

Committee on Judiciary

HB 65 — Civil Remedies for Terrorism

by Reps. Fischer, White, and others (SB 898 by Senators Simmons and Artiles)

The bill creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A prevailing plaintiff is entitled to a minimum of \$1,000 in damages or three times the actual damages sustained, and reasonable attorney fees and court costs at the trial and appellate levels.

In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported by the facts or law.

Anyone who participates in the act of terrorism and is injured may not bring a claim under the cause of action authorized by the bill.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 114-0

Committee on Judiciary

CS/CS/CS/SB 118 — Criminal History Records

by Appropriations Committee; Criminal Justice Committee; Judiciary Committee; and Senator Steube

This bill creates a mechanism for a person to seek the removal of his or her arrest booking photograph from a publicly accessible print or electronic medium or other dissemination.

The bill requires the publisher of an arrest booking photograph to remove the photograph within 10 days after receiving a written request from the person in the photograph or his or her legal representative. The request must be sent by registered mail to the registered agent of the publisher and must include sufficient proof of identification of the person whose photograph is to be removed and information identifying the relevant photograph. The publisher may not solicit or accept a fee to remove the photograph.

If the publisher does not comply with the request for removal, the person in the photograph may file a civil action for an injunction. The court may award reasonable attorney fees and costs related to the issuance and enforcement of the injunction. A civil penalty of up to \$1,000 a day may be imposed for the failure to comply with an injunction, and this penalty will be deposited into the General Revenue Fund. Additionally, a publisher that fails to remove the photograph after a written request commits an unfair or deceptive trade practice, subjecting the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 34-0; House 118-0

Committee on Judiciary

CS/SB 128 — Self-defense Immunity

by Judiciary Committee; and Senators Bradley, Simpson, Bean, Baxley, Steube, Mayfield, Brandes, Broxson, and Benacquisto

The bill establishes a statutory procedure for a criminal defendant to claim immunity from prosecution based on a justified use of force. This new procedure will replace procedures established by the courts which require a defendant to prove entitlement to immunity by a preponderance of the evidence at a pretrial hearing. Under the bill, the defendant must raise a prima facie claim of immunity at the pretrial hearing. Once the defendant raises the claim, to overcome the immunity, the state must prove by clear and convincing evidence that the defendant is not immune.

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

Vote: Senate 22-14; House 74-39

Committee on Judiciary

CS/CS/HB 151 — Proceedings Involving Minors or Certain Other Persons

by Children, Families and Seniors Subcommittee; Civil Justice and Claims Subcommittee; and Reps. Brodeur, Moskowitz, and others (CS/CS/SB 416 by Criminal Justice Committee; Judiciary Committee and Senators Montford and Book)

This bill revises the authority of a court to authorize a person to testify in a judicial or other proceeding with the assistance of an animal. Under the bill, the court's authority is expanded to expressly allow it to authorize a person having intellectual disability to testify with the assistance of an animal. Those previously authorized to testify with the assistance of an animal include child victims and witnesses and certain sexual offense victims and witnesses.

The bill also specifies that a "facility dog" is a type of animal authorized to assist witnesses. However, the bill deletes references to "service animal" and retains references to "therapy animal." The terms facility dog and therapy animal are also defined by the bill. A facility dog is a dog that "provides unobtrusive emotional support to children and adults in facility settings" and that has been "trained, evaluated, and certified as a facility dog pursuant to industry standards." A therapy animal is an "animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 116-0

Committee on Judiciary

CS/HB 239 — Public Records/Protective Injunction Petitions

by Civil Justice and Claims Subcommittee; and Rep. Lee and others (CS/CS/CS 1062 by Governmental Oversight and Accountability; and Senators Powell, Bracy, and Torres)

This bill provides a public records exemption for a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking. Upon written request by the respondent named in the petition, the public records exemption applies to those petitions that have been dismissed:

- Without a hearing;
- At an ex parte hearing due to the failure to state a claim or lack of jurisdiction; or
- Based upon the insufficiency of the petition.

The respondent to the petition must provide the request to the clerk of court in person or by mail, facsimile, or electronic transmission. The request must include the case name and number, document heading, and page number.

The bill declares that the public records exemption is necessary because the unverified allegations in a petition that is dismissed may defame and cause unwarranted damage to the reputation of the respondent.

This bill applies to injunctions issued on or after July 1, 2017.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 38-0; House 116-0

Committee on Judiciary

CS/CS/HB 277 — Wills and Trusts

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Reps. Grant, J., White, and others (CS/CS/CS/SB 206 by Rules Committee; Banking and Insurance Committee; Judiciary Committee; and Senators Passidomo and Brandes)

This bill creates the Florida Electronic Wills Act, permitting and regulating the use of electronic wills. Current law does not expressly permit the use of electronic wills or clearly prohibit it. Additionally, the bill makes several significant changes to the Florida Trust Code.

As described in the bill, an electronic will is a will that exists in an electronic record and, like a traditional will, disposes of a person's property after death.

Under current law, traditional wills and living wills generally must be signed by the principal to the instrument and by witnesses. The bill allows these individuals to sign, witness, and otherwise fulfill their duties while in different locations by using video conferencing and other technology. An electronic will may be stored by a "qualified custodian," which must be capable of storing an electronic will, and must store electronic records of electronic wills, including documents related to the execution of an electronic will. The bill substantially regulates qualified custodians and includes several consumer protections for testators who choose to employ a qualified custodian.

In addition to electronic wills executed in this state, the bill grants the courts of this state jurisdiction over electronic wills that are executed by nonresident testators according to the Act or according to the laws of the testator's state. During probate proceedings, the bill expressly permits the admission to probate of the electronic will or its "true and correct copy."

Additionally, the bill modifies the Florida Trust Code to:

- Protect the trust creator's intent as paramount in trust interpretation;
- Expressly permit co-trustees to be compensated in a manner that is aggregately more than would be permissible for each individually;
- Expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests; and
- Address current case law that some believe to have misconstrued the timeframes in which a beneficiary may bring an action against a trustee who fails deliver a trust accounting.

If approved by the Governor, these provisions take effect July 1, 2017, except where otherwise provided in the bill.

Vote: Senate 34-0; House 73-44

Committee on Judiciary

CS/CS/HB 357 — Self-Service Storage Facilities

by Civil Justice and Claims Subcommittee; Careers and Competition Subcommittee; and Rep. Moraitis (CS/CS/SB 264 by Rules Committee; Judiciary Committee; and Senator Perry)

This bill revises the options that an owner of a self-storage facility has for recourse against a tenant who is delinquent on rent or other expenses and makes other changes regarding the owner-tenant relationship.

Current law permits the storage facility to sell the stored property of a delinquent tenant to recover unpaid rent and other expenses. Under the bill, these sales are expressly permitted to occur online. However, these sales may still occur in person, at the storage facility.

The bill imposes an additional requirement when the property to be sold is a motor vehicle or a watercraft, namely, a 60-day delay between the date a tenant becomes delinquent and the sale of the watercraft or motor vehicle stored by the tenant. In addition to selling a motor vehicle or watercraft, the bill expressly permits the storage facility to have it towed after the same 60-day delay. The wrecker operator that tows the item may sell it, and the storage facility may be able its lien from the sale, depending on the circumstances.

Additionally, the bill deems a rental agreement's limit on the value of property stored in a unit to be the maximum value of the property actually stored in the unit. Lastly, the bill permits a storage facility to assess a reasonable late fee for the nonpayment of rent, if the fee is set forth in the rental agreement. The bill defines a reasonable late fee as \$20 or 20 percent of the monthly rent, whichever is greater.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 115-0

Committee on Judiciary

CS/CS/HB 361 — Bail Bonds

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Santiago (CS/CS/SB 680 by Banking and Insurance Committee; Judiciary Committee; and Senators Baxley and Garcia)

The changes made by the bill:

- Generally narrow the responsibilities of a bail bond agent and reduces the risk that a bail bond will be forfeited due to a defendant's failure to appear at criminal proceedings;
- Delete provisions of existing law which may have made bail bond agents responsible for ensuring that a defendant released on bail fulfills conditions of the bond in addition to appearing at criminal proceedings;
- Require a court to discharge the forfeiture of a bail bond if one of the following events occur within 60 days after the required court appearance: the defendant is confined in an immigration detention facility, is deported, or dies;
- Requires a court to discharge the forfeiture of a bail bond if a at any time after a required court appearance the defendant becomes incarcerated and the state refuses to seek the extradition of the defendant within 30 days after a surety agent's request and consent to pay costs and expenses to return the defendant;
- Provides that a bail bond, except for forfeited bonds, expires or must be cancelled by the court 36 months after the bond is posted; and
- Provides that an original appearance bond does not guarantee a defendant's placement in a court-ordered program, including a residential mental health facility.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 36-0; House 116-0

Committee on Judiciary

CS/CS/HB 377 — Limitations on Actions other than for the Recovery of Real Property

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Rep. Leek and others (CS/SB 204 by Judiciary Committee and Senator Passidomo)

Existing s. 95.11(3)(c), F.S., specifies the 4-and 10-year limitations periods or statutes of repose for bringing an action alleging a construction defect or latent construction defect. In some cases, the limitations periods begin on the “*date of completion . . . of the contract* between the professional engineer, registered architect, or licensed contractor and his or her employer.” Completion of the contract, according to an appellate court opinion, requires the completion of construction and the submission of the final payment required by the contract. Thus, delays in payments by a customer can extend a contractor’s liability for construction defects.

As a response to the appellate court opinion, the bill defines completion of the contract as the “later of the date of final performance of all the contracted services, or the date that final payment for those services becomes due.” This new definition will prevent a customer’s delay in making a required payment from extending a contractor’s liability for construction defects.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 114-0

Committee on Judiciary

CS/HB 441 — Court Records

by Civil Justice and Claims Subcommittee and Rep. Diamond (CS/SB 202 by Governmental Oversight and Accountability Committee and Senator Brandes)

This bill grants immunity from liability to the clerk of court for releasing confidential information from a court record which the filer failed to disclose to the clerk. The liability protections apply to the release of any information made confidential by court rules.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 34-0; House 118-0

Committee on Judiciary

CS/CS/SB 724 — Estates

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

This bill modifies several sections of the Probate Code relating to the “elective share”—that is, the 30 percent portion of a decedent’s estate that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent’s testamentary plan.

The bill expressly includes the decedent’s protected homestead in the elective estate, which is the part of the decedent’s property upon which the elective share is calculated. In contrast, current law does not include homestead property in the elective estate. For the purpose of the calculation of the elective estate, homestead is valued differently depending on the interest that the surviving spouse has in the homestead. Specifically, the homestead is valued at:

- Its fair market value as of the decedent’s death if the surviving spouse receives a full, outright (“fee simple”) interest; or
- One-half of its fair market value on the decedent’s date of death if the surviving spouse elects to take a life estate in the homestead or if the surviving spouse elects to take a one-half interest in the homestead.

However, if the surviving spouse waived his or her homestead rights but nevertheless receives an interest in the homestead, the interest is valued as if it was in non-homestead property.

The bill expands the prospect of recovering attorney fees and costs in elective share proceedings. Under current law, a court may order only a surviving spouse to pay attorney fees and costs and only if he or she makes a bad-faith election. Under the bill, the court may award fees and costs to any person in an elective share proceeding in which there is a dispute over the:

- Entitlement to or the amount of the elective share;
- Property interests included in the elective estate or its value; or
- The satisfaction of the elective share.

If fees and costs are awarded, they may be paid from the estate, the elective estate, or other property of a party.

Current law permits the elective share to be satisfied by placing it in an elective share trust for the benefit of the surviving spouse. However, by law, this trust must give the surviving spouse the power to force the trustee to make the trust property productive of income. The bill grants this authority to the surviving spouse by operation of law, thus “saving” those trusts that do not expressly grant the surviving spouse this authority but that are otherwise legally sufficient.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 117-0

Committee on Judiciary

CS/CS/SB 1052 — Justifiable Use of Force

by Rules Committee; Judiciary Committee; and Senator Simmons

This bill addresses scrivener's errors or inconsistencies in current s. 776.013(3), F.S., on the right to act in self-defense.

These errors or inconsistencies:

- Imply that a person who is in his or her dwelling or residence must be physically attacked before he or she has the right to act in self-defense.
- Appear to require a person to flee from his or her home before acting in self-defense if the person is engaged in criminal activity, although a person's home has historically been viewed as his or her castle or a place of refuge from which no retreat has been required.

The bill replaces the flawed subsection of statute with new provisions that govern the use of defensive force in a dwelling against a person who has not unlawfully or forcibly entered a dwelling or residence, such as a co-occupant or guest. In these circumstances, the bill provides that the general standard for using or threatening to use deadly or nondeadly force outside a dwelling or residence applies. Additionally, a person who is in a dwelling or residence in which he or she has a right to be has no duty to retreat before using lawful defensive force.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 23-14; House 77-41

Committee on Judiciary

CS/CS/HB 1237 — Condominiums

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Rep. Diaz, J. and others (CS/CS/SB 1682 by Rules Committee; Regulated Industries Committee; and Senators Garcia, Rodriguez, Artiles, and Campbell)

The bill makes two main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest which may be detrimental to the unit owners of a condominium.
- Increase access to records by unit owners.

These changes are substantially based on a final report by a Miami-Dade County grand jury, titled, *Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action*. The grand jury found that the existing statutes do not sufficiently restrict self-dealing by members of the boards of condominiums or sufficiently deter other forms of misconduct such as election fraud. Additionally, the grand jury found that the existing statutory mechanisms are insufficient to force condominium associations to make their official records available to unit owners in a timely manner.

Conflicts of Interest

The bill prohibits conflicts of interest among those who are responsible for operating a condominium as follows:

- Attorneys are prohibited from representing both the board of a condominium association and the management company of the association.
- Members of the board or the management company for a condominium association that is not a timeshare condominium are prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit by deed in lieu of foreclosure.
- Condominium associations that are not timeshare condominiums are prohibited from contracting with a service provider that is owned or operated by a board member or a person who has a financial relationship with a board member, or a close relative of a board member or officer.

The bill also prohibits a party that contracts to provide maintenance or management services or a board member of the party from owning more than 50 percent of the units of the condominium or from purchasing a property that is subject to a lien by the association.

Additionally, officers and directors of a condominium board are required to disclose activities that may reasonably be construed to be a conflict of interest. In some cases, the officer or director engaged in a conflict of interest must choose to no longer pursue the activity creating the conflict or withdraw from office. Otherwise, the board must remove the officer or director.

Access to Association Records

The bill requires condominium associations to keep additional records and generally to take actions to make those records available to unit owners as follows:

- A condominium association must maintain bids for materials, equipment, and services as part of its official records.
- A condominium association must permit renters to inspect and copy the association's bylaws and rules.
- A condominium association must provide an annual report to the Department of Business and Professional Regulation listing the financial institutions at which it maintains accounts, and unit owners may obtain the report from the department.
- A unit owner may give notice to the Division of Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation that an association has failed to mail or hand deliver to the unit owner a copy of the most recent financial statement after a request. The division must then give the association notice that it must comply with the request. If the association fails to comply with that request within 5 business days, the association may not prepare less complex financial statements than the statutory default requirements for 3 years.
- An officer or director of a condominium who is charged with certain crimes relating to the condominium generally may not access association records without a court order while the charges are pending.
- A condominium association having 150 or more units must post copies of most of its official records on its website, but the records must be inaccessible to the general public.

If approved by the Governor, these provisions take effect July 1, 2017.

Vote: Senate 37-0; House 118-0

Committee on Judiciary

HB 7087 — OGSR/Protective Injunctions for Certain Types of Violence

by Oversight, Transparency and Administration Subcommittee; and Rep. Davis and others (SB 7028 by Judiciary Committee)

This bill is based on an Open Government Sunset Review of public records exemptions by legislative staff. These exemptions are scheduled for repeal on October 2, 2017. The reviewed exemptions generally prohibit the disclosure of contact information for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. Contact information consists of the petitioner's home, employment, or cell number, home or employment address, email address, or other electronic forms of communication.

The information protected from disclosure will be stored in a database, to be known as the CCIS 3.0, that will send an automated notice to the petitioner within 12 hours after the respondent is served with the injunction. The automated notice must provide, at a minimum, the date, time, and location where the injunction for protection was served on the respondent.

The clerks of the court are currently upgrading from the current database, known as the Comprehensive Case Information System, or the CCIS, to the CCIS 3.0. Once the upgrade is operational, the system will be able to send the automated notice to petitioners that an injunction has been served.

Because the system has not yet been fully developed or activated, the need for the exemptions cannot be fully evaluated by legislative staff at this time consistent with the requirements of the Open Government Sunset Review Act. Accordingly, the bill delays the scheduled repeal of the exemptions by 1 year to October 2, 2018 so that legislative staff may evaluate the exemptions after the automated system is in place.

If approved by the Governor, these provisions take effect October 1, 2017.

Vote: Senate 36-0; House 115-0