

Committee on Commerce and Tourism

CS/HB 253 — Limited Liability Companies

by Civil Justice Subcommittee; and Rep. Stargel, and others (CS/SB 1152 by Banking and Insurance Committee and Senator Simmons)

In response to a Florida Supreme Court holding about remedies available to a judgment creditor of a single-member limited liability company, CS/HB 253 amends s. 608.433, F.S. The bill clarifies that the general application of the decision in Olmstead v. Federal Trade Commission to single-member limited liability companies does not apply to multiple-member limited liability companies.

The bill provides, with one exception, that a charging order is the “sole and exclusive remedy” by which a judgment creditor of a member or member’s assignee may satisfy a judgment from a judgment debtor’s interest in a limited liability company or rights to distributions from a limited liability company. The exception arises in situations where a limited liability company has only one member. The bill provides that the court may order the sale of a member’s interest in a single-member limited liability company if the judgment creditor shows that distributions under a charging order will not satisfy the judgment in a reasonable time.

The bill provides that the amendments made to s. 608.433, F.S., are clarifying and apply retroactively.

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

Vote: Senate 39-0; House 112-1

Committee on Commerce and Tourism

CS/CS/CS/HB 399 — Infrastructure Investment

by Economic Affairs Committee; State Affairs Committee; Transportation and Highway Safety Subcommittee; and Rep. Ray and others (CS/CS/CS/SB 768 Budget Committee; Transportation Committee; Commerce and Tourism Committee; and Senator Ring)

This bill makes a number of changes to the permitting and planning for Florida's 14 deepwater public seaports. Specifically, the bill:

- Authorizes the Florida Department of Transportation (FDOT) secretary to designate an assistant secretary as an economic development liaison to the Governor's Office;
- Requires the Florida Seaport Transportation and Economic Development (FSTED) Council to annually develop a project priority list and submit it to FDOT;
- Requires each seaport to develop a 10-year strategic plan that includes:
 - Potential business opportunities;
 - Proposed infrastructure and intermodal projects;
 - Any physical, environmental and regulatory hurdles facing port projects; and
 - Proposals to coordinate the port plan goals with other governmental entities.
- Modifies the existing State Transportation Plan to include information on methods to expand Florida as a hub for trade and investment;
- Directs FDOT to identify within the state's transportation system those facilities significant for trade opportunities;
- Exempts overwater piers, docks and similar structure at a seaport from its stormwater management system if the seaport has a Stormwater Pollution Prevention Plan;
- Directs the Department of Environmental Protection (DEP) to approve or deny a port conceptual permit application within 60 days of receipt;
- Provides that DEP may only request additional information on a port conceptual permit application twice, unless the applicant waives this limitation in writing;
- Provides that if a third party petitions to challenge DEP's issuance of a port conceptual permit, the petitioner has the burden of ultimate persuasion and the burden of going forward with the evidence;
- Specifies that the 14 seaports are not required to obtain permits for maintenance dredging of previously dredged areas if specified conditions are met;
- Clarifies the dimensions of the turbidity mixing zones where the return water from port dredging projects is discharged;
- Provides that ditches, pipes, and other linear conveyances are not considered receiving waters for the purpose of requiring permits;
- Grants consent for the seaports to use any sovereignty submerged lands for maintenance dredging; and
- Provides that the spoil material from seaport dredging may be deposited in a self-contained, upland disposal site without needing a permit, if certain conditions are met.

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

Vote: Senate 37-0; House 114-0

Committee on Commerce and Tourism

CS/CS/CS/HB 599 — Corporations Not For Profit

by Economic Affairs Committee; Civil Justice Subcommittee; Insurance and Banking Subcommittee; Rep. Passidomo and others (CS/CS/SB 952 by Higher Education Committee; Commerce and Tourism Committee; and Senators Richter and Gaetz)

The bill adopts the 2006 Uniform Prudent Management of Institutional Funds Act (act), and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

The new act applies to all charitable endowment funds with the exception to funds administered by the State Board of Administration. Charitable purpose is defined under the new act as “the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.”

The primary benefit of this act is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in 47 states.

The bill also provides that when a not for profit corporation is issued a deed to real property in the state by the Board of Trustees of the Internal Improvement Trust Fund (board) containing a reverter clause that restricts the use of property to specified uses in the deed, the failure to put the property to the required use within a period of 3 years after the grant, unless a stricter time period is contained in the deed, is prima facie evidence that the restriction is violated, subjecting the property to reversion to the board at its discretion. This section applies retroactively and prospectively and may not be construed to excuse for any period of time a use of the property in violation of the restrictive use.

The bill creates s. 617.2014, F.S.

If approved by the Governor, these provisions take effect July 1, 2012.

Vote: Senate 39-0; House 117-0

Committee on Commerce and Tourism

CS/CS/HB 879 — Targeted Economic Development

by Economic Affairs Committee; Finance and Tax Committee; and Rep. Eisnaugle and others (CS/CS/SB 1318 by Budget Subcommittee on Transportation, Tourism, and Economic Development Appropriations; Commerce and Tourism Committee; and Senator Benacquisto)

This bill modifies two state economic development incentives and extends eligibility for 11 different state incentives to eligible businesses in the two pilot Energy Economic Zones.

Specifically, the bill:

- Gives businesses participating in the Capital Investment Tax Credit program, pursuant to s. 220.191, F.S., an additional 10 years to claim their unused tax credits against their corporate tax liabilities.
- Renames one of the criteria for determining a “target industry business” for clarity purposes in the Qualified Target Industry (QTI) tax refund program, and specifies that special consideration should be given to applicant businesses that enhance trade opportunities and global logistics – which is one of the new additions to the 2011 Target Industry Sector List compiled by Enterprise Florida, Inc.
- Adds input from municipal governing bodies to recommend to the state on which private-sector wage calculation should be used as the baseline for calculating the QTI business’s required 115-percent annual average wage for the business’ new employees.
- Effective July 1, 2011, through June 30, 2014, specifies that the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla, and Walton may provide only a 10 percent local match – rather than the currently required 20 percent – to state funding for the QTI refund program.
- Augments the existing Energy Economic Zone (EEZ) Pilot Program language in s. 377.809, F.S., to:
 - Make all the sales and corporate tax incentives and benefits provided to businesses within ch. 290, F.S., enterprise zones pursuant to state law also will be available to businesses within EEZs, effective July 1, 2012. The two pilot EEZs are in Sarasota County and the City of Miami Beach;
 - Extend eligibility to EEZ businesses to receive higher tax refund subsidies, as do businesses in enterprise zones, and waives the minimum wage requirement of at least 115 percent of the average area private sector wage for EEZ businesses;
 - Specify that EEZ projects will have priority consideration for economic development transportation funding, pursuant to s. 288.063, F.S.;
 - Make EEZ projects eligible for Quick Response Training and Incumbent Worker Training incentive funds;
 - Cap the total amount of incentives at \$300,000 annually in each EEZ;
 - Specify that the EEZ ordinances to be approved by the two local governing boards will include business criteria and other information; and
 - Exempts a development in an EEZ from the DRI requirements of s. 380.06, F.S.

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

Vote: Senate 39-0; House 114-0

Committee on Commerce and Tourism

CS/HB 901 — Household Moving Services

by Economic Affairs Committee; Rep. Horner and others (CS/CS/SB 296 by Community Affairs Committee; Commerce and Tourism Committee; and Senator Wise)

The bill preempts local government ordinances regulating movers of household goods or moving brokers that were enacted after January 1, 2011. Therefore, local government ordinances enacted prior to January 1, 2011, may remain in effect, provided that such ordinances levy “reasonable” registration fees that do not exceed the cost of administering the ordinances. However, these existing ordinances only apply to a mover or moving broker if the mover or moving broker’s principal place of business is located in the jurisdiction having such an ordinance. The bill further clarifies that the preemption does not apply to a local government’s authority to levy local business taxes.

In addition, the bill:

- Requires movers to register biennially, rather than annually, with the Department of Agriculture and Consumer Services; and
- Clarifies the definition of storage.

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

Vote: Senate 39-0; House 114-0

Committee on Commerce and Tourism

CS/SB 926 — Liability/Employers of Developmentally Disabled

by Commerce and Tourism Committee; and Senator Storms

CS/SB 926 creates a new section of the Florida Statutes to provide an employer who employs an individual who has a developmental disability with immunity from liability for negligent or intentional acts or omissions by that individual if:

- The employee receives or has received supported employment services through a supported employment service provider; and
- The employer does not have actual prior notice of the employee's actions that created the unsafe conditions in the workplace.

The bill also allows a supported employment service provider that has provided employment services to a person with a developmental disability to be immune from liability for the actions or conduct of the person that occur within the scope of the person's employment.

The bill creates s. 768.0895, F.S.

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

Vote: Senate 39-0; House 106-11

Committee on Commerce and Tourism

CS/CS/SB 1346 — Obsolete References and Programs

by Children, Families, and Elder Affairs Committee; Commerce and Tourism Committee; and Commerce and Tourism Committee

CS/CS/SB 1346 amends or repeals 35 obsolete references to the former Department of Labor and Employment Security, or one of its former programs, and ten obsolete references to the Florida Department of Commerce still remaining in Florida Statutes. Additionally, it repeals or amends other statutes that have been identified that relate to programs related to or within a department that were obsolete prior to department abolishment.

The bill repeals provisions related to the obsolete Florida-Caribbean Basin Trade Initiative; the obsolete microenterprise program; an obsolete public records exemption for Base Realignment and Closure (BRAC); and the inactive Inner City Redevelopment Review Panel. The bill also removes references to the inactive Florida Trade Data Center.

Finally, the bill repeals or amends numerous sections of law relating to programs or functions of the Department of Children and Family Services (DCF), which are outdated, no longer effective, applicable, or being implemented.

This bill amends the following sections of the Florida Statutes: 14.2015, 20.18, 20.195, 39.00145, 39.0121, 39.301, 39.3031, 45.031, 49.011, 69.041, 112.044, 252.85, 252.87, 252.937, 287.09431, 287.09451, 287.0947, 288.012, 288.021, 288.035, 288.1168, 288.1229, 288.1169, 311.07, 331.369, 377.711, 377.712, 381.006, 381.0072, 390.01114, 402.35, 409.1685, 409.2576, 411.01013, 414.24, 414.40, 440.385, 440.49, 450.161, 464.203, 469.002, 489.1455, 489.5335, 553.62, 597.006, 753.03, 877.22, 944.012, and 944.708.

This bill repeals the following sections of the Florida Statutes: 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 255.551, 255.552, 255.553, 255.5535, 255.555, 255.556, 255.557, 255.558, 255.559, 255.56, 255.561, 255.562, 255.563, 288.038, 288.386, 288.9618, 288.982, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, 409.803, 409.946, 446.60, and 469.003(2)(b).

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

Vote: Senate 38-0; House 102-8

Committee on Commerce and Tourism

CS/SB 1884 — Consumer Protection

by Commerce and Tourism Committee and Senator Gaetz

This bill prohibits a post-transaction third-party seller from charging a consumer for a good or service sold over the Internet unless specific disclosures are made and the seller receives the informed consent of the consumer. It also requires a post-transaction third-party seller to provide a simple mechanism for a consumer to cancel a purchase of a good or service and stop any recurring charges. Finally, it prohibits an initial merchant from disclosing a consumer's credit card number, debit card number, bank account number, or other account number, or disclose other consumer billing information, to a post-transaction third-party seller.

This bill is very similar to recently enacted federal law, enacted to counter "negative option marketing," which refers to a category of commercial transactions in which sellers interpret a customer's failure to take an affirmative action, either to reject an offer or cancel an agreement, as assent to be charged for goods or services.

By including these same protections in our statutes, Florida has jurisdiction to enforce the consumer protections provided in the act under state law.

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

Vote: Senate 38-0; House 116-1

Committee on Commerce and Tourism

CS/HB 4013 — Television Picture Tubes

by Business & Consumer Affairs Subcommittee; and Rep. Eisnaugle (CS/SB 1626 by Commerce and Tourism Committee and Senator Lynn)

The bill repeals s. 817.559, F.S., which requires cathode ray tubes (CRT, or television picture tubes) be correctly labeled to indicate the new and used components and materials in such picture tubes. The bill also repeals s. 817.56, F.S., which prohibits activities related to the sale or servicing of cathode ray tubes.

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

Vote: Senate 37-1; House 116-0

Committee on Commerce and Tourism

HB 4023 — Sales Representative Contracts/Commissions

by Rep. Plakon (SB 474 by Senator Evers)

This bill repeals s. 686.201, F.S., relating to sales representatives contracts.

Enacted in 1984, this provision requires a written contract between principal and commissioned sales representatives which specifies the terms of the commission. In the event that there was no written contract, this provision requires that the sales representative be paid within 30 days of termination of the unwritten contract. Should the principal not comply with this requirement, the sales representative has a cause of action for damages equal to triple the amount of commission found to be due, and reasonable attorney's fees and court costs.

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

Vote: Senate 36-1; House 93-25

Committee on Commerce and Tourism

HB 4033 — Florida Industrial Development Corporation

by Rep. Dorworth (SB 1632 by Senator Lynn)

This bill repeals all of ch. 289, F.S., the Florida Industrial Development Corporation (FIDC). The chapter had been enacted by the Legislature in 1961 to create a process by which residents, businesses, and financial institutions could create an FIDC to issue revenue bonds for economic development projects. It appears that only two FIDCs have been created, and both have dissolved, according to the state Division of Corporations.

Specifically repealed are ss. 289.011, 289.021, 289.031, 289.041, 289.051, 289.061, 289.071, 289.081, 289.091, 289.101, 289.111, 289.121, 289.131, 289.141, 289.151, 289.161, 289.171, 289.181, 289.191, and 289.201, F.S. Also, ss. 212.08, 220.183, 220.62, 440.491, and 658.67, F.S., are revised to remove ch. 289, F.S., cross-references.

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

Vote: Senate 39-0; House 118-0

Committee on Commerce and Tourism

CS/CS/HB 7005 — Unemployment Compensation

by Economic Affairs Committee; Finance and Tax Committee; Economic Development and Tourism Subcommittee; and Rep. Holder (CS/CS/SB 728 by Judiciary Committee; Commerce and Tourism Committee; and Senators Detert and Gaetz)

This bill reforms the unemployment compensation (UC) law in the following manner:

- The bill changes qualifying requirements by (effective August 1, 2011):
 - Requiring claimants to participate in an initial skills review using an online education or training program as part of reporting for benefits;
 - Requiring claimants to make a systematic and sustained effort to find work, and to contact at least five prospective employers each week or report in person to a One-Stop Career Center to meet with a representative for reemployment services each week; and
 - Requiring claimants to file continuing claims by Internet, rather than by phone or mail.
- The bill changes the criteria by which claimants are disqualified from receiving benefits by:
 - Changing the standard to show misconduct from “willful” (a high standard) to “conscious” (a lower standard);
 - Changes the definition of misconduct to specify certain acts of misconduct that would disqualify an individual from benefits, such as absenteeism;
 - Adds a disqualification for any weeks in which an individual receives severance pay from an employer (effective August 1, 2011);
 - Expands disqualification to include being fired for all crimes committed in connection with work (rather than only those punishable by imprisonment) (effective August 1, 2011); and
 - Adds a specific disqualification for individuals who are incarcerated or imprisoned (effective August 1, 2011).
- The bill creates a sliding scale for benefits beginning in 2012 by correlating the maximum weeks of benefits available with the rate of unemployment. The maximum amount of benefits available is 23 weeks when the unemployment rate is 10.5 percent or greater, and this scales down to 12 weeks of benefits when the unemployment rate is 5 percent or less.
- The bill codifies the executive order extending the temporary state extended benefits program and amends the program to conform to new federal law.
- The bill eliminates the payment of benefits by mail (effective August 1, 2011).
- Related to unemployment taxes, the bill:
 - Allows employers to continue to have the option to pay their taxes in installments over 2012, 2013, and 2014;
 - Provides tax relief for employers beginning in 2012 by adjusting the tax calculation;

- Increases the number of employee leasing companies who may obtain tax information for their clients by filing a memorandum of understanding, instead of filing a power of attorney for each client, with the Department of Revenue.
- The bill allows appeals of orders by the Unemployment Appeals Commission to be filed in district courts of appeal where the claimant resides, where the business was located, or where the order was issued (effective August 1, 2011).
- The bill codifies certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances (effective August 1, 2011).
- The bill creates a rebuttable presumption that the date on a document mailed by AWI or DOR is the date that the document was mailed.
- The bill amends law related to statutory construction to repeal language which requires that unemployment laws be liberally construed in favor of a claimant.
- The bill permits AWI to contract with consumer reporting agencies to access wage records and requires that any revenues from the contract be used for administration of the unemployment system.

If approved by the Governor, these provisions take effect upon becoming law, unless otherwise specified in the bill.

Vote: Senate 27-11; House 80-38

Committee on Commerce and Tourism

CS/HB 7209 — Consumer Services Functions/DOACS

by Economic Affairs Committee; Business and Consumer Affairs Subcommittee; and Rep. Crisafulli (CS/CS/SB 1916 Budget Subcommittee on General Government Appropriations; Commerce and Tourism Committee; and Senator Detert)

This bill addresses a number of issues regarding the Department of Agriculture and Consumer Services (department) responsibilities related to consumer services, professional licenses, and inspection of oil and gas operations.

The bill deletes the authority for the department to:

- Enforce the prohibition against unconscionable prices relating to the rental or sale of essential commodities during a declared state of emergency (also known as the statutory “Price Gouging” restriction); and
- Bring actions for injunctive relief under the Bedding Act.

The bill transfers department responsibilities under the Motor Vehicle Warranty Enforcement Act (or “Lemon Law”) to the Attorney General.

The bill creates a regulatory system for Cottage Food Operations, to exempt from permitting by the department a cottage food operation that sells less than \$15,000 annually, and provides for labeling requirements of cottage food products.

As to department responsibilities relating to the inspection of oil and gas, and consistent with requirements imposed by the Department of Revenue, this bill adds terminal suppliers and importers to the list of those who must supply the affidavits currently required of manufacturers and wholesalers.

The bill also deletes obsolete provisions relating to the transition to the sale of ethanol gasoline.

The bill requires applicants for certain licenses to meet the following citizenship and residency qualifications:

- Applicants for an armed security guard or firearms instructor license must be a U.S. citizen or permanent legal resident alien. An applicant who is a permanent resident alien must also provide proof that the applicant has resided in the state of residence shown on the application for at least 90 consecutive days before the date the application is submitted; and
- Applicants for a security guard, private investigator, or recovery agent license must be a U.S. citizen or permanent resident alien or submit proof of current employment authorization issued by the U.S. Citizenship and Immigration Services.

As to other issues relating to licensees, the bill:

- Extends the Class “K” firearms instructor license period from 2 to 3 years.

- Amends current law effective January 1, 2012, to require applicants for a security guard or private investigator intern licenses to have completed 40 hours of professional training before they apply for their license;
- Provides that an armed security officer or firearms instructor is subject to discipline if he is prohibited from purchasing or possessing a firearm by state or federal law;
- Deletes the requirement that an application be notarized and requires that it be verified by the applicant under oath as provided in s. 92.525, F.S.;
- Allows for payment of application fees by electronic funds transfer and removes the option to pay by certified check;
- Provides for a more thorough review of an applicants' criminal history; and
- Streamlines current processes, and makes technical and conforming changes to current law.

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

Vote: Senate 35-0; House 113-0