

ADMINISTRATIVE AND CIVIL PROCEEDINGS

CS/CS/SB 340 — Involuntary Commitment/Baker Act

by Health, Aging, and Long-Term Care Committee; Judiciary Committee; and Senator Lynn

Florida's Baker Act is a civil commitment statute which allows a person to be involuntarily admitted to a receiving facility for short-term emergency service and maximum 72-hour detention until an evaluation and treatment of a mental, emotional, or behavioral disorder are completed. The bill amends s. 394.463(2)(f), F.S., which authorizes a clinical psychologist or psychiatrist to approve the release of a patient who is being involuntarily detained at a receiving facility under the Baker Act. The bill extends such authority to a hospital emergency department physician with diagnostic and treatment experience in mental and nervous disorders, provided the patient has undergone an involuntary examination and the hospital is designated as a receiving facility.

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

Vote: Senate 40-0; House 114-0

CS/SB 472 — Mining Activities

by Banking and Insurance Committee and Senators Smith, Pruitt, Geller, and Diaz de la Portilla

This bill provides an exclusive administrative remedy through the Division of Administrative Hearings (DOAH) solely for the recovery of damages to real and personal property caused by the use of explosives in construction mining activities. Recovery of damages for personal injury, emotional distress, or punitive damages is excluded from this administrative forum and must be pursued separately in court. The administrative remedy for the alleged real or personal property damage must be sought no later than 6 months after the damage occurred. Within 5 days of filing the petition, the case is assigned and an order is issued directing mandatory nonbinding mediation to be held no later than 60 days after the mediator is selected by the parties or the administrative law judge. If no settlement is reached within 15 days of the concluded mediation, the matter may be set for an expedited summary hearing upon mutual agreement of the parties. If the parties have not reached a settlement within 30 days of the concluded mediation, the matter is set for formal administrative hearing.

If the court finds by a preponderance of evidence that the damages are attributable to construction mining activities, the court must direct the respondent to pay the damages within 30 days of the order unless the matter is appealed to a district court of appeal. If the respondent fails to pay the damages within 30 days of the order, or within 30 days of an appellate mandate affirming the order, then the damages may be paid upon the petitioner's request from the security

bond the respondent was required to post as a statutory prerequisite to applying or renewing a user license in connection with the construction mining activities. The court may reduce to judgment any amount not covered by the security bond. If the court finds by a preponderance of evidence that the damages were not caused by the respondent's activities, the court must issue an order stating that the respondent is not responsible for the damages. The prevailing party is entitled to taxable costs including expert witness fees and administrative costs. Additionally, the prevailing party is entitled to reasonable attorney's fees unless the claim or defense was frivolous or without basis in fact or law. The \$100 filing fee is to be deposited into the Administrative Trust Fund of the Division of Administrative Hearings as the repository to defray the cost and expense of the specialty administrative hearing process.

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

Vote: Senate 37-1; House 114-0

SB 2826 — Tobacco Settlement Agreement

by Senators Haridopolos, Campbell, and Lynn

This bill limits the amount of an appeal bond that may be ordered in any civil action involving a signatory or successor or an affiliate of a signatory to the tobacco settlement agreement, as defined in s. 215.56005(1)(f), F.S., to no more than \$100 million, regardless of the total value of the judgment. The bill provides that if after notice and hearing a plaintiff proves by a preponderance of the evidence that a defendant to such an action is purposefully dissipating assets outside the ordinary course of business to avoid payment of the judgment, the court may enter any necessary order to protect the plaintiff, including increasing the appeal bond to the full amount of the full judgment. The bill does provide an exemption for any past, present, or future actions brought by the State of Florida against one or more signatories to the tobacco settlement agreement. The bill provides that the act shall apply to all cases pending or filed on or after the effective date.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 38-0; House 118-1

HB 561 — The Victim’s Freedom Act/Sexual Violence Injunctions

by Rep. Kyle and others (Compare CS/SB 294 by Judiciary Committee and Senators Crist, Hill, and Argenziano)

This bill creates “The Victim’s Freedom Act” to provide a new type of injunctive relief against sexual violence. A person may obtain protective injunctive relief if:

- A sexual violence victim has reported the incident to law enforcement and is cooperating in any pending or dismissed criminal proceeding against the offender.
- or*
- The sexual violence victim’s offender state prison term is expired or will expire within 90 days following the filing of the petition for protective injunctive relief.

The underlying acts of “sexual violence” include sexual offenses under chapters 787, 794, 800 and 827, F.S., and any other forcible felony offenses involving a sexual act. No filing fee or service charge may be assessed against petitions for injunctions against dating violence, repeat violence, and sexual violence. However, subject to legislative appropriation, the Clerks of Court can petition the Office of State Courts Administrator for reimbursement of \$40 per petition, of which a maximum of \$20 must be allocated to the law enforcement agency serving the injunction. This bill authorizes a correctional officer in lieu of a law enforcement officer to serve process of a sexual violence injunction upon an imprisoned offender. Finally, this bill redesignates the statewide injunction verification system as the “Domestic, Dating, Sexual, and Repeat Violence Injunction Statewide Verification System.”

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

Vote: Senate 40-0; House 115-1

EVIDENCE

CS/SB 90 — Parent-Child Privilege

by Children and Families Committee and Senator Geller

This bill creates a statutory parent-child privilege. This evidentiary privilege allows a parent or child, or guardian or conservator thereof, to invoke the privilege to refuse to disclose, or prevent another from disclosing certain communications between the parent and child which were intended to be made in confidence. The parent-child privilege is not available in any of the following proceedings:

- Any proceeding brought by the child against the parent or vice versa.

- Any criminal proceeding in which the child is charged with a crime committed against the person or property of the child's parent or any other child of the parent.
- Any criminal proceeding in which the parent is charged with a crime committed against the person or property of the child or any child of the child.
- Any criminal or other governmental investigation involving allegations of abuse, neglect, abandonment, or nonsupport of a child by the parent.
- Any criminal or other governmental investigation involving allegations of certain types of abuse of a parent by a child of that parent.
- Any proceeding governed by the Florida Family Law Rules or Florida Juvenile Rules of Procedure.

The child or parent can expressly waive the privilege and consent to disclosure of the communication. Consent by a minor child or a child who has not yet been emancipated, however, is only valid if approved by the court based on the recommendation of a court-appointed guardian ad litem who has recommended that the waiver is in the child's best interest.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 116-0

HB 195 — Presumption of Non-negligence/Emergency Medical Dispatch Act

by Rep. Bilirakis and others (CS/SB 338 by Judiciary Committee and Senators Fasano, Argenziano, Peaden, and Bullard)

The bill creates the Emergency Medical Dispatch Act relating to a statutory presumption of non-negligence for emergency medical dispatchers and agencies. The bill provides that where a public or private emergency medical dispatcher has been provided certain training and has followed unspecified protocols that are substantially similar to standards developed by the American Society for Testing and Materials or the National Highway Traffic Safety Administration, the dispatcher, and the dispatcher's agency, its agents, or employees will be presumed to not have acted negligently in any injuries or damages resulting from the use of those protocols. This bill also allows emergency medical dispatch services to participate in the Emergency Medical Services Grant Program administered by the Department of Health.

If approved by the Governor, these provisions take effect September 11, 2003.

Vote: Senate 39-0; House 106-0

SB 524 — Rules of Evidence

by Senator Campbell

This bill amends three sections of the Florida Evidence Code. The first section provides that, in order to preserve appellate review, a party does not have to renew an objection or offer of proof during trial in response to a pre-trial evidentiary ruling. The second section allows business records to be admitted into evidence by means of a certificate of authenticity, while the third section sets forth the criteria for establishing the certificate of authenticity.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 118-0

HB 1579 — Autopsy Records

by Rep. Roberson and others (SB 1052 by Senator Smith)

This bill revises s. 406.135, F.S., a public records exemption for photographs, video or audio recordings of an autopsy held by a medical examiner. These records are confidential and exempt from public disclosure except that a surviving spouse, or under certain conditions, another relative, may obtain such records. This bill provides that the surviving relative who has the authority to view and copy the autopsy records is authorized to designate an agent for that purpose.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 117-0

FAMILY LAW

HB 835 — Adoption

by Rep. Mahon and others (CS/SB 2456 by Judiciary Committee and Senators Lynn, Campbell, and Bennett)

This bill substantially revises the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, venue, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involves the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaces existing constructive notice provisions as previously applied to fathers who could not be identified or located. The categories of "fathers" for whom notice and consent may be required is revised to incorporate and conform with the new definition of "unmarried biological father."

The bill also makes the following changes:

- Deletes the statutory duty of a mother placing a child to identify a potential unmarried biological father.
- Allows for pre-birth execution of an affidavit of nonpaternity.
- Broadens the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expands placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revising venue provisions to include 4 primary venue options and waiver of venue.
- Revises a number of statutory timeframes including reducing the statute of repose period from 2 years to 1 year for any challenge to an adoption or termination of parental rights, reducing in half the time period between the date of personal or constructive service and the date of a final hearing, and extending the time period from 7 to 14 days in which make adoption disclosures to birth and prospective adoptive parents, extending from 24 hours to 7 days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Family Services, from 24 hours to 7 days, and changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement.
- Revises the statutory forms for consent to adoption, for adoption disclosure and for notice of service of process, and eliminates the statutory forms for affidavits of nonpaternity and the waiver of venue to conform with changes in the bill in those areas.
- Revises provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat-fee representation and for birth mothers by expanding recovery of pre-birth *and* post-birth expenses including toiletries, insurance, investigator fees, birth certificate, medical records, and other expenses for the birth mother's well being.
- Deletes requirement that all proceedings for adoption be conducted by the same judge that conducted the termination proceedings.
- Allows private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.
- Creates provisions specific to stepparent, relative, and adult adoptions to facilitate compliance with or to except them from the requirements applicable in typical adoptions.
- Revises provisions relating to preplanned adoption agreements by relocating such provisions into a separately created statutory section and by allowing prospective

adoptive parents to agree to pay for lost wages due to the pregnancy and birth, and reasonable compensation for inconvenience, discomfort, and medical risk.

- Revises provisions governing sanctions against adoption entities to make award of attorney fees permissive rather than mandatory, to require an evidentiary hearing to determine whether the actions or failures of the adoption entity directly contributed to a finding of fraud or duress, to require orders of sanctions against the Department of Children and Families to be forwarded to the Office of the Attorney General, to preclude fraudulent representation as a basis for dismissing a petition for termination of parental rights or adoption, and to require willful violation and criminal intent in the imposition of criminal sanctions against an adoption entity.
- Replaces a grandparent's priority right to adopt a grandchild to one of a right to notice of an adoption proceeding of such grandchild.
- Eliminates the right of a non-party to petition for judicial review of a placement's appropriateness.
- Revises the adoption process for abandoned infants including giving the court the discretion to order paternity testing and making conforming changes to the bill.
- Revises provisions relating the duties of an adoption entities when a child in their custody.
- Clarifies that forgiveness by a parent of vested child support arrearages owed in a step-parent adoption does not constitute a felony.
- Allows the department to contract with more than one licensed child-placing agency to operate the state adoption information center.

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

Vote: Senate 39-0; House 115-0

CS/SB 2526 — Putative Father Registry/Public Records

by Judiciary Committee and Senator Campbell

This bill provides that all information contained in the Putative Father Registry and maintained by the Office of Vital Statistics within the Department of Health is confidential and exempt from public disclosure with a few exceptions. The bill permits access to the registry database by the following persons or entities:

- An adoption entity in connection with the planned adoption of a child.
- A registrant unmarried biological father may receive a copy of his registry entry.
- A court, upon issuance of a court order concerning a petitioner acting pro se in an action under the chapter.

Otherwise all such information in the database is to be kept separate from all other local or state databases and may not be accessed by any state or federal agency. Such provisions stand repealed October 2, 2008, unless reviewed and reenacted by the Legislature. The bill provides a statement of public necessity

If approved by the Governor, these provisions take effect on the same date as CS/HB 835.
Vote: Senate 38-0; House 116-0

CS/CS/SB 2050 — Child Custody Evaluations

by Health, Aging, and Long-Term Care Committee; Judiciary Committee; and Senator Aronberg

This bill prescribes the process for pursuing an administrative, civil or criminal claim against a court-appointed psychologist regarding a child custody evaluation in any judicial proceeding. A court-appointed psychologist is statutorily presumed to be acting in good faith if the evaluation is done in accordance with standards that are consistent with the American Psychological Association's guidelines for such evaluations in divorce proceedings. Any administrative claim based on a child custody evaluation by a court-appointed psychologist can no longer be filed anonymously. Any civil claim against a court-appointed psychologist must first be preceded by a petition to replace the psychologist with another court-appointed psychologist. It is within the court's discretion to allocate attorney's fees and costs associated with the subsequent appointment. In any administrative, civil or criminal proceeding against a court-appointed psychologist in which the psychologist is found liable (or not to have acted in good faith), the claimant is entitled to reasonable attorney's fees and costs. If the court-appointed psychologist is not found liable (or to have acted in good faith), the psychologist is entitled to reasonable attorney's fees and costs.

If approved by the Governor, these provisions take effect July 1, 2003.
Vote: Senate 40-0; House 113-0

JUDICIARY

HB 439 — Statewide Guardian Ad Litem Office

by Rep. Rich and others (CS/SB 1974 by Judiciary Committee and Senators Campbell, Bullard, and Cowin)

This bill provides for the transfer, oversight, and administration of locally-based guardian ad litem programs and the attorney ad litem pilot program from the auspice of the judicial branch to the Statewide Guardian Ad Litem Office to be created and housed administratively within the Judicial Administrative Commission. The Office is to be headed by an executive director appointed

by the Governor from a list of applicants selected by a 5-member Guardian Ad Litem Qualifications Committee. The executive director must have knowledge of dependency law and of the social service delivery systems. The executive director will serve for a 3-year term, subject to removal for cause.

The bill sets forth the Office's duties including program oversight and review, the provision of technical support, training, review of funding sources and services, program development, and creation of statewide performance measures and standards. The Office is required to continue the attorney ad litem pilot program and may contract or develop other such projects with available or solicited gifts, grants, or contributions. The Office is required to submit an interim status report and proposed plan to the Legislature, the Governor, and the Florida Supreme Court by October 1, 2004, and subsequent annual reports thereafter.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 117-0

PROBATE AND TRUST

SB 2450 — Florida Uniform Principal and Income Act

By Senator Atwater

This bill amends provisions of Chapter 738, F.S., the Florida Uniform Principal and Income Act, which governs the identification of principal and income in or from a trust property through a trust instrument, will, or other governing instrument, the allocation of principal and income, and the apportionment of assets between income and principal. The bill makes technical and clarifying changes necessary as a result of a major revision to the Act enacted in 2001, including revisions to the scope and duties of a trustee and clarifying certain activities related to the valuation and distribution of trust assets.

If approved by the Governor, these provisions take effect upon becoming law and are retroactively applied to January 1, 2003.

Vote: Senate 40-0; House 112-0

SB 2700 — Probate and Trusts/Limitations

by Senator Campbell

This bill continues Florida's comprehensive revision of its probate and trust law. Some of the more significant provisions of this bill include:

- Adding evidence of exposure to a "specific peril" as a basis for presuming death, with particular venue provisions for petitioning a court for such a determination.

- Establishing a specific conflict of interest standard, i.e., when each of the trustees is also a personal representative of the estate, then the beneficiaries of the trust are the estate beneficiaries. Otherwise, it is the trustees of the trust who are the beneficiaries of the estate.
- Eliminating a conflict in the law by removing the exception of homestead property from the application of the Florida Uniform Disposition of Community Property Rights at Death Act.
- Addressing gaps in the antilapse laws concerning beneficiaries deemed to have predeceased a decedent by operation of law.
- Incorporating federal law by expressly providing that military testamentary instruments properly executed by an individual eligible for military legal assistance pursuant to Title 10 U.S.C. § 1044d are valid wills in this state.
- Amending provisions relating to the serving of the notice of administration and notice to creditors.
- Providing that civil actions based upon constructive fraud must be initiated within four years of when the facts giving rise to the action are discovered, or should have been discovered with the exercise of due diligence.
- Clarifying personal representative's powers pertaining to control and expenditure of funds for protected homestead property.

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

Vote: Senate 39-0; House 112-0

PROPERTY

CS/CS/SB 1220 — Sale of Real Property

by Comprehensive Planning Committee; Judiciary Committee; and Senators Fasano, Lynn, and Argenziano

This bill amends s. 689.26, F.S., to revise the disclosure requirements that must be provided to prospective purchasers of real property and will implicitly require that such disclosure be provided to buyers in those neighborhoods where restrictive covenants run with the property.

Sellers will be required to specify whether or not a property purchaser will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to a municipality. The notice must also state whether or not the restrictive covenants of the association can be amended with the approval of the membership or, if there is not a mandatory association, the parcel owners. This bill encourages prospective purchasers to refer to

actual governing documents and covenants prior to purchasing the property. Disclosure requirements must be provided to prospective purchasers of real property. A contract for sale of property governed by covenants subject to disclosure under s. 689.26, F.S., must contain a voidability clause, in the same form as provided for in statute, and such contract is voidable at the option of the purchaser prior to closing if it does not have such a clause.

If approved by the Governor, these provisions take effect July 1, 2003.

Vote: Senate 40-0; House 118-0

HB 1453 — Vessels

by Rep. Berfield and others (CS/SB 2652 by Judiciary Committee and Senator Aronberg)

This bill substantially amends s. 328.17, F.S., governing the non-judicial sale of vessels by marinas. Generally, this bill revises the procedure for the non-judicial sale of a vessel by a marina held for unpaid costs, storage charges, dockage fees, or failure to pay removal costs pursuant to other statutory provisions. The bill eliminates the current requirement that a marina seeking to satisfy a lien against a vessel obtain two independent appraisals of the vessel prior to auction, and that the vessel be sold for at least 50 percent of the appraised value. The marina must adhere to notice requirements as described therein. This bill provides that a marina placing a lien on a vessel may satisfy that lien after the satisfaction of prior liens perfected under the Uniform Commercial Code. The buyer of vessel under the provisions of this bill takes the vessel free of any lien other than those perfected under the Uniform Commercial Code despite the marina not complying with the provisions of this bill.

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

Vote: Senate 40-0; House 109-0

