

Committee on Judiciary

CS/HB 55 — Sale of Firearms

by Oversight, Transparency and Administration Subcommittee and Rep. White and others
(CS/SB 152 by Judiciary Committee and Senators Steube, Grimsley, Simpson and Perry)

The bill requires the Florida Department of Law Enforcement (FDLE) to provide additional payment options to licensed firearm dealers, importers, and manufactures when paying for criminal history record checks. Currently, the only payment methods authorized by administrative rule are personal checks, money orders, or cashier's checks. The bill requires FDLE to establish, by rule, procedures that permit electronic payment or transmittal by debit cards, credit cards, or electronic funds transfers, but the payment methods are not limited solely to those options.

The bill also expands how firearms dealers may submit requests to FDLE for criminal history record checks. Currently, the law allows a licensed importer, manufacturer or dealer to submit requests by a toll-free telephone call. The bill allows a licensed importer, manufacturer or dealer to submit requests to FDLE by electronic means.

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

Vote: Senate 36-0; House 110-2

Committee on Judiciary

CS/CS/SB 140 — Marriage Licenses

by Rules Committee; Judiciary Committee; and Senators Benacquisto, Simpson, Book, Hutson, Perry, Bracy, Torres, Rodriguez, Campbell, Taddeo, Baxley, Farmer, Negron, Bean, Braynon, Broxson, Flores, Gainer, Galvano, Garcia, Gibson, Hukill, Mayfield, Montford, Passidomo, Powell, Rader, Rouson, Simmons, Steube, Stewart, Thurston, and Young

Current law vests the authority to issue a marriage license solely in a county court judge or clerk of the circuit court and no one may marry without a valid license. An applicant for a license generally must be at least 18 years old. However, there are exceptions for minors who have the consent of their parents, minors who have been married previously, minors who are expecting a child, and minors who are the parents of a child.

The bill prohibits a county court judge or the clerk of the circuit court from issuing a marriage license to any person under the age of 18 except that a marriage license may be issued to someone who is 17 years old if:

- The parents or legal guardian of a 17 year old provide written consent; and
- The older person to the proposed marriage is no more than 2 years older than the younger person.

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

Vote: Senate 38-0; House 109-1

Committee on Judiciary

SB 146 — Appointment of Attorneys for Dependent Children with Special Needs

by Senators Bean, Bradley, and Young

The bill authorizes the payment of certain “due process costs” when a court-appointed pro bono attorney represents a dependent child with special needs. These due process costs are the costs of court reporting and transcriptions, expert witnesses, mental health professionals, reasonable pretrial consultation fees and costs, and certain travel expenses.

Currently, a court-appointed pro bono attorney is not entitled to funds for due process costs. In contrast, a private court-appointed attorney who is paid for his or her services in these cases is permitted to access funds for due process costs. Under the bill, the Justice Administrative Commission will review and pay due process costs for pro bono attorneys as it does for compensated attorneys under current law.

The bill is expected to increase the need for funding for due process costs associated with children with special needs represented by pro bono attorneys. Indirectly, this bill may reduce funding needs for private attorneys if more pro bono attorneys are willing to represent children with special needs when due process costs are borne by the state.

These provisions became law upon approval by the Governor on March 19, 2018.

Vote: Senate 38-0; House 109-0

THE FLORIDA SENATE
2018 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

HB 413 — Trusts

by Rep. Moraitis (SB 478 by Senators Hukill and Young)

HB 413 amends the Florida Trust Code to:

- Ensure that the intent of the trust settlor (creator) is paramount in trust interpretation;
- Increase certain trustees' authority to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests;
- Further regulate the practice of electronically providing important trust documents; and
- Counter what some regard as problematic case law relating to the time period for bringing an action based on a trustee's failure to provide an accounting.

The bill deletes statutory provisions stating that a trust must be created "for the benefit of the trust's beneficiaries." There is concern that courts may begin to use this core requirement of trusts also as a principle for interpreting trusts. Common law recognizes the settlor's intent as the "polestar" of trust interpretation, and the bill's removal of the benefit-of-the-beneficiaries language from the statutes helps ensure that a benefit-of-the-beneficiaries principle will not rival the settlor's-intent principle for judicial interpretation of trusts.

Additionally, the bill provides that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of any limitations or laches period for an action based on the failure of the trustee to provide the accounting. Thus, the bill provides a longer period during which a beneficiary may hold a trustee responsible for a past-due accounting. This change is a response to a district court of appeal opinion which addressed the issue.

Finally, the bill includes several provisions to further regulate a trustee's providing documents to a beneficiary solely by posting them to a website or electronic account. These provisions include a requirement that the authorization signed by the recipient allowing documents to be electronically delivered specifically indicate whether a trust accounting, trust disclosure statement, or limitation notice will be posted in this way. Also, the bill lengthens the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account.

If approved by the Governor, these provisions take effect July 1, 2018, except where otherwise provided in the bill.

Vote: Senate 35-0; House 107-0

Committee on Judiciary

HB 623 — Out-of-Country Foreign Money Judgments

by Rep. Byrd and others (SB 760 by Senator Bean)

This bill amends Florida’s Uniform Out-Of-Country Foreign Money-Judgment Recognition Act in ch. 55 F.S., to add two permissive grounds under which Florida courts may decline to recognize and enforce money judgments rendered by tribunals of foreign countries. The two additional permissive grounds permit a Florida court to decline to recognize and enforce a foreign judgment if:

- There is “substantial doubt” about the “integrity” of the particular foreign court that rendered the judgment; or
- There was a lack of due process afforded by the particular foreign court that rendered the judgment.

The Act currently provides a similar mandatory ground for nonrecognition if a foreign country’s court system is systematically unfair and fails to provide an impartial court system or compatible due process of law. The key difference between the current mandatory provision of the Act and the new permissive grounds is that the Act currently addresses only “systematic unfairness” in a foreign country’s court system; whereas, the two additional grounds address “specific unfairness” in a proceeding in a particular foreign court.

These provisions became law upon approval by the Governor on March 19, 2018.

Vote: Senate 36-0; House 107-0

Committee on Judiciary

CS/HB 631 — Possession of Real Property

by Civil Justice and Claims Subcommittee and Rep. Edwards-Walpole and others (CS/SB 804 by Rules Committee and Senator Passidomo)

The bill amends and modernizes real property provisions controlling ejectment, unlawful and forcible entry, and unlawful detainer actions. These actions all involve a person entitled to possession of real property who is wrongfully removed but seeks to recover possession of the property. The relevant statutes are amended to create new definitions, clarify that circuit courts have jurisdiction over these actions, modernize statutory pleading requirements, and provide remedies.

The final section of the bill creates a new statute governing the “customary use” of private property for public use. The language details the process by which a governmental entity may seek the judicial determination of a recreational customary use of private beach property.

The new process requires a governmental entity, at a public hearing, to adopt a formal notice of intent to affirm the existence of a recreational customary use. The parcel owner must be notified of the intent at least 30 days before the public meeting. Within 60 days after adopting the notice of intent, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court and provide each parcel owner with the option to intervene. The court must then make a determination if the recreational customary use exists.

The section does not apply to a governmental entity that had an ordinance or rule adopted and in effect on or before January 1, 2016. However, a governmental entity may raise the customary use as an affirmative defense in a proceeding challenging an ordinance or rule adopted before July 1, 2018.

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

Vote: Senate 29-7; House 95-17

Committee on Judiciary

HB 639 — Equitable Distribution of Marital Assets and Liabilities

by Rep. Perez (CS/SB 676 by Rules Committee and Senator Passidomo)

In response to the Florida Supreme Court’s 2010 decision in *Kaaa v. Kaaa*, the bill changes the way courts are to determine the passive appreciation of nonmarital property which is subject to equitable distribution in divorce proceedings. By way of background, “equitable distribution” refers to the method a court must use in dividing up the assets (i.e., property) and liabilities (i.e., debts) acquired by a divorcing couple during their marriage. Florida has a dual-property system, meaning the property of the divorcing couple is either categorized as marital property, which is acquired during the marriage and can be divided equitably or equally by the court; or the property is categorized as separate property, which is not subject to being divided by a court. Florida law refers to separate property as “nonmarital assets and liabilities,” and the best example of separate property is a home purchased and owned by one of the parties before the marriage.

The Florida Supreme Court’s *Kaaa* decision concerned this type of separate property: a home purchased by the husband a few months prior to the marriage and held only in his name during the couple’s 27-year marriage. However, marital income was used to pay the mortgage on the property, and the property passively appreciated during those 27 years as a result of market forces. The *Kaaa* decision held that the use of marital funds to pay down the principle on the mortgage caused the passive appreciation of the property to become a marital asset. As a result, the passive appreciation was subject to equitable distribution.

The bill partially adopts the holding in the *Kaaa* decision and partially overrules the *Kaaa* decision. It partially adopts it by including the passive appreciation of real property owned by only one spouse as a marital asset that may be distributed between the spouses, but *only if* marital funds are used to pay down the property’s mortgage principal. The bill overrules *Kaaa* primarily by replacing the calculation method for determining passive appreciation set out in *Kaaa* with a three-step formula incorporating a “coverture fraction.” This coverture fraction is intended to more closely measure the parties’ actual marital contributions in paying down the mortgage so that the nonowner spouse does not end up with a windfall.

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

Vote: Senate 31-0; House 112-1

Committee on Judiciary

CS/CS/HB 875 — Limitations of Actions Other Than for the Recovery of Real Property

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Rep. Leek (CS/CS/SB 536 by Community Affairs Committee; Judiciary Committee; and Senators Passidomo and Campbell)

The bill addresses two issues regarding the timeframes for bringing a lawsuit based on a defect in the design, planning, or construction of a building or other improvement to real property. First, the bill specifies that a person who is served with a pleading may file a related counterclaim, cross-claim, or third-party claim within 1 year, regardless of whether the filing of the claim would otherwise be time barred.

Second, the bill causes the timeframes for filing a construction-defect lawsuit to begin and end sooner in some circumstances than under current law. Both under the bill and current law, the timeframes in which a property owner may file a construction-defect lawsuit begin to run at the latest of four events set forth in statute. One of these events is the completion of the construction contract.

Recent case law suggests that such a contract is not complete, and thus the timeframes for bringing a lawsuit cannot begin to run, until all punch-list or other follow-up work is complete. The bill substantially counters this case law by effectively providing that a construction contract performed pursuant to a building permit is complete when a final certificate of occupancy or certificate of completion is issued. After that point, the correction or repair of completed work that is within the scope of the building permit and final certificate does not delay the running of the timeframes in which a construction-defect action may be filed.

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

Vote: Senate 38-0; House 112-0

Committee on Judiciary

CS/HB 1187 — Guardianship

by Health and Human Services Committee and Rep. Spano (CS/SB 1002 by Appropriations Committee and Senators Passidomo and Bean)

Clerks of the circuit courts serve as the custodian of guardianship files. In that capacity, they are responsible for reviewing guardianship reports to ensure that guardians are correctly performing their responsibilities. The bill identifies several specific actions that circuit court clerks may take when reviewing guardianships.

The bill authorizes clerks, when conducting a further review of inventories and accountings, to conduct audits and cause initial and annual guardianship reports to be audited. The clerk must advise the court of the results of the audit. If a fee or cost is incurred by the guardian when he or she responds to the review or audit, it may not be paid or reimbursed using the ward's assets if the court finds an act of wrongdoing on the part of the guardian.

The bill provides that the clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies "for other purposes," as provided by a court order. The confidential information is a court record pertaining to the settlement of a ward's or minor's claim, including a petition for approval of a settlement, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or a minor.

With respect to the Office of Public and Professional Guardians, the bill expressly authorizes designees of the office to receive documents that are otherwise confidential when investigating guardianships. Additionally, the office may appoint certain types of guardians and investigate and, when appropriate, discipline guardians who violate their statutory duties.

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

Vote: Senate 34-1; House 115-0

Committee on Judiciary

CS/CS/HB 1217 — Deployed Parent Custody and Visitation

by Judiciary Committee; Civil Justice and Claims Subcommittee; and Rep. Metz and others
(CS/CS/SB 1598 by Rules Committee; Judiciary Committee; and Senator Passidomo)

The bill creates the Uniform Deployed Parents Custody and Visitation Act. The act establishes a framework for resolving child custody and visitation issues when a parent is deployed in military or other forms of national service. In addition to providing definitions for the act, the bill:

- Requires parents to communicate about custody and visitation issues upon learning of an upcoming deployment.
- Addresses custody issues that arise when someone receives notice of deployment and during deployment by permitting an out-of-court agreement. If the parents do not reach an agreement, an expedited resolution of custody arrangement is available in court.
- Provides that no permanent custody order can be issued before or during deployment unless the servicemember consents.
- Governs termination of a temporary custody arrangement by written agreement between the parents or by court order.

The bill repeals s. 61.13002, F.S., pertaining to temporary time-sharing modification and child support modification due to military service. Repealing the current statute prevents any conflicts between the existing section and the new act.

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

Vote: Senate 36-0; House 109-0

Committee on Judiciary

HB 7013 — OGSR/False Claims

by Oversight, Transparency and Administration Subcommittee and Rep. Yarborough (SB 7006 by Judiciary Committee)

The bill continues a public records exemption that is contained in the Florida False Claims Act. Maintaining the exemption encourages a private citizen to report fraud and facilitates the recovery of state funds and property that are taken by false claims or fraud.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the acts has occurred.

This exemption helps the state recover monies and property by:

- Protecting the identity of a person who initiates a false claim action;
- Allowing the Department of Legal Affairs to privately investigate the merits of a claim to determine if the government should intervene; and
- Maintaining the confidentiality of state information that is similarly shielded under a federal public records exemption, which, if disclosed in Florida, would compromise the confidentiality of the federal investigation.

The original exemption was enacted in 2013 and is scheduled for repeal on October 2, 2018, unless continued by the Legislature.

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

Vote: Senate 37-0; House 108-0