

## **FAMILY LAW AND CHILDREN**

### **SB 160 — Partial-Birth Abortion Ban**

by Senator Cowin

This bill creates the “Partial-Birth Abortion Ban Act” within the chapter on homicide. It criminalizes, as a second-degree felony, the act of intentionally killing a “partially born living fetus.” It excludes suction or sharp curettage abortion procedures. The ban does not preclude the physician from taking measures medically necessary to save the life of the mother when her life is threatened by a physical disorder, physical injury, or physical illness, provided all reasonable precautions are taken to save the fetus’ life as well. It exempts women from criminal prosecution for obtaining such procedure.

If approved by the Governor, these provisions take effect July 1, 2000.

*Vote: Senate 30-10; House 84-32*

### **CS/HB 1901 — Child Protection/Abandoned Newborns**

by Family Law & Children Committee, Rep. Murman and others (CS/SB 2080 by Judiciary Committee and Senator Grant)

This bill creates a process by which a parent may anonymously, and with limited amnesty from criminal prosecution, abandon a newborn infant at a fire station or hospital. It provides a streamlined process for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption in cases of unclaimed abandoned newborn infants which bypasses involvement by the Department of Children and Families unless there is evidence of actual or suspected child abuse or neglect. It sets forth the responsibilities and duties for fire stations, hospitals, licensed child-placing agencies, and the Department of Children and Families in the process for handling an abandoned newborn infant. It provides specified time frames in which a parent can reclaim or claim their abandoned newborn infant. It provides finality to judgments that terminate parental rights and grant adoption under ch. 63, F.S., by imposing one- and two-year statutes of repose periods for challenging such judgments based on fraud or other grounds. It directs the Department of Children and Families and the Department of Health to conduct a media campaign to promote safe alternatives for placement of abandoned newborn infants.

If approved by the Governor, these provisions take effect upon becoming law.  
*Vote: Senate 39-0; House 109-2*

**SB 2082 — Child Protection/Public Records Exemption**  
by Senator Grant

This bill is linked to CS/SB 2080 (passed as CS/HB 1901), relating to abandoned newborn infants. It creates a public records exemption for the identity of a parent who abandons a newborn infant at a hospital or fire station. In accordance with the Open Government Sunset Review Act of 1995, this exemption is subject to legislative review and repeal at the end of 5 years.

If approved by the Governor, these provisions take effect upon becoming law.  
*Vote: Senate 39-0; House 118-0*

**CIVIL LITIGATION**

**CS/SB 154 — Vexatious Litigants**  
by Judiciary Committee and Senators Campbell and Saunders

This bill creates the Florida Vexatious Litigant Law, which is intended to deter repeat filings of frivolous civil lawsuits by litigants who are not represented by attorneys. The act provides that vexatious litigants may not proceed with a civil lawsuit unless security is furnished to cover the defendant's reasonable expenses of litigation, including attorneys' fees and taxable costs. The act also provides that a court may enter a prefiling order prohibiting a vexatious litigant from filing a civil action without first obtaining leave from the administrative judge of that circuit.

According to the act, a vexatious litigant is any person, as defined in s. 1.01(3), F.S., who, in the immediately preceding five year period, has commenced, prosecuted, or maintained, without being represented by an attorney, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person. A vexatious litigant also includes any person or entity previously determined to be a vexatious litigant pursuant to this act. The Clerk of the Florida Supreme Court is required to maintain a registry of vexatious litigants, which must be updated by the clerks of the courts.

If approved by the Governor, these provisions take effect October 1, 2000.  
*Vote: Senate 39-0; House 115-0*

---

## **HB 135 — Citizen Participation in Government**

by Rep. Fasano and others (CS/SB 306 by Judiciary Committee and Senators Lee and Grant)

The bill creates s. 768.29, F.S., the “Citizen Participation in Government Act,” to protect persons who exercise their constitutional right to petition the government for redress of grievances, and to guard these persons against costly lawsuits aimed at intimidating or deterring public participation in government. The act prohibits *any governmental entity* from engaging in “Strategic Lawsuits Against Public Participation” (SLAPPS) without merit and solely because a person has exercised his or her constitutional rights to assemble, instruct representatives, or redress grievances.

Any person who is sued in violation of this act may seek to have the suit dismissed or move for summary judgement. The court must conduct a hearing on the motion as soon as possible and may award the party sued by the governmental entity actual damages in accordance with the waiver of sovereign immunity provisions of s. 768.28, F.S. The court must also award the prevailing party attorney’s fees and costs.

A governmental entity that is found in violation of the act must report the violation to the Attorney General, who must report the violation to the Cabinet and Legislature.

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

*Vote: Senate 40-0; House 112-0*

## **EVIDENCE**

### **SB 794 — Witnesses**

by Senator Saunders

This bill amends s. 90.612, F.S., of the Florida Evidence Code, which provides for the mode and order of interrogation and presentation of witnesses. The bill requires the judge to take special care to protect a witness under age 14 from undue harassment or embarrassment. The bill also requires the judge to monitor the form of questions asked of a child to ensure that the questions are posed in a manner which is appropriate to the age and understanding of the child.

The bill also amends s. 90.502, F.S., of the Florida Evidence Code, to add subsection (6), which provides that a discussion or activity that is not a meeting for purposes of s. 286.011, F.S., is not to be construed to waive the attorney-client privilege. Further, the bill provides that this provision does not create a new exemption, or alter an existing

exemption, to either the Public Records Law in s. 119.07, F.S., or to the Government in the Sunshine Law in s. 286.011, F.S.

If approved by the Governor, these provisions take effect July 1, 2000.

*Vote: Senate 36-0; House 115-0*

## **REAL PROPERTY**

### **CS/SB 2190 — Business Entities/Merger/Conversion**

by Judiciary Committee and Senator Saunders

This bill eliminates the requirement that title to real property held by certain business entities merging with other business entities be conveyed by recordation of a deed. Accordingly, title to real property owned by the merging entity would, upon filing of articles of merger with the Secretary of State, pass by operation of law to the surviving entity without the requirement of recording a deed and paying the applicable documentary stamp tax required when recording a deed. However, the surviving entity is required to file the articles of merger or conversion in the county where the real property is located. Title to real property owned by a business entity that merged prior to the effective date of the act is vested in the surviving entity.

The bill also amends s. 865.09, F.S., to provide that a fictitious name registered with the Division of Corporations for a corporation, limited liability company, limited liability partnership, or limited partnership is not required to contain the designation of the type of legal entity in which the person or business is organized.

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

*Vote: Senate 39-0; House 117-0*

## **ESTATE PLANNING**

### **CS/HB 599 — Perpetuities and Trusts**

by Real Property & Probate Committee, Rep. Goodlette and others (CS/SB 830 by Judiciary Committee and Senator Grant)

This bill revises the trust laws in three major ways:

- 1) It amends Florida's statutory Rule Against Perpetuities by extending the time period within which a property interest in a trust must either vest or terminate from 90 years to 360 years as measured from the date the trust was created.
- 2) It amends Part IV of ch. 737, F.S., relating to the powers of a trustee, to:
  - a) Codify in part the procedure for judicial modification of irrevocable trusts,
  - b) Create a procedure for the non-judicial modification of irrevocable trusts after the principal has died,
  - c) Require that specified persons have representation in these modification proceedings and
  - d) Allow the court to award attorneys' fees, costs and guardian ad litem fees in these modification proceedings.
- 3) It conforms similar provisions in the trust and estate law to provisions in the Florida Probate Code relating to challenges to the validity of a trust, the duties of a trustee, the prohibition against a killer benefiting from a victim's death in a trust action, and the evidentiary weight to be given to specific evidence of a person's death in trust proceedings.

If approved by the Governor, these provisions take effect December 31, 2000, except that the sections on judicial and non-judicial modification of trusts will not apply to trusts created prior to January 1, 2001, or to trusts created after December 31, 2000, if specific conditions are met.

*Vote: Senate 39-0; House 116-0*

## **COURTS**

### **CS/SB 1212 — Judiciary**

by Judiciary Committee and Senator Laurent

This bill implements the provisions of Revision 7 of the State Constitution, adopted in 1998, to revise the method for funding Florida's judicial system by specifying the costs to be paid by the state, the counties, or by specific funding sources. The constitution revision specified that a phase-in schedule had to be provided by general law and that state funding was to begin in FY 2000-2001.

This committee substitute establishes the phase-in schedule to begin implementation this fiscal year and to complete implementation by July 1, 2004. It provides the framework for identifying and defining the essential elements of the state court system, the public

defenders' offices, the state attorneys' offices, court-appointed counsel, and those court-related functions that are the responsibility of the counties for funding purposes.

***Phase-in Schedule***

During FY 2000-2001 the Legislature is to review the state court system to determine what functions should be funded by the state and the most appropriate manner for providing that funding.

By FY 2001-2002 the Legislature is to review the revenue generated by the court system and redirect the appropriate revenue to the state.

By FY 2002-2003 the Legislature is to review the state attorneys' offices and the public defenders' offices as well as the use of civil indigency counsel and conflict counsel to determine what functions should be funded by the state.

By FY 2003-2004 the Legislature is to review the offices of the clerks of the circuit and county courts to define court-related activities performed by the clerks. Where there is appropriate data, the Legislature should also determine the appropriate levels of filing fees, service charges, and court costs to fund the assigned activities.

The bill includes a requirement that until July 1, 2004, each county must continue to fund existing functions of the state court's system, the state attorneys' offices, public defenders' offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts consistent with current law and practice. This provision will not apply where the state assumes the cost of the function prior to July 1, 2004.

The bill also provides funding during FY 2000-2001 for the Small County Contingency Fund and for a three-county pilot program for funding conflict attorneys. The Small County Contingency Fund is created to assist counties with a population of less than 85,000 to fund "extraordinary criminal case-related costs." Attorney fees, costs, and expenses related to conflict counsel are to be funded in three counties specified in the appropriations act. The three counties selected are Dade, Hillsborough and Polk.

The bill specifies that nothing in the act requires the state to fund any court function or court-related activity except as provided in the sections creating the Small County Contingency Fund and the three-county pilot program for conflict counsel.

### **Definitions**

The bill provides definitions of the components of the judicial system to be initially funded in accordance with Revision 7. These definitions will be augmented as additional analysis of judicial functions and funding are completed in accordance with the phase-in schedule.

**State Court System** — The state court system is defined to include: Judges appointed under current law and the essential staff; Expenses and costs as provided by general law; Costs related to juries; Court reporting services necessary to meet constitutional requirements; Accommodations for a person with a disability to access the courts (except for facility related costs born by the county); Facilities for the Supreme Court and the District Courts of Appeal; Foreign language interpreters and translators to meet constitutional requirements; and, Funding for the Judicial Qualifications Commission.

**State Attorneys' Offices and Prosecution Expenses** — The State Attorneys' Offices and prosecution expenses are defined to include: The state attorney; Assistant state attorneys; Essential staff; Court reporting services to meet constitutional requirements; and, A specified list of witnesses.

**Public Defenders and Indigent Defense Costs** — The Public Defenders' Offices and indigent defense costs are defined to include: The public defender; Assistant public defenders; Essential staff; Court reporting services needed to meet constitutional requirements; and, The specified witnesses.

**Court-Appointed Counsel** — Court-appointed counsel is defined to include: Court-appointed counsel in cases where the defendant is indigent and cannot be represented by the public defender; Private counsel appointed to represent indigents or other litigants in civil proceedings in accordance with state and federal constitutional guarantees; Constitutionally required court reporting services; Witnesses as specified; and, The investigation of indigency.

**County Funding of Court-related Functions** — The bill provides definitions for those items listed in Article V, section 14 subsection (c) to be funded by the counties. These include: Facilities; Construction or Lease; Maintenance; Utilities; Security; Communications systems or communications services; Existing radio systems; Existing multi-agency criminal justice information systems; and The reasonable and necessary salaries, costs, and expenses of the state court system to meet local requirements. These definitions are not to be implemented before July 1, 2001.

***Work groups to develop information for implementation of Revision 7***

A Joint Legislative Committee on Article V is created to recommend programs and funding to implement Revision 7. The committee consists of eight members, four of whom are to be appointed by the President of the Senate and four to be appointed by the Speaker of the House of Representatives. The joint committee is to be reviewed in 2004 to determine whether it should be continued.

An Article V financial accountability and efficiency workgroup is created to develop recommendations related to financial accountability systems and standards, alternative structures for budgeting and fiscal management. The workgroup is also to obtain data on revenue sources for the court system, and the efficiency and effectiveness of operating policies and procedures for the court system, the public defenders, and the state attorneys.

The Supreme Court Workload Study Commission is created to develop recommendations for addressing workload issues, including the need for additional justices on the Supreme Court.

The Clerks of the Court are directed to provide specified financial and operational information to the Legislature by September 30, 2000.

***Performance-based Budgeting for the Court System***

The bill provides direction to the court on the submission of its budget pursuant to performance-based budgeting. The requirements are substantially the same as those for a state agency. The programs and measures must be developed in consultation with the Office of Program Policy Analysis and Government Accountability and legislative staff, and measures documented. The Chief Justice may propose revisions to the proposed programs and performance measures but the Legislature will have final approval through the General Appropriations Act or the legislation implementing that act.

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

*Vote: Senate 40-0; House 117-0*