

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

HB 43 — Churches or Religious Organizations

by Reps. Plakon, Cortes, B., and others (SB 110 by Senators Bean, Gaetz, and Hutson)

This bill has been referred to as the “Pastor Protection Act.” It provides that certain individuals and entities may not be required to solemnize a marriage or provide marriage-related goods, services, or accommodations if doing so would violate their sincerely held religious beliefs. The protected individuals and entities include:

- A church;
- A religious organization;
- A religious corporation or association;
- A religious fraternal benefit society;
- A religious school or educational institution;
- An integrated auxiliary of a church;
- An individual employed by a church or religious organization while acting in the scope of that employment;
- A clergy member; or
- A minister.

A refusal by any listed individual or entity to solemnize a marriage or provide marriage-related services, goods, or accommodations may not serve as the basis for a civil cause of action. Additionally, the refusal may not serve as the basis for the state or its political subdivisions to impose penalties or withhold any benefits or privileges, including tax exemptions or governmental contracts, grants, or licenses.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 23-15; House 82-37

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/HB 91 — Severe Injuries Caused by Dogs

by Judiciary Committee; Local Government Affairs Subcommittee; Civil Justice Subcommittee; and Rep. Steube and others (CS/SB 334 by Judiciary Committee and Senator Montford)

Under current law, an animal control authority is required to investigate any incident involving a dog that may be dangerous. Dogs that cause severe injury to human beings may either be classified as a dangerous dog subject to safety restrictions or immediately confiscated and euthanized. If an animal control authority pursues a classification determination, the owner of the dog may raise affirmative defenses for the dog's behavior. Affirmative defenses may not be raised, however, in a destruction proceeding in which a dog has not been previously classified as dangerous. Based on this current scheme, a number of trial courts have ruled the law unconstitutional.

The bill grants owners the right to appeal a decision by a local animal control authority on any dog that causes severe injury, whether the dog is classified dangerous or not. Although current law authorizes appeals to county court, the appropriate court of appeal of local decisions is generally the circuit court. The bill transfers the court of appeal from a county to a circuit court, and extends the number of days for an owner to file a notice of appeal from 10 to 30 days. A dog may not be euthanized while an appeal is pending.

Current law provides that an owner commits a second degree misdemeanor if the owner had knowledge of but recklessly disregarded a dog's dangerous propensities, and the dog causes a severe injury to or death of a human being. This bill makes the owner exempt from criminal penalties if the person attacked was engaged in or attempting to engage in a criminal act.

These provisions became law upon approval by the Governor on March 8, 2016.

Vote: Senate 40-0; House 118-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

HB 111 — Jury Service

by Rep. Combee and others (SB 206 by Senator Clemens)

This bill authorizes a person who is permanently incapable of caring for himself or herself to obtain a permanent exemption from jury service. To obtain the exemption, the person must make a written request that is accompanied by a letter from a physician verifying the permanent incapacity. Qualifying health conditions must relate to “mental illness, intellectual disability, senility, or other physical or mental incapacity.” The award of the permanent exemption is subject to the discretion of the clerk of court.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 37-0; House 117-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/HB 183 — Administrative Procedures

by State Affairs Committee; Government Operations Appropriations Subcommittee; Rulemaking Oversight and Repeal Subcommittee; and Rep. Adkins (CS/CS/SB 372 by Appropriations Committee; Judiciary Committee; and Senator Lee)

This bill revises the Administrative Procedure Act (APA), which governs agency rulemaking and decision making. The most significant changes to the APA by the bill:

- Generally require that an agency commence and complete rulemaking activities within 180 days after it holds a public hearing on a petition to initiate rulemaking activities on an unadopted rule.
- Require the dissemination of additional notices of agency rulemaking activities on the Florida Administrative Register and through e-mails by an agency to its licensees and other interested persons.
- Authorize a person to challenge agency action by asserting that a rule or unadopted rule used as a basis for the agency's action is invalid.
- Require agencies to review their rules to identify rules the violation of which would constitute a minor violation and for which a notice of noncompliance will be the first enforcement action.

The bill also makes the APA's summary hearing procedures applicable to challenges to proposed regulatory permits related to special events, such as a boat show, on sovereign submerged land.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 40-0; House 104-1

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

SB 396 — Nonresident Plaintiffs in Civil Actions

by Senator Bradley

The bill repeals a current requirement that a nonresident plaintiff in a civil action post a \$100 bond to secure the payment of court costs that may be adjudged against the plaintiff. The requirement applied to plaintiffs who were not residents of the state at the time of filing a lawsuit or who became nonresidents after filing a lawsuit. The repealed bond requirement dates back to 1828, when the state was still a territory.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 37-0; House 117-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/HB 439 — Mental Health Services in the Criminal Justice System
by Judiciary Committee; Appropriations Committee; Children, Families and Seniors
Subcommittee; and Reps. McBurney and others (CS/CS/SB 604 by Appropriations Committee;
Judiciary Committee; and Senators Diaz de la Portilla, Hutson, and Gaetz)

This bill expands the authority of courts to use treatment-based mental health and substance abuse court programs for defendants who are involved in the criminal justice process at both the preadjudicatory and postadjudicatory level.

The bill:

- Expands eligibility criteria for defendants to participate in diversionary programs to include children in dependency court and veterans who were released from military service under a general discharge.
- Authorizes counties to fund and establish mental health court programs under which a child under the jurisdiction of dependency court or a defendant having a mental illness shall be processed in a manner that provides appropriate treatment and services.
- Requires the state courts system, contingent upon appropriations by the Legislature, to establish a mental health coordinator for each county mental health court program.
- Creates the Forensic Hospital Diversion Pilot Program to divert defendants found mentally incompetent to proceed to trial or not guilty by reason of insanity into a residential bed and community treatment setting. The Program authorizes the Department of Children and Families (DCF) to replicate the current model of the Miami-Dade Forensic Alternative Center into 2 additional counties. In addition to Miami-Dade, the DCF would implement the program in Broward and Duval Counties.

The specialized mental health treatment authorized by the bill may help defendants avoid returning to the criminal justice and forensic mental health systems.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 40-0; House 117-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/SB 458 — Transfers of Structured Settlement Payment Rights

by Banking and Insurance Committee and Senator Richter

This bill makes changes to the laws governing the transfer of the right to receive payments under a structured settlement agreement. The changes made by the bill:

- Specify that the court having jurisdiction over an application to transfer structured settlement payment rights is the court where the payee resides or, if the payee does not reside in this state, the court that approved the structured settlement agreement or the court in which a claim was pending which led to the structured settlement agreement;
- Require an applicant seeking to receive the payments under a structured settlement agreement to provide additional information about the payee in its application to the court;
- Require the payee to appear in court for the hearing on the application unless good cause exists to excuse the payee's attendance;
- Grant immunity to structured settlement obligors and annuity issuers that act in reliance on court orders approving the transfer of a structured settlement agreement;
- Make structured settlement obligors and annuity issuers immune from liability for a transferee's failure to provide required disclosures to the payee or to provide all the required information in its application to the court; and
- Allow the transfer of structured settlement payments notwithstanding the terms of a structured settlement agreement prohibiting those transfers.

The bill may result in more favorable terms for payees who seek to sell the right to payments under their structured settlement agreements. The bill also increases the marketability of structured settlement payment rights.

These provisions became law upon approval by the Governor on March 10, 2016.

Vote: Senate 37-0; House 116-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/SB 494 — Digital Assets

by Rules Committee; Judiciary Committee; and Senators Hukill and Joyner

This bill accomplishes two purposes. First, it provides fiduciaries the legal authority to manage digital assets and electronic communications in the same manner that they manage tangible assets and accounts. The bill distinguishes between when a fiduciary may access the content of digital assets and electronic communications and when the fiduciary may only access a catalog of the digital property. Second, the bill provides custodians of digital assets and electronic communications the legal authority they need to interact with the fiduciaries of their users while honoring the user's privacy expectations for his or her personal communications.

A custodian is granted immunity from liability for acts or omissions done in good faith compliance with the provisions of this bill. The bill gives Internet users the ability to plan for the management and disposition of their digital assets if they should die or become unable to manage their assets. This is done by vesting fiduciaries with the authority to access, control, or copy digital assets and accounts.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 36-0; House 116-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/CS/SB 540 — Estates

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

This bill revises the statutes governing the use of trust assets to pay the trustee's attorney fees incurred in defending against a breach of trust claim. These changes clarify that the statutes giving broad authority to a trustee to incur attorney fees do not apply when the trustee is defending against a breach of trust claim.

The bill also provides that Florida law determines the validity and effect of the disposition of real property located in this state. Finally, the bill provides that a surviving spouse's claim of an elective share does not reduce what the spouse would receive if the election had not been made and that the spouse is not to be treated as having predeceased the decedent. In other words, the bill clarifies that an elective share is a floor, not a ceiling, on the amount of assets which the surviving spouse may receive from the decedent's estate.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 38-0; House 114-1

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/SB 668 — Family Law

by Appropriations Committee; Judiciary Committee; and Senator Stargel

This bill revises laws on the amount and duration of alimony awards, grounds for alimony, and bases for modification of alimony due to a substantial change in circumstances. The bill also revises the laws governing the establishment of parenting plans and time-sharing schedules.

Regarding initial alimony awards, the bill:

- Establishes presumptive alimony ranges based on formulas that incorporate the difference between the parties' gross incomes and the duration of their marriage.
- Limits the duration of an alimony award to 25 to 75 percent of the duration of the parties' marriage.
- Caps the combination of alimony and child support at 55 percent of the obligor's income.
- Provides an exception to alimony guidelines so that the court may consider the contributions to the marriage of a long-term homemaker.

The bill identifies additional bases for modifications or terminations of alimony, which include:

- An increase in the recipient's income, and if the income has increased by 10 percent, the obligor is entitled to pursue an immediate modification of alimony.
- The involuntary underemployment or unemployment of the obligor.
- The obligor's retirement at a reasonable age.

The bill also clarifies that in instances in which an obligor alleges the existence of a supportive relationship between the obligee and another person, the obligor does not have to actually prove cohabitation.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. The bill provides instead that the court must begin with the premise that a minor child should spend approximately equal amounts of time with each parent. In formulating a specific parenting plan or time-sharing schedule, the bill directs courts to consider the existing statutory factors, which have been slightly revised. The revisions allow a court to consider the disposition of a parent to perform new roles after the parents separate. Finally, the bill generally requires courts to make detailed, written findings of fact when establishing parenting plans and time-sharing schedules.

If approved by the Governor, these provisions take effect October 1, 2016.

Vote: Senate 24-14; House 74-38

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/HB 821 — Reimbursement of Assessments

by Civil Justice Subcommittee and Rep. Rooney (CS/SB 1692 by Judiciary Committee and Senator Altman)

This bill prohibits an agent or attorney from requesting or obtaining reimbursement of an assessment imposed by the United States Department of Veterans Affairs (VA) from a veteran claimant.

Under federal law, the VA may impose the assessment on an agent or attorney who represents a claimant seeking veteran's benefits. This assessment may not exceed the lesser of \$100 or 5 percent of the compensation of the attorney or agent. Under the bill, an agent or attorney who requests or obtains reimbursement of the assessment from the claimant commits a second degree misdemeanor.

If approved by the Governor, these provisions take effect October 1, 2016.

Vote: Senate 40-0; House 116-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

HB 967 — Family Law

by Rep. Stevenson and others (SB 972 by Senator Lee)

This bill establishes a collaborative law process to facilitate out-of-court settlements in divorce and paternity cases. The process brings together collaborative attorneys, mental health professionals, and financial specialists to help the parties reach a consensus. The terms of the process are contained in a collaborative law participation agreement.

The collaborative law process may resolve such matters in family law as:

- Alimony and child support;
- Marital property distribution;
- Child custody and visitation;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

Parties may enter into a collaborative law participation agreement before filing a petition with the court or while an action is pending. The bill also allows the case to be partially resolved collaboratively, with the remainder to be resolved through the traditional adversarial process.

Communications made during and as part of the collaborative process are generally confidential and privileged from disclosure, not subject to discovery in a subsequent court proceeding, and inadmissible as evidence.

The effect of the bill is contingent upon the adoption of implementing rules by the Florida Supreme Court.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 39-0; House 117-0

THE FLORIDA SENATE
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Committee on Judiciary

CS/SB 1042 — Judgments

by Judiciary Committee and Senator Simmons

This bill revises chapter 56, Final Process, which regulates how a creditor may collect a judgment against a debtor. The bill makes organizational changes to the chapter while updating and clarifying several definitions for uniformity.

The bill amends chapter 56, F.S., by:

- Providing a new definitions section at the beginning of the chapter to establish uniform usage throughout the chapter;
- Moving the discovery provisions in current law into a single section and providing that the discovery provisions are in addition to the discovery provisions found in the rules of civil procedure;
- Establishing a procedure for bringing non-parties to the original action into proceedings supplementary by a notice to appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court;
- Providing that a claim under the Uniform Fraudulent Transfer Act which is raised during proceedings supplementary must be initiated by a supplemental complaint and that those claims are governed by the Uniform Fraudulent Transfer Act and the rules of civil procedure; and
- Providing that a person who asserts a claim to defense in proceedings supplementary for the purpose of delay maybe subject to penalties imposed by the court.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 36-0; House 114-0

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/HB 1181 — Bad Faith Assertions of Patent Infringement

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Grant and others (CS/SB 1298 by Judiciary Committee and Senator Brandes)

The Patent Troll Prevention Act, enacted in 2015, was intended to deter the filing of bad-faith patent infringement claims. The act worked by allowing a defendant to pursue a private cause of action for damages, including punitive damages, against a claimant, a patent troll, making a bad-faith claim. The claimant could also be required to post a bond in the amount equal to the lesser of \$250,000 or a good faith estimates of the defendant's expenses of litigation, including attorney fees.

The bill eases the act's potential for deterring appropriate patent infringement lawsuits. The specific changes:

- Require that a demand letter be objectively baseless before it may be deemed a bad-faith assertion of patent infringement.
- Remove the act's bond-posting requirement for a plaintiff who may have made a bad-faith assertion of patent infringement.
- Limit the entitlement to and amount of punitive damages awards against a person who makes a bad-faith assertion of patent infringement.

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

Vote: Senate 38-0; House 114-0

THE FLORIDA SENATE
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Committee on Judiciary

SB 1412 — Orders of No Contact

by Senator Simmons

This bill clarifies that the duty of a defendant to avoid contact with a victim is contingent upon the issuance of a “no contact” order. An order of no contact generally prohibits a defendant from being near or communicating with a victim.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 38-0; House 116-0.

THE FLORIDA SENATE
2016 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/SB 1432 — Service of Process

by Rules Committee; Judiciary Committee; and Senator Stargel

This bill authorizes additional methods of service of process if personal service of process cannot be effected.

Under current law, a process server may personally serve process, such as a subpoena or summons, on a witness or opposing party in a lawsuit. If personal service of process is not possible, existing law authorizes substitute service of process on the intended recipient's spouse or person in charge of the recipient's business or private mailbox.

This bill allows a process server to effect substitute service of process on a person in charge of an intended recipient's virtual office or executive office or mini suite. The bill further provides that these intended recipients may include a registered agent for a corporation, an officer or director of a corporation, or the corporation itself in certain circumstances.

A virtual office is an office that provides communications services such as telephone or fax services, and other services without dedicated office space, provided that all communications are routed through a common receptionist. An executive office or mini suite is similar, except that it includes dedicated office space.

In addition to expanding substitute service of process, this bill revises the state's long-arm statute which defines the limits of the jurisdiction of the courts of this state.

Among other limits, the current statute limits the jurisdiction of the courts of this state to enforce a penalty or fine imposed by an agency of another state. The penalty or fine may not be enforced in this state's courts unless the other state grants the defendant a mandatory right of review of the penalty or fine. This bill further prohibits courts from enforcing agency actions from other states by prohibiting the enforcement of any agency order unless the other state grants a mandatory right of review.

If approved by the Governor, these provisions take effect July 1, 2016.

Vote: Senate 40-0; House 112-4