

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1066

SPONSOR: Senator Peaden

SUBJECT: Civil Actions/Admission of Liability

DATE: March 16, 2001 REVISED: 03/20/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends the Florida Evidence Code to make portions of statements, writings, or benevolent gestures expressing sympathy relating to the pain, suffering, or death of a person involved in an accident inadmissible as an admission of liability in a civil action. Portions of statements or writings that show fault will continue to be admissible under the bill.

The bill will take effect upon becoming law.

This bill creates section 90.4026 of the Florida Statutes.

II. Present Situation:

Florida law contains no provision to prevent the admission of apologies or other statements of sympathy by a defendant or potential defendant after an accident. If such statements are made, attorneys can argue that they are proof of fault in civil actions. The admission of such statements is governed under normal evidentiary rules such as relevance. If a statement is found to be relevant, it might be admitted pursuant to s. 90.803(18), F.S. (admissions by a party opponent), s. 90.804(2)(d), F.S. (statements against interest), or other evidentiary rules. It has been contended by some parties, that since such statements might be admitted into evidence as proof of an admission of fault in negligence actions, expressions of sympathy are sometimes not made.

Florida case law does not provide a per se rule on admission of such statements of sympathy or apology in a civil proceeding. Each statement must be analyzed under usual evidentiary rules (relevance, etc.) and its admission would be subject to an abuse of discretion standard of review on appeal.

III. Effect of Proposed Changes:

Section 1 of the bill adds a new section to the Florida Evidence Code, s. 90.4026, F.S. Under the bill, portions of statements, writings, or benevolent gestures expressing sympathy relating to pain, suffering, or death of a person involved in an accident made to the person, or the family of that person, who experienced the pain or loss is not admissible as evidence in a civil action. However, a statement of fault, which is part of or in addition to a statement of sympathy, is admissible into evidence. An example used by the sponsor of an identical provision in California was that an accident occurs and a driver says, "I'm sorry you were hurt. The accident was my fault." The first statement would not be admissible as an admission of liability while the second statement would be admissible as an admission. *See* Senate Judiciary Committee Analysis of AB 2804, June 20, 2000.

The bill defines "accident" as "an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party" to make clear that statements after occurrences caused by willful actions would still be admitted.

"Benevolent gestures" is defined as "actions which convey a sense of compassion or commiseration emanating from human impulses."

The language in this bill is similar to a statute passed in California last year. Although the California courts have not discussed the provision, the sponsor of the California law indicated his intent:

The California Evidence Code manifestly discourages the human tendency to apology or express regret over an incident caused by negligence. Yet, apologies reduce the anger of those who otherwise would sue from anger. [The bill] permits humane, natural sentiments to be uttered by human beings without fear of use against them in litigation.

CA Evidence § 1160 - Comment—Assembly Committee on Judiciary (West Pub. 2001).

Massachusetts and Texas also have similar statutes.

Section 2 of the bill provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To the extent that this bill is procedural rather than substantive, it must be adopted as a rule of court by the Florida Supreme Court. The court often adopts legislative changes to the Evidence Code as court rules, *see e.g. In re: Fla. Evidence Code*, 372 So. 2d 1369 (Fla. 1979). However, such adoption is not automatic. *See In re: Amendments to the Florida Evidence Code*, SC00-607 (Fla. October 26, 2000)(declining to adopt chapter 98-2, section 1, Laws of Florida, as a court rule). Case law regarding the distinction between substantive law and procedural law is unclear in Florida. However, the court noted in its recent opinion that no other jurisdiction has similar provisions to the one it declined to adopt. *Id.* at 8. Identical or similar language to the language of this bill has been adopted in other states.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

Amendment #1 by Judiciary:

On page 1, lines 6 and 7, the words “of an admission of liability” were removed from the title.