

STORAGE NAME: h0211.jo.doc
DATE: February 15, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 0211
RELATING TO: Florida Evidence Code
SPONSOR(S): Representative Maygarden

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
 - (2) SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

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.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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, plaintiff's attorneys may argue that they show liability 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 section 90.803(18), Florida Statutes (admissions exception to the hearsay rule), section 90.804(2)(d), Florida Statutes (excluding statements against interest from the definition of hearsay), or other evidentiary rules. Since such statements might be admitted into evidence as admissions of liability in negligence actions, expressions of sympathy are sometimes not made because their potential use in a legal proceeding.

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.

C. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill adds a new section to the Florida Evidence Code. 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 person or the family of that person who experienced the pain or loss is not admissible as an admission of liability in a civil action. 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. Although such statements, writings, or gestures are not admissible as admissions under the bill, they might be admissible for other purposes.

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.” This language is identical to language in statutes from California, Texas, and Massachusetts.

Under the bill, a statement of fault would continue to be admissible and trial courts would continue to resolve evidentiary disputes. The bill does not change the rule that evidentiary rulings by a trial court are reviewed on appeal for abuse of discretion.

The language in this bill is identical 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).

The sponsor of the California bill believed that enactment of this rule would reduce litigation by permitting parties to resolve emotionally-charged disputes with apologies.

Massachusetts and Texas also have similar statutes.

Section 2 of the bill provides that the bill will be effective upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority the municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. 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), but 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.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

STORAGE NAME: h0211.jo.doc

DATE: February 15, 2001

PAGE: 5

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier

Lynne Overton