting the clerk to maintain the confidentiality of information that is exempt from disclosure requirements in a court record or official record.
- Require the property appraiser, instead of the clerk, to provide a copy of the property record card to a petitioner in a challenge to a property tax valuation.
- Exempt the state from paying fees in enforcing judgments for costs and fines.
- Require clerks to provide public defenders with access to records of juveniles they are expected to represent prior to being appointed by the court.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 37-0; House 116-0

Committee on Judiciary

CS/HB 571 — Marshal of the Supreme Court

by Criminal Justice Subcommittee; and Rep. Roberson and others (CS/SB 496 by Judiciary Committee and Senator Dean)

The bill gives the marshal and his or her deputies' authority to bear arms and make arrests in connection with their official duties for the Supreme Court. The bill specifies that the marshal and his or her deputies must be law enforcement officers. These individuals must comply with the qualifications and training for law enforcement officers required by law.

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

Vote: Senate 34-0; House 116-0

Committee on Judiciary

CS/SB 592 — Garnishment

by Commerce and Tourism Committee and Senator Galvano

The bill extends the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to the creditor or 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. The form will include a requirement for certification under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief. The bill allows a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to attorneys for the creditor and garnishees. Existing law provides for the forms to be delivered only to the creditor and garnishees.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 40-0; House 117-0

THE FLORIDA SENATE
2013 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

SB 628 — Driver Licenses

by Senator Joyner

This bill expands the list of entities and individuals authorized to access copies of driver's licenses held by the Department of Highway Safety and Motor Vehicles. The bill provides access to driver's licenses to judges, employees of the state courts system, and government employees who perform functions for the state courts system in their official capacity with the courts. For employees to have access, the Chief Justice or a chief judge must grant permission in writing.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 40-0; House 115-0

Committee on Judiciary

CS/CS/SB 718 — Family Law

by Rules Committee; Judiciary Committee; and Senators Stargel, Grimsley, Richter, Thrasher, Soto, and Altman

This bill establishes guidelines for the duration and amount of alimony awards and revises other laws relating to dissolution of marriage cases. Specifically, the bill:

- Eliminates permanent, periodic alimony and limits a court's ability to award durational alimony.
- Limits the term of an award of durational alimony to 50 percent of the length of marriage unless the proponent shows sufficient need for a longer award, as supported in writing by the court.
- Provides a rebuttable presumption against an alimony award following a short-term marriage.
- Creates a rebuttable presumption in favor of an alimony award following a long-term marriage.
- Places caps on alimony payments expressed as a percentage of the income of the obligor. The caps vary based on the length of marriage.
- Provides that equal time-sharing by the parents is in the best interest of a minor child unless the court finds that equal time will pose a danger or be impracticable. This provision applies prospectively.
- Provides that the court must consider the same factors in awarding temporary alimony, alimony requested without a concurrent filing of a dissolution of marriage, and alimony required pursuant to a dissolution of marriage.
- Establishes formulas for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding. The formulas apply if a party paid down a note and mortgage on the property with marital funds.
- The bill increases the number of years of marriage required for a marriage to qualify as a short-term, mid-term, or long-term marriage.
- Prioritizes alimony ordered by the court in order of preference starting with bridge-the-gap alimony, followed by rehabilitative alimony.
- Requires the court to consider as a factor in alimony determinations nonmarital assets relied upon during the marriage.
- Requires, rather than permits, the court to modify or terminate alimony upon a showing of a supportive relationship between the obligee and a third party.
- Prohibits an alimony award to a party whose income is equal to or greater than the other party.
- Clarifies that the court must consider the retirement of the obligor of an alimony award as a substantial change in circumstances.
- Provides for the retroactive application of the guidelines specifying the amount and duration of alimony awards.

- Provides a schedule for filing petitions to modify an existing alimony award based on the duration of the alimony obligation.

This bill was vetoed by the Governor on May 1, 2013.

Vote: Senate 29-11; House 85-31

Committee on Judiciary

SB 736 — Limitations Relating to Deeds and Wills

by Senator Richter

The bill expands the scope of existing law (s. 95.231(1), F.S.), to cure defective documents purporting to transfer title to real property. Under existing law, a 5-year limitation period acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. Under the bill, the 5-year limitation period will cure such defects in any instrument, including a power of attorney, used in connection with the transfer of title to real property. Additionally, the bill provides a savings clause to allow any person who is adversely affected by the bill's changes to bring a claim within the specified period of time to protect his or her interest.

If approved by the Governor, these provisions take effect October 1, 2013.

Vote: Senate 38-0; House 117-0

Committee on Judiciary

CS/CS/HB 833 — General Assignments

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Passidomo (CS/SB 1098 by Banking and Insurance Committee and Senator Richter)

This bill streamlines procedures for the discharge of duties by an assignee under an assignment for the benefit of creditors. The changes were recommended by the Business Law Section of The Florida Bar as part of its comprehensive review of the law. More specifically, this bill:

- Creates a negative notice procedure to allow an assignee when discharging duties under an assignment for the benefit of creditors to give notice to interested parties of a planned action. In the absence of objection, the assignee may proceed without a hearing. A form is created for providing negative notice of certain acts to be undertaken by the assignee.
- Sets a minimum bond for assignees under an assignment for the benefit of creditors of at least \$25,000 or double the liquidation value of the unencumbered and liquid assets of the insolvent estate, whichever is greater.
- Authorizes an assignee to conduct discovery as provided for in the Florida Rules of Civil Procedure in the course of prosecuting or objecting to claims.
- Eliminates a conflict in existing law relating to an extension of the time within which an assignee may conduct the business of an insolvent debtor. The change allows the assignee to conduct the business of the insolvent debtor for 45 days, or longer, if needed and appropriate notice is given.
- Identifies the parties entitled to notice and specifies the contents of the notice if an assignee rejects a lease when discharging his or her duties for an insolvent estate.
- Creates a form for deeds for use by an assignee in the sale of real property of an insolvent estate.

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

Vote: Senate 36-0; House 113-0

Committee on Judiciary

CS/HB 841 — Powers of Attorney

by Judiciary Committee and Rep. Powell and others (SB 832 by Senator Joyner)

This bill makes a number of changes to the Florida Power of Attorney Act (Act) which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes:

- Make provisions of the Act which apply to financial institutions expressly applicable to broker-dealers.
- Specify that the laws governing powers of attorney do not apply to a power given to a transfer agent to facilitate a specific transfer of a financial instrument, a power authorizing a financial institution or broker-dealer to act as agent for the account owner in executing transfers of financial assets or a delegation of powers by a trustee.
- Allow a notary public to sign the principal's name on a power of attorney document if the principal is physically unable to sign.
- Allow a third party to require that an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property.
- Allow an agent with a power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose.
- Provide a standard for a court to award attorney fees in litigation involving a power of attorney.
- Allow a third party to require that an agent provide an affidavit stating whether the agent's authority has been terminated by the filing of an action for dissolution of marriage of the agent and principal.
- Clarify when a rejection of a power of attorney by a third party must be in writing.
- Clarify that the default cap in existing law on the amount of gifts that an agent may give under a power of attorney applies to gifts given in a single a calendar year.

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

Vote: Senate 38-0; House 118-0

Committee on Judiciary

CS/HB 903 — Adverse Possession

by Civil Justice Subcommittee; and Rep. Davis and others (CS/SB 1166 by Judiciary Committee; and Senator Bradley)

This bill addresses the problem of individuals squatting illegally on property while preserving adverse possession actions for legitimate purposes.

The bill adds new requirements that a person must satisfy to take title to property through adverse possession. One such requirement is that the person pays all outstanding taxes against the property within 1 year after entering into possession. Additionally, the form of the return a person must file in connection with an adverse possession claim is revised. The form requires a person to acknowledge that the return “does not create any interest enforceable by law” in the property.

The bill subjects a person to criminal penalties for trespassing if the person attempts to occupy or occupies a residential structure on the basis of adverse possession before filling a return with the property appraiser. If the person attempts to occupy a residential structure by claim of adverse possession before filing a return and then offers the property for lease, the bill subjects the person to criminal penalties for theft.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 37-0; House 117-0

Committee on Judiciary

CS/CS/HB 935 — Florida False Claims Act

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Young (CS/CS/SB 1494 by Rules Committee; Judiciary Committee; and Senator Thrasher)

The bill conforms the Florida False Claims Act (FFCA) to the Federal False Claims Act. Specifically, the bill:

- Expands the authority of the Department of Legal Affairs to issue subpoenas to investigate false claims against the state. However, this authority is contingent upon a public records exemption in House Bill 1297 (Senate Bill 1496) or similar legislation becoming law.
- Removes the statement of purpose for the FFCA.
- Revises the definitions under the FFCA to conform to the Federal False Claims Act.
- Revises the violations under the FFCA.
- Revises procedures for the Department of Legal Affairs to intervene in a case under the FFCA.
- Expands the authority of the Attorney General's Office to prosecute false claims allegedly made by certain governmental officials which are not acted upon by other state officials having authority to act.
- Revises provisions relating to the burden of proof in actions under the FFCA. Under the revised provisions, a defendant in a *qui tam* action may not deny facts which were the basis of a criminal proceeding in which the defendant was found guilty, pled guilty or pled nolo contendere. A "*qui tam* action" is an action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.

If approved by the Governor, except as otherwise provided in this act, these provisions take effect July 1, 2013.

Vote: Senate 35-0; House 117-0

Committee on Judiciary

CS/HB 953 — Warrants

by Criminal Justice Subcommittee; Rep. Nunez; and others (CS/SB 962 by Judiciary Committee and Senator Gardiner)

This bill authorizes judges to electronically sign search and arrest warrants, including warrant applications that are electronically submitted. This bill clarifies that a judge must find probable cause prior to issuing the warrant.

Prior to signing, the court must find that a complaint for an arrest warrant or an application for a search warrant:

- Contains the affiant's actual, or electronic signature;
- Is accompanied by an oath or affirmation by a judge or someone else who is authorized to administer oaths; and
- Is submitted by reliable means if submitted electronically.

Warrants are deemed to be issued at the time a judge affixes his or her actual or electronic signature to the warrant.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 37-0; House 115-0

Committee on Judiciary

CS/CS/HB 1147 — Office of Attorney General

by Judiciary Committee; Justice Appropriations Subcommittee; and Rep. Fitzenhagen (CS/SB 1464 by Appropriations Committee and Senator Lee)

This bill makes changes to laws enforced by or governing the Office of the Attorney General, also known as the Department of Legal Affairs. These changes:

- Reduce the amount of funds that revert from the Legal Affairs Revolving Trust Fund to the General Revenue Fund at the end of a fiscal year. Under existing law, amounts in excess of 3 times the combined budgets for the antitrust and racketeering sections of the Department of Legal Affairs revert to the General Revenue Fund. Under the bill, trust fund will also retain 3 times the amount of the budget for the department's consumer protection section.
- Correct a discrepancy in statute and specify that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Operating Trust Fund.
- Incorporate current federal consumer protection laws and regulations of the Federal Trade Commission into the Deceptive and Unfair Trade Practices Act, effectively specifying additional deceptive and unfair trade practices.
- Allow final written notification of the need to repair a vehicle that does not conform to the manufacturer's warranty to be made by any method providing a delivery confirmation.
- Require that, upon receipt from a manufacturer of a procedure for handling consumer complaints, the Department of Legal Affairs notify the manufacturer of any deficiencies in the procedure, certify the procedure for a period not to exceed 1 year, or deny the certification and state the reasons for the denial.
- Allow a notice sent by the Department of Legal Affairs which rejects a motor vehicle dispute for arbitration be sent by any method by deleting a requirement that the notice be sent by registered mail.
- Allow the Attorney General discretion as to whether to file an action based on a complaint involving discriminatory housing practices.

These provisions became law upon approval by the Governor on July 1, 2013.

Vote: Senate 36-0; House 114-0

Committee on Judiciary

HB 1297 — Public Records/Florida False Claims Act

by Rep. Young (CS/SB 1496 by Judiciary Committee and Senator Thrasher)

The bill creates a public records exemption for a complaint of a Florida False Claims Act (FFCA) violation and other information held by the Department of Legal Affairs pursuant to an investigation of the alleged violation. The exemption expires when the investigation is complete, unless the complaint and other information are otherwise protected by law.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

This bill is linked to CS/CS/HB 935 (CS/CS/SB 1494), which substantially revises the authority of the Department of Legal Affairs to pursue fraud and other acts of misconduct under the FFCA.

If approved by the Governor, these provisions take effect on the same date that HB 935 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Vote: Senate 38-0; House 117-0

Committee on Judiciary

CS/CS/SB 1300 — Limited Liability Companies

by Commerce and Tourism Committee; Judiciary Committee and Senator Simmons

The bill creates the Revised Limited Liability Companies Act. Many provisions in existing law are retained, but the bill makes some substantial changes to the rules governing Limited Liability Companies. The bill is substantially based on the Revised Uniform Limited Liability Company Act of 2006 as amended in 2011 with deviations to reflect unique situations present in Florida. Among the most significant changes, the bill:

- Imposes an obligation directly on the members or managers of an LLC, as applicable, to correct information in articles of organization that become inaccurate.
- Expands the list of nonwaivable default rules that cannot be superseded by the operating agreement of an LLC.
- Authorizes an LLC to file a statement of authority, which provides constructive notice as to who can bind the LLC.
- Modifies provisions addressing the LLC's management structure. It removes the concept of a "managing member" who is elected from among the existing members. An LLC that was managed by a "managing member" is now considered to be member managed and the former managing member is not entitled to compensation unless agreed upon in an operating agreement.
- Requires the unanimous vote of the members to amend the operating agreement or the articles of organization of a member-managed LLC.
- Allows a member of an LLC to dissociate at any time, rightfully or wrongfully, by withdrawing by "express will." If a member dissociates, the member loses the right to participate in the LLC's management. Additionally, the bill provides 14 new causes for dissociation of a member other than bankruptcy or insolvency of a member, which already exist in current law.
- Provides specifics procedures for service of process on an LLC, including the method of delivery and waiver of a right any to notice given by the bill or the articles of organization or the operating agreement of the LLC.
- Allows a member of an LLC to maintain a derivative action to enforce a right of the LLC when, within a reasonable time, an action is not instituted after a member or manager makes a demand. If the demand would be futile or irreparable injury would result to the LLC by waiting for the members or managers to bring the action, the bill authorizes the member to begin a derivative action.
- Permits interest exchanges in another business entity and allows non-U.S. entities to become LLCs in this state while continuing its existence in the foreign jurisdiction.

If approved by the Governor, these provisions take effect January 1, 2014.

Vote: Senate 37-0; House 117-0

THE FLORIDA SENATE
2013 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

SB 1792 — Medical Negligence Actions

by Judiciary Committee

This bill clarifies a health care practitioner's or provider's right to legal counsel, authorizes a prospective defendant to interview a claimant's treating health care providers, and revises the qualifications of experts authorized to testify in medical negligence actions against a specialist.

Health Care Practitioner or Provider Access to Legal Counsel

Whether a health care practitioner or provider may consult with legal counsel before serving as a witness in a medical negligence action was made unclear as the result of *Hasan v. Garvar*, 108 So. 3d 570 (Fla. 2012). The bill clarifies that a health care practitioner or provider may consult with an attorney before serving as a witness in a medical negligence action.

During a consultation, the practitioner or provider may disclose to his or her attorney information disclosed by a patient or records created during the course of care or treatment of the patient. However, the bill prohibits the attorney from being a conduit for ex parte communications between the practitioner or provider and the defendant or the defendant's insurer. If the liability insurer for the provider or practitioner represents a defendant or prospective defendant in the action:

- The insurer may not choose an attorney for the practitioner, but may recommend attorneys other than the attorney representing the defendant or a prospective defendant.
- The practitioner's attorney may not disclose any information to the insurer, other than categories of work performed or time billed.

Presuit Investigation of Medical Negligence Claims

This bill revises the informal discovery procedures available for the presuit investigation of a medical negligence claim.

Under existing law, a prospective defendant may not interview the claimant's treating health care providers without the consent of the claimant. Under the bill, the claimant's attorney is responsible for arranging an interview between the prospective defendant and the claimant's treating health care providers within 15 days after receiving a request. For a subsequent interview, a prospective defendant need only provide 72 hours advance notice of taking the interview to the claimant. However, if the claimant's attorney fails to schedule the first interview, the prospective defendant may conduct an interview of the claimant's treating health care providers without notice to the claimant.

The bill does not require a health care provider to submit to an interview.

Medical Specialists as Expert Witnesses

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The bill limits the class of individuals who may offer expert testimony in a medical negligence action against a specialist. Under existing law, these experts must specialize in the same or similar specialty as the defendant. Under the bill, these experts must specialize in the same medical specialty as the defendant.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 27-12; House 77-38

Committee on Judiciary

HB 7015 — Expert Testimony

by Civil Justice Subcommittee; Rep. Metz and others (CS/SB 1412 by Rules Committee and Senator Richter)

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) to determine whether to admit expert testimony. Under the *Frye* standard, the methodology or principle on which expert opinion testimony is based must be generally accepted in the field in which it belongs.

The bill replaces the *Frye* standard with the *Daubert* standard. Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make a preliminary assessment of whether the reasoning or methodology properly can be applied to the underlying facts at issue. The bill adopts the *Daubert* standard by amending s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise, including pure opinion testimony, unless:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

Additionally, the preamble further states that the Legislature intends to adopt the standards provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999) and to prohibit pure opinion testimony as provided in *Marsh v. Valyou*, 997 So. 2d 543 (Fla. 2007).

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury's evaluation of the expert's opinion substantially outweighs their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 30-9; House 70-41

Committee on Judiciary

HB 7017 — Terms of Courts

by Civil Justice Subcommittee; and Rep. Spano; and others (SB 746 by Senator Stargel)

This bill (Chapter 2013-25, L.O.F.) repeals various sections in law that provided specific references to terms of court. These provisions are obsolete as they were adopted at a time when judges had to travel through the circuit in difficult and cumbersome circumstances. This bill permits the Supreme Court to set terms of court for the Supreme Court, district courts of appeal, and circuit courts. The bill also allows an appellate court to withdraw a mandate within 120 days after issuance.

These provisions were approved by the Governor and take effect January 1, 2014.

Vote: Senate 40-0; House 116-0

Committee on Judiciary

HB 7035 — Pretrial Detention

by Criminal Justice Subcommittee; Rep. Eagle and others (CS/SB 1372 by Judiciary Committee and Senator Bradley)

This bill adds two factors for a court to consider in setting bail or ordering pretrial detention of a criminal defendant:

- Whether a defendant currently before the court for a crime other than a misdemeanor driving offense must register as a sexual offender or a sexual predator. If so, the court must order pretrial detention until first appearance to enable participation by the prosecutor and ensure public safety.
- Whether the state attorney has filed a request for, or the defendant has previously been sentenced as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, and:
 - o A substantial probability exists that the defendant committed the current offense; and
 - o No conditions of release can reasonably protect the community from the risk of physical harm or ensure the presence of the defendant at trial.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 36-0; House 119-0

Committee on Judiciary

CS/CS/HB 7083 — Death Penalty

by Judiciary Committee; Justice Appropriations Subcommittee; Criminal Justice Subcommittee;
Rep. Gaetz and others (CS/SB 1750 by Appropriations Committee and Senator Negron)

This bill creates the Timely Justice Act of 2013 to increase efficiency in the postconviction or collateral review phase of capital cases.

The bill:

- Eliminates the pilot registry counsel program in the northern region of Florida.
- Provides an appropriation to reestablish the Capital Collateral Regional Counsel (CCRC) in the northern region of Florida.
- Prohibits counsel found by the court to have twice provided constitutionally deficient representation resulting in relief from taking on new cases for a 5-year period. The court must report each instance of constitutionally deficient representation to The Florida Bar for discipline.
- Limits instances in which the CCRC may withdraw as counsel based on a conflict of interest to actual conflicts, which are greater than a possible, speculative, or merely hypothetical conflict.
- Provides that the Justice Administration Commission.
 - o Replaces the Department of Corrections as the agency responsible for compensating attorneys who represent inmates in clemency proceedings.
 - o Assumes all responsibilities in the contracting process for legal representation in capital cases.
 - o Has standing to appear in court to contest motions on payment for attorney fees, costs, or related expenses.
- Specifies timelines, after appeals are exhausted, for the clerk and the Governor.

Lastly, the Supreme Court must annually report to the Legislature the status of each capital case in which a postconviction action remains pending for longer than 3 years.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 28-10; House 84-34