

## **EVIDENCE CODE AND CIVIL ACTIONS**

### **SB 1066 — Civil Actions/Statements**

by Senator Peadar

This 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. The bill creates s. 90.4026, F.S.

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

*Vote: Senate 37-0; House 116-1*

### **HB 947 — Decedent's Medical Records/Presuit**

by Rep. Seiler and others (CS/SB 1084 by Judiciary Committee and Senator Villalobos)

This bill amends s. 766.104, F.S., to allow a health care practitioner to provide the medical records of a deceased patient to the spouse, parent, adult child, guardian surrogate, proxy, or attorney in fact of the deceased patient. The health care practitioner can provide the records to such persons subsequent to the death of the patient and prior to the administration of the deceased patient's estate. This provision only applies for the purpose of completing the investigation of a potential medical malpractice claim.

The bill provides the health care practitioner with immunity from civil damages and disciplinary action, as long as the health care practitioner acts in good faith in complying with the bill's provisions.

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

*Vote: Senate 37-0; House 117-1*

### **CS/SB 2012 — Character Evidence/Child Molestation**

by Judiciary Committee and Senator Crist

The bill amends s. 90.404, F.S., which is part of the Florida Evidence Code, by adding a new paragraph to subsection (2). The bill provides that, in a criminal case involving child molestation, evidence of the defendant's commission of other crimes, wrongs, or acts of child molestation is admissible and may be considered for its bearing on any matter which is relevant.

The term “child molestation” means conduct proscribed by s. 794.011, F.S. (sexual battery) or s. 800.04, F.S. (lewd or lascivious: battery, molestation, conduct, or exhibition), when committed against a person 16 years of age or younger.

The bill also requires the state in a criminal prosecution to provide notice to the defendant, no later than 10 days before trial, of the state’s intent to offer evidence of other acts of child molestation.

If approved by the Governor, these provisions take effect July 1, 2001.

*Vote: Senate 37-0; House 115-0*

## **FAMILY LAW**

### **CS/HB 215 — Parental Rights/Child’s Records**

by State Administrative Committee and Rep. Cusack and others (SB 98 by Senator Campbell)

This bill (Chapter 2001-2, L.O.F.) reinforces existing law giving both parents, regardless of who is the primary custodial parent, an equal right to access their child’s medical, dental or educational records and other pertinent information. However, that right may be expressly limited or denied by court order including through the terms and conditions of an injunction for domestic violence. For those parents who have the same full right of access to their child’s records, access in the same “form, substance, and manner” is not required unless the noncustodial parent requests that access to those records be provided in the same way as is being provided to the custodial parent.

If approved by the Governor, these provisions take effect July 1, 2001.

*Vote: Senate 40-0; House 113-0*

### **CS/HB 141 — Adoption**

by Healthy Communities Council and Rep. Lynn and others (CS/CS SB 138 by Children & Families Committee; Judiciary Committee; and Senators Campbell, Latvala, and Sebesta)

The Legislature comprehensively amended Florida’s adoption law (*see* Chapter 2001-3, L.O.F.) The provisions of the Act become effective October 1, 2001. The cumulative effect of the Act is to provide uniformity, continuity, clarification, and finality regarding proceedings for termination of parental rights and proceedings for adoption. It streamlines the total adoption process by providing for a uniform bifurcated procedural framework whereby the proceedings for termination of parental rights are completed before the proceedings for the creation of new parental rights may be initiated and completed. It adds registered child-caring agencies to the list of entities eligible to handle adoptions. It sets forth explicit and comprehensive disclosure,

consent, notice, service, and hearing requirements in termination of parental rights and adoption proceedings. More specifically, the Act:

- Prohibits de facto pre-birth termination of parental rights without notice;
- Requires written pre-birth and post-birth disclosures to parents and prospective adoptive parents;
- Prohibits pre-birth execution of a consent to adoption or an affidavit of nonpaternity;
- Provides a 48-hour post-birth waiting period before birth mothers may execute a consent to adoption;
- Provides a 3-day revocation period for a consent to adoption where a child has not yet been placed for adoption or up until the time the child is actually placed with the prospective adoptive parent, whichever occurs later;
- Deletes reference to physicians as handling adoptions and adds registered child-placing agency as another entity eligible to handle adoptions in Florida (this is in addition to the existing entities: 1) the Department of Children and Families, 2) a child-placing agency (licensed by DCF under s. 63.202, F.S.), and 3) an intermediary (licensed attorney or a child-placing agency licensed in another state that is qualified by DCF to place out-of-state children for adoption));
- Enumerates the express duties of adoption entities and the liabilities for material failure to adhere to those duties;
- Adds criminal penalties and civil liabilities against persons who withhold information and commit fraudulent acts in adoption proceedings;
- Establishes categories of fees, costs and expenses which an adoptive parent may be assessed, sets fee threshold limits, and establishes the repayment process under certain circumstances;
- Clarifies procedures for pre-approval, final approval and reimbursement of fees, costs and expenses connected with an adoption;
- Expands the opportunities for placing children in out-of-state adoptions;
- Retains the confidentiality of records and requires that these records be maintained for a specified period;

- Expands to parents in all adoptions the right to move to set aside judgments terminating parental rights and judgments for adoption based on willful acts precluding a parent from rightfully asserting his or her parental rights;
- Requires that a copy of the preliminary home study be given to the prospective adoptive parent; upon completion of the preliminary home study, a copy of the study must be provided to the prospective adoptive parents;
- Expands the scope of post-adoption communication or contact between an adopted child and a sibling to permit communication or contact with other specified biological relatives, provided the adoptive parents agree;
- Prohibits placement of a child in a home where there is a convicted sexual predator or other specified felon; and
- Requires licensed hospital facilities and birthing centers to establish protocols in order to educate staff as to the adoption law as it pertains to the waiting periods, the revocation periods and other requirements for consents and to the appropriate manner of interacting with birth parents and prospective adoptive parents in the process.

If approved by the Governor, these provisions take effect October 1, 2001.

*Vote: Senate 30-8; House 104-8*

### **CS/SB 886 — Durable Powers of Attorney**

by Judiciary Committee and Senator Klein

This bill revises provisions in ch. 709, F.S., relating to durable powers of attorney. The bill clarifies how and when a third party may rely on the authority granted under any durable power of attorney. It also gives legal recognition to what is typically called a springing or contingent power of attorney. The bill:

- Incorporates new procedures and requirements for the execution, exercise, and reliance on the “springing or contingent” durable power of attorney that is conditioned upon the delivery of an executed medical affidavit regarding the principal’s incapacity to manage property,
- Provides criminal and civil immunity from liability to a Florida-licensed medical or osteopathic physician who, in good faith, executes an affidavit of the principal’s incapacity to manage property based on a medical determination of incapacity,
- Includes suggested statutory forms for affidavits to attest to the principal’s lack of capacity to manage property by the physician and the attorney in fact, and

- Clarifies how notice of revocation, termination or suspension of the authority under a durable power of attorney must be mailed to a financial institution.

If approved by the Governor, these provisions take effect January 1, 2002.

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

### **CS/SB 1274 — Learner's Driver's License**

by Judiciary Committee and Senators Burt, Latvala, and Peadar

The bill relieves a foster parent or the authorized representative of a group home of liability for damages caused by a foster child in their care who is under 18 years of age solely because the foster parent or group home representative signed the minor's application for a driver's license. It also bars a motor vehicle insurer from charging an additional premium for coverage of a minor child operating the foster parent's vehicle while the child is holding a learner's driver's license. This prohibition would apply until the child obtains a regular driver's license. The foster parent would still be vicariously liability as the vehicle owner for the permissive use of the vehicle by a foster child.

If approved by the Governor, these provisions take effect July 1, 2001 and would be applicable to insurance policies issued or renewed on or after that date.

*Vote: Senate 36-0; House 118-0*

## **BUSINESS LAW**

### **CS/SB 94 — Consumer Collection Practices**

by Judiciary Committee and Senator Laurent

This bill amends ss. 559.72 and 559.77, F.S., which are part of the Florida Consumer Collection Practices Act (FCCPA). Section 559.72, F.S., is amended to add additional activities in which debt collectors are prohibited from engaging. The prohibited activities include communicating with a debtor if the person collecting the debt knows that the debtor is represented by an attorney and causing charges to be made to a debtor for communications by concealment of the true purpose of the communication.

Section 559.77, F.S., which provides civil remedies for violations of the FCCPA, is amended to:

- Revise the amount of recoverable damages from the greater of actual damages or \$500, to actual damages and additional statutory damages of up to \$1,000;
- Allow class action plaintiffs who are the named plaintiffs in the lawsuit to recover additional statutory damages of up to \$1,000 per named plaintiff;

- Authorize an aggregate award of damages in a class action lawsuit not to exceed the lesser of \$500,000 or 1 percent of the defendant's net worth for all plaintiffs who are not the named plaintiffs; however, no individual class member may recover additional damages in excess of \$1,000;
- Provide a defendant with a bona fide error affirmative defense;
- Provide a 2-year statute of limitations; and
- Provide that, in construing the FCCPA, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.

If approved by the Governor, these provisions take effect July 1, 2001, and apply to any cause of action accruing on or after that date.

*Vote: Senate 37-0; House 117-0*

### **HB 579 — Uniform Commercial Code**

by Rep. Crow (CS/SB 386 by Judiciary Committee and Senator Campbell)

This bill substantially revises ch. 679, F.S., which governs Article 9 of the Uniform Commercial Code, relating to secured transactions. A secured transaction is an agreement between two or more parties wherein one party provides an interest in some type of property to another party in exchange for receipt of some type of consideration. For example, one type of secured transaction occurs when a consumer purchases goods from a retailer and finances the purchase of those goods with the retailer. Until the consumer pays for the goods in full, the retailer retains an interest in the goods that is "secured" when the retailer meets certain filing requirements. If the consumer fails to pay for the goods in full, the retailer can exercise certain rights in an attempt to be paid in full. The retailer's rights are governed by the provisions of ch. 679, F.S.

The bill repeals all of the existing statutes in ch. 679, F.S., and implements a new numbering system. The bill creates 7 parts in ch. 679, F.S., which relate to the following:

- Part I, consisting of ss. 679.1011-679.1101, F.S., contains general provisions regarding definitions, principles relating to control, description of collateral, and the scope of the chapter.
- Part II, consisting of ss. 679.2011-679.210, F.S., contains provisions relating to the effectiveness of a security agreement, attachment of a security interest, and the rights of parties to a security agreement.
- Part III, consisting of ss. 679.3011-679.342, F.S., governs the perfection and priority of security interests;

- Part IV, consisting of ss. 679.40111-679.409, F.S., provides rules relating to the rights of third parties to security interests;
- Part V, consisting of ss. 679.5011-679.527, F.S., contains provisions relating to the filing of security interests;
- Part VI, consisting of ss. 679.601-679.628, F.S., contains provisions relating to default; and
- Part VII, consisting of ss. 679.701-679.709, F.S., contains provisions governing the transition from former ch. 679 to the new ch. 679.

The bill also provides changes in conformance with the provisions of ch. 679, F.S., to the following sections of the Florida Statutes: 671.105, 671.201, 672.103, 672.210, 672.236, 672.502, 672.716, 674.2101, 677.503, 678.1031, 678.1061, 678.1101, 678.3011, 678.3021, 678.5101, 680.1031, 680.303, 680.307, and 680.309. Likewise, the bill creates ss. 285.20 and 675.1181, F.S., in conformance with the changes made to ch. 679, F.S.

If approved by the Governor, these provisions take effect July 1, 2002.

*Vote: Senate 39-0; House 118-0*

## **HB 601 — Judgments and Liens**

by Rep. Pickens and others (CS/SB 1744 by Judiciary Committee and Senator Burt)

This bill is primarily a glitch bill to ch. 2000-258, L.O.F., in which the Legislature established a new statutory framework for perfecting and prioritizing claims of judgment liens on leviable personal property in addition to the revision of other procedures such as garnishment for the collection of debt. Last year's Act directed that the Department of State establish and maintain a centralized database of judgment liens on personal property. *See* ss. 55.201-55.209, F.S. This centralized database is intended to replace the county-by-county system of filing judgment liens with the sheriff of the county with a statewide system based on filing such judgment liens and other specified warrants and tax liens with the Department of State.

The operational date of the database was deferred until October 1, 2001, in order to allow the Department time to establish the database, implement the filing process for judgment lien certificates and to determine any corrections prior to the operation of the database. A two-year transitional provision was also included to give creditors the opportunity to execute on or enforce their existing liens against personal property, or to convert their judgment lien claims on personal property to the new statewide system by October 1, 2003, or otherwise lose their judgment lien priority under the new system.

This bill corrects inconsistencies and oversights in that Act. In addition, it makes the following changes:

- Establishes a staggered scheme for allowing purchasers of household goods or items who buy without knowledge of a judgment lien registered in the database to retain all or part of the value of the goods purchased based on the value of the purchased goods ranging from \$10k to \$30k,
- Clarifies that claims for exemption from garnishment only apply to individual defendants and not all defendants,
- Deletes the requirement that copies of foreign judgments be filed with the Department of State,
- Deletes the department's responsibility to maintain a list of foreign jurisdictions that do not recognize judgments issued from the State of Florida, and
- Amends the Florida Uniform Federal Lien Registration Act (s. 713.09, F.S.) to incorporate the registration of federal liens into the centralized judgment lien database and to permit the Department of State to accept electronic filing of such federal tax liens in lieu of paper filing.

If approved by the Governor, these provisions take effect October 1, 2001.

*Vote: Senate 38-0; House 118-0*

## **JUDICIARY AND BAR**

### **CS/SB 778 — Lawyer Assistance Programs**

by Judiciary Committee and Senator Rossin

This bill creates provisions relating to lawyer assistance programs. These programs typically consist of an extensive network of attorneys and other professionals who offer assistance to lawyers and judges in the treatment and recovery of substance abuse, mental illness and other behavioral problems. The Florida Lawyers Assistance, Inc. (FLA), has been in existence in Florida for a number of years and receives partial funding from the Florida Bar although it operates independently of the Supreme Court and the Florida Bar.

The bill attempts to encourage greater unhindered participation in FLA and similar lawyer assistance programs by:

- Providing civil immunity from liability for good faith actions taken by these programs and their employees, agents, members, volunteers and other persons who otherwise participate in the programs,

- Providing that all information furnished to a lawyer assistance program that is covered by an evidentiary privilege (such as attorney-client privilege and work product privilege) will remain privileged even when furnished to the program, and
- Setting forth the scope of records, proceedings and communications that will be deemed confidential as arising from the contact by or between a person seeking assistance and the lawyer assistance program.

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

*Vote: Senate 40-0; House 116-0*

### **HB 1865 — Judiciary/Number Increases**

by Judicial Oversight Committee and Rep. Crow (SB 1444 by Senator Burt)

This bill authorizes an additional 16 circuit court and 11 county court judge positions based on an adjustment of the original judicial certification of need by the Florida Supreme Court to match available funding. The new positions require appointment by January 2, 2002, for the following circuits and counties:

<b>Judicial Circuit</b>	<b>Circuit Court Judges</b>
1 <sup>st</sup>	+1
2 <sup>nd</sup>	+2
4 <sup>th</sup>	+1
5 <sup>th</sup>	+1
6 <sup>th</sup>	+1
7 <sup>th</sup>	+1
9 <sup>th</sup>	+1
10 <sup>th</sup>	+1
11 <sup>th</sup>	+1
13 <sup>th</sup>	+1
15 <sup>th</sup>	+1
17 <sup>th</sup>	+2
18 <sup>th</sup>	+1
20 <sup>th</sup>	+1
<b>TOTAL:</b>	<b>16</b>

<b>County</b>	<b>County Court Judges</b>
Brevard	+1
Broward	+1
Duval	+1
Hillsborough	+1
Lee	+1
Okaloosa	+1
Orange	+1
Pasco	+1
Pinellas	+1
Polk	+1
Sarasota	+1
<b>TOTAL:</b>	<b>11</b>

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

*Vote: Senate 39-0; House 112-0*

### **CS/HB 367 — Judicial Nominating Commissions**

by Smarter Government Council and Reps. Brummer and Cantens (CS/CS SB 1470 by Judiciary Committee; Governmental Oversight & Productivity Committee; and Senators Cowin and Crist)

Under this bill the law governing the nomination and appointment of the Judicial Nominating Commissions (JNC) will be as follows:

- Each JNC will still consist of 9 members, however, six of the members must be members of the Florida Bar.
- The Governor will now have sole authority to appoint members to each JNC. Four of the Florida Bar members must be selected from nominees from the Board of Governors of the Florida Bar. The Board of Governors must submit to the Governor a list of three recommended nominees for each of the positions from which the Governor may select his appointment. The Governor may reject all nominees and request a new list of previously unappointed persons. For the remaining five JNC positions, the Governor directly appoints the members of whom at least two must be Florida Bar members.
- The unconstitutional selection provisions relating to the mandated ethnic, racial, and gender composition of the JNC are replaced with a provision to solely require consideration of these factors when appointments are made.
- The geographic distribution of the population within the JNC and the adequacy of the representation of each county must now also be considered in making the appointments.
- The term of office for each JNC member will still be four years.
- A JNC member still cannot be a justice or judge.
- A commission member is still not eligible for consecutive reappointment.
- A commission member is still not eligible for judicial appointment during his or her commission term or two years thereafter for a judicial office over which that commission has jurisdictional authority.

- All acts of the commission must still be made with a concurrence of a majority of its members, however, a quorum is necessary to take any action or transact any business. A quorum is a majority of the commission members.
- The authority to suspend a JNC member for cause remains with the Governor and the authority to adopt uniform rules relating to suspension for cause is transferred from the JNCs to the Governor.
- Current JNC members who were appointed directly by the Florida Bar will serve the remainder of their term unless removed for cause. The remaining terms for all other JNC members who were either appointed directly by the Governor or by the remaining JNC membership are terminated.
- A staggered term schedule is provided for replacement of the discharged JNC members.
- The Executive Office of the Governor is required to provide administrative support for each JNC.
- Further, the Governor's office must enact rules to administer the new provisions. These rules presumably are not intended to override or conflict with the rules of procedure adopted by the JNC's in accordance with s. 11 of Art. V of the State Constitution.
- The definition of "state officers" is expanded to include circuit and district court of appeal JNC members for purposes of the financial disclosure reporting requirements in s. 112.3145, F.S. This makes these requirements applicable to all JNC members, not just the members of the Supreme Court Judicial Nominating Commission.

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

*Vote: Senate 29-10; House 68-48*

### **CS/HB 199 — Substance Abuse Treatment Programs**

by Judicial Oversight Committee and Rep. Traveling and others (CS/CS SB 1814 by Criminal Justice Committee; Judiciary Committee; and Senator Burt)

This bill requires each of the 20 judicial circuits to establish one or more model treatment-based drug court programs. It requires each drug court program to incorporate principles of therapeutic jurisprudence through the coordination of the courts, prosecutors, law enforcement, local government and community-based entities to address substance abuse offenders. It creates the Florida Association of Drug Court Professionals and requires that organization to annually, on October 1, submit recommendations to the Florida Supreme Court Treatment-Based Drug Court Steering Committee regarding the expansion, operation, and institutionalization of drug courts. The bill allows certain drug court program defendants to have their cases transferred from one

county or circuit to another for purposes of participating in drug-treatment programs. It also expands the category of non-violent offenders who may be eligible for participation in the felony pretrial intervention program and provides for the establishment of pretrial intervention programs for specified misdemeanor drug offenses.

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

*Vote: Senate 37-0; House 117-0*

## **ESTATES**

### **CS/HB 137 — Probate**

by Smarter Government Council and Rep. Goodliest and others (CS/SB 402 by Judiciary Committee and Senator Burt)

This bill represents the culmination of a 3-year effort by the Florida Bar including many of the state's most experienced probate attorneys and judges to make major revisions and updates to the Florida Probate Code (ch. 731-735, F.S.), and to ch. 737, F.S., governing trust administration. In addition to technical, stylistic and grammatical changes, the bill eliminates many duplicative and sometimes conflicting statutory provisions in the Probate Code and defers to procedural matters already established in court probate rules. It also makes the following significant changes:

- Eliminates the provisions of the rarely used Family Administration process,
- Increases monetary values relating to various estate administration procedures—It increases the threshold from \$25,000 to \$75,000 for summary administration of small estates, and from \$25,000 to \$50,000 for ancillary administration of nonresident's estates. It increases the family allowance cap from \$6,000 (which has remained unchanged since 1974) to \$18,000, for which a spouse or lineal descendent may petition. It increases the surviving spouse's initial share of the intestate estate from \$20,000 to \$60,000, in those cases in which the decedent is survived by lineal descendents. It also increases from \$500 to \$2,500<sup>1</sup> the federal tax refund amount that may be paid directly to a surviving spouse or surviving child (if there is no surviving spouse) without requiring formal administration of the estate under specified circumstances.
- Revises the Elective Share law as recently amended in ch. 99-343, L.O.F., to correct glitches, to clarify how nonmarital assets held in trust are to be treated, and to eliminate a loophole that allowed someone to defeat a surviving spouse's right to an elective share. It also provides that specified changes to the Elective Share law found in sections 19-31 of the bill become effective October 1, 2001,

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<sup>1</sup> The \$500 figure was enacted in 1974. According to a calculation by the American Institute for Economic Research, using the Consumer Price Index calculated by the United States of America, Bureau of Labor Statistics, \$500 in 1974 equals \$1,742.39 in 2000. <http://www.aier.org>. The increase to \$2,500 being beyond an inflationary adjustment, it represents a policy change.

- Clarifies creditors rights and creditors' claims procedures against a decedent's estate, including the creation of a Notice to Creditors form and the integration of the Medicaid Estate Recovery Act under s. 409.9101, F.S., into the estate claims system in the Probate Code,
- Clarifies the replacement and transition process for a change of personal representatives due to death, removal, resignation or some other disqualification,
- Revises the specified rights and duties of personal representative and other fiduciaries, creditors, beneficiaries, and other interested persons in the estate administration process,
- Re-prioritizes attorney's fees claims against the estate from a class 8 claim to a class 1 claim,
- Sets forth a more detailed process for opening and inventorying of a safe deposit box after someone dies, and
- Relocates the provisions of the Anatomical Gift law (ch. 732, part X, F.S.) to ch. 765, F.S. relating to Health Care Advance Directives, and makes conforming statutory cross-references.

If approved by the Governor, these provisions take effect January 1, 2002.

*Vote: Senate 37-0; House 117-0*

## **PROPERTY**

### **SB 150 — Property Exempt from Legal Process**

by Senator Horne

This bill adds another category of exemptions to the existing list of property statutorily exempted from attachment, garnishment or other liens resulting from a bankruptcy proceeding or other legal process. It exempts a debtor's interest in an earned income credit. The earned income credit (EIC) is a special federal refundable tax credit available for low-income, working taxpayers who meet certain eligibility requirements. This new statutory exemption for the EIC will apply regardless of whether the earned income credit is received or commingled with the debtor's financial accounts as long as it is traceable. However, it is not exempted from attachment, garnishment or other lien in cases involving debts arising from child or spousal support obligations.

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

*Vote: Senate 38-0; House 119-1*

## **CS/SB 178 — Duration of Real Property Liens**

by Judiciary Committee and Senator Brown-Waite

This bill corrects a glitch in the statutory recording periods for judgment liens on real property as revised in the 2000 legislative session. *See* ch. 2000-258, L.O.F. Prior to the 2000 Act, a judgment against real property could be recorded for two periods of 7 years and one period of 6 years for a total of the full 20 years a lien is valid. The 2000 Act intended to extend the initial recording and re-recording period from 7 to 10 years in order to require only one re-recording in lieu of two re-recordings. However, the initial recording period was not changed from 7 years to 10 years resulting in confusion and a potential loss of 3 years to someone seeking to enforce a valid judgment against real property.

This bill corrects that error to reflect that the initial recording and re-recording period is changed from 7 to 10 years. It ensures that those persons who validly recorded judgment liens under the defective law receive the benefit of the full 20 years in which to enforce their liens. It also clarifies that those liens that are no longer valid by virtue of having expired or having been satisfied are not inadvertently extended or revived by the glitch bill.

If approved by the Governor, these provisions take effect July 1, 2001.

*Vote: Senate 38-0; House 120-0*

## **CS/SB 838 — Landlord and Tenant**

by Judiciary Committee and Senator Saunders

This committee substitute amends the security deposit provisions and the abandoned property provisions in the Florida Residential Landlord and Tenant Act, which are found in ch. 83, part II, F.S. The committee substitute provides for the following:

- Enlarges the time period from 15 days to 30 days within which a landlord must notify a tenant of an intent to impose a claim upon a security deposit;
- Relieves the landlord from compliance with the notice provisions of s. 715.104, F.S., which pertain to the treatment of abandoned or surrendered property. To avoid having to provide the tenant with written notice under s. 715.104, F.S., which notice is given after the tenant vacates the premises, the landlord must inform the tenant before the tenant vacates the premises, either in the rental agreement or some other written document, of how the landlord will treat abandoned property.

The committee substitute also amends ss. 715.105, 715.106, and 715.109, F.S., which govern the sale or disposition of abandoned property, to raise to \$500 the value of abandoned property which requires no additional notification to the owner or former tenant before the sale or other disposition of the abandoned property.

The committee substitute amends s. 475.011, F.S., which lists activities exempted from the real estate brokers and salespersons regulatory law, to include the ability of property management firms and apartment complex owners to pay a finder's fee or referral fee to a tenant who refers a new tenant. The finder's fee or referral fee may not exceed \$50 and can include a fee paid, credit towards rent, or some other thing of value.

The committee substitute also creates a new, unnumbered section of the Florida Statutes which provides members of the United States Armed Forces the ability to cancel their rental agreements, with limited liability, under certain circumstances. The provisions apply to military personnel who: are required to move, pursuant to permanent change of station orders, 35 miles or more from the location of the rental premises; are prematurely or involuntarily discharged or released from active duty; and die during the course of their enlistment. Damages pursuant to this section are limited to the following:

- Rent due under the rental agreement prorated to the effective date of the termination; and
- Liquidated damages of no greater than 1 month's rent if the tenant has completed less than 6 months of the tenancy as of the effective date of the termination;
- Liquidated damages of no greater than one-half of 1 month's rent if the tenant has completed at least 6 but not less than 9 months of the tenancy as of the effective date of termination; or
- No liquidated damages if the tenant has completed at least 9 months of the tenancy as of the effective date of termination.

If approved by the Governor, these provisions take effect July 1, 2001.

*Vote: Senate 38-1; House 109-4*

## **CS/SB 890 — Mortgages**

by Banking & Insurance Committee and Senator Campbell

This bill revises provisions relating to mortgage foreclosures.

- It provides that rents in the control of a mortgagor are subject to an assignment of rents just as rents in the possession of the mortgagor.
- It amends the order to show cause process for mortgage foreclosure set out in s. 702.10, F.S. to:
  - Require that the order to show cause hearing must be held within 60 days of service of the order on the defendant.

- Require the order to show cause to state that the court may determine that when an answer does not contest the foreclosure the defendant has waived the right to a hearing and the court may enter a final judgment of foreclosure.
- Require the court to promptly enter a final judgment if the right to be heard has been waived.
- Provide it is unnecessary to hold a hearing to award attorney fees when the note or mortgage provides for the award of reasonable attorney's fees and the fees do not exceed 3 percent of the principal amount owed at the time of the filing of the complaint, even if the note or mortgage does not specify the amount of the percentage of the original amount of the mortgage to be paid as liquidated damages.
- The bill also creates a new section of law to provide an expedited process for uncontested mortgage foreclosures where the order to show cause process is not used. Under this process:
  - When a mortgage is uncontested and a mortgagee waives the right to recoup any deficiency, the court must enter a final judgment within 90 days of the close of the pleadings. A foreclosure is uncontested when an answer not contesting the foreclosure is filed or a default judgment is entered.
  - Where a default judgment is entered and the note or mortgage provides for reasonable attorney's fees, it is not necessary for the court to hold a hearing to determine that the fees requested are reasonable provided the fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint. Such fees will constitute liquidated damages in any proceeding to enforce the note or mortgage. However, these provisions would not preclude a challenge to the reasonableness of the attorney's fees.

If approved by the Governor, these provisions take effect July 1, 2001.

*Vote: Senate 34-0; House 114-0*