

COURT-RELATED PROCEEDINGS

CS/SB 2198 — Tobacco Settlement Agreements

by Judiciary Committee and Senator Haridopolos

This bill provides that in civil actions against a signatory, or a successor, parent, or affiliate of a signatory (hereinafter appellants), to a tobacco settlement agreement, brought by persons who have been decertified from a class action lawsuit, the trial court must automatically stay the execution of any judgments during the pendency of all appeals, upon provision of security to the clerk of the Florida Supreme Court.

The amount of security required in each case is equal to the lesser of the amount of the judgment to be stayed or an amount determined by the following tiers of judgments on appeal in Florida courts:

From # appeals	To # appeals	Amount of security per judgment	Maximum Total (all security)
1	40	\$5,000,000	\$200,000,000
41	80	\$2,500,000	\$200,000,000
81	100	\$2,000,000	\$200,000,000
101	150	\$1,333,333	\$199,999,950
151	200	\$1,000,000	\$200,000,000
201	300	\$666,667	\$200,000,100
301	500	\$400,000	\$200,000,000
501	1,000	\$200,000	\$200,000,000
1,001	2,000	\$100,000	\$200,000,000
2,001	3,000	\$66,667	\$200,001,000

Security amounts are adjusted as the number of cases on appeal changes. In cases having multiple defendants, an individual appellant's required security is proportionate to the percent or amount of liability specifically allocated against that appellant in the judgment. If liability is not specifically allocated in the judgment, the required security is a share of the unallocated portion of the judgment determined by dividing that portion of the judgment equally among all defendants. Once an appellant has provided its required security, that appellant is entitled to a stay of that judgment regardless of whether any other defendants provide security.

When there is no appellate review pending in a Florida court and an appeal is taken outside of Florida, including a review by the United States Supreme Court, the security required to stay the execution of a judgment is equal to the lesser of the amount of the judgment to be stayed or three times the security required to stay a judgment pending appellate review in Florida courts at the time appellate review outside of Florida is sought.

All security must be posted or paid into the registry of the clerk of the Florida Supreme Court. The clerk can collect fees and interest for receipt of the security. All fees and interest collected shall be deposited into the State Courts Revenue Trust Fund.

It is the intent of the Legislature that the clerk of the Florida Supreme Court maintain a record of the number of appeals in Florida courts and all security posted. Additionally, an appellant must maintain an accounting of security paid and provide an updated copy of the accounting to the clerk of the Florida Supreme Court by July 15 of each year. By August 1, 2009, an appellant must provide to the clerk of the Florida Supreme Court a list of all civil actions against that appellant that are covered by the bill. An appellant must update the clerk on any additional actions filed within 60 days after the additional actions are joined.

If an appellant fails to pay a judgment within 30 days of it becoming final, the appellee may claim the security for that judgment provided by that appellant.

The security limits provided in the bill for civil actions brought by or on behalf of persons who claim or have been determined to be members of a former class action that was decertified in whole or in part expires on December 31, 2012.

The current statutory cap of \$100 million on security for appeals against certain cigarette manufacturers remains in effect for all other cases.

If approved by the Governor, these provisions take effect upon becoming law and apply to all judgments entered on or after that date.

Vote: Senate 29-10; House 100-17

HB 949 — Nonrecognition of Foreign Defamation Judgments

by Rep. Van Zant and others (SB 1066 by Senators Aronberg and Deutch)

This bill provides that a Florida court is not required to recognize a defamation judgment obtained outside the United States, unless the court determines that the defamation law applied in the foreign court's adjudication provided at least as much constitutional free speech protection as would be provided by the United States and Florida constitutions. Additionally, the bill provides Florida courts personal jurisdiction over any person who obtains a foreign defamation judgment against any person who:

- Is a resident of this state;
- Is a person or entity amenable to the jurisdiction of this state;
- Has assets in this state; or
- May have to take action in this state to comply with the judgment.

The bill provides Florida courts personal jurisdiction for the purpose of rendering declaratory relief with respect to a person's liability for a foreign defamation judgment and for determining whether the foreign defamation judgment should be considered nonrecognizable.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 40-0; House 115-0

CS/SB 258 — Petition for Name Change/Criminal History Check

by Judiciary Committee and Senator Wise

This bill requires that a person filing a petition for a name change have fingerprints submitted for a state and national criminal history records check prior to the court hearing on the petition.

Consistent with existing law, those seeking to restore a former name are exempt from the fingerprint requirement and therefore the criminal background check. In addition, the bill retains the exemption for name changes in connection with proceedings for adoptions and dissolutions of marriage from the petition procedures listed under s. 68.07, F.S.

Under the bill, when the name-change petition is filed, the clerk of court will instruct the petitioner on the fingerprint process and provide a list of entities authorized to take fingerprints. The authorized entity will submit the fingerprints electronically to the Florida Department of Law Enforcement (FDLE or the department) to perform a state criminal history records check. In turn, FDLE will forward the prints to the Federal Bureau of Investigation (FBI) for a national criminal history records check. The department will then send the results of the state and national criminal history check to the clerk of court, and the court will use the results to review the information filed by the petitioner and to evaluate whether to grant the petition.

The petitioner for the name change, or the parent or guardian of a minor for whom a name change is being sought, shall bear the cost of processing fingerprints and conducting the criminal history records check.

As a result of the bill, the hearing on a petition for a name change may only be held after the clerk receives the results of the criminal history check. However, as under existing law, a hearing on a petition for restoring a former name may be held immediately after the petition is filed. Following the name change hearing, the clerk will send a final report of the judgment to FDLE along with the results of the criminal history check.

If approved by the Governor, these provisions take effect October 1, 2009.

Vote: Senate 40-0; House 119-0

CS/SB 412 — Service of Process

by Criminal and Civil Justice Appropriations Committee and Senator Crist

Service of Process

The bill increases fees charged by a sheriff in connection with docketing and service of process in civil cases to \$40 from \$20. The bill also deletes the provision of law that prohibits additional fees to be charged by the sheriff for service of alias and pluries documents when service was not effected on the original document. The State of Florida and its agencies are exempted from the

increase in fees, as well as the additional fees imposed for service of alias and pluries writs. In addition, the bill:

- Permits special process servers and certified process servers to serve criminal witness subpoenas and criminal summonses; and
- Permits sheriffs to return to the clerk unserved writs that have been on a docket prior to October 1, 2001.

Execution Sale and Notice Procedure

The bill also expands the execution sale and notice procedure to apply in the real property context in addition to the personal property context. More specifically, the bill:

- Clarifies that the sheriff will provide notice of an execution sale prior to the advertisement of the sale to the judgment debtor;
- Includes references to mortgages and other liens against real property to ensure that these lienholders also receive notice of the execution sale;
- Requires creditors to identify in an affidavit provided to a sheriff the liens recorded on real property subject to an execution sale;
- Clarifies that the affidavit must identify all judgment liens, mortgages, financing statements, tax warrants, and other liens against real property and must include name and address information of each lienholder;
- Clarifies that the levying creditor can either perform or review the title search regarding the real property that is the subject of the affidavit;
- Specifies the priority in which proceeds will be distributed from the execution sale of real and personal property;
- Clarifies that when the creditor's title search affidavit discloses the existence of any junior mortgages or other real property liens, the proceeds will be paid into the court registry for distribution among the holders of any junior real property liens; and
- Provides that any surplus from the execution sale is provided to the "owner of the property sold" rather than to the "defendant";

Domestic and Sexual Violence Cases

The bill permits sheriffs to serve facsimile copies of protective injunctions instead of certified copies of protective injunctions in domestic and sexual violence cases. In addition, the bill provides that law enforcement may arrest a person when probable cause exists that the person has violated a condition of pretrial release when the original arrest was for an act of dating violence.

Additional Court Cost Liens

The bill directs the clerk of court to record in the official records a court order imposing county-authorized additional court costs, under s. 939.185, F.S., when a person commits a felony, misdemeanor, delinquent act, or criminal traffic violation. The bill further provides that the order becomes a lien attaching to the person's real and personal property. The lien will be enforceable in the manner provided by law for other liens. The bill creates an exception under which a lien will not attach to real or personal property protected from forced sale under the homestead and other exemption provisions of s. 4, Art. X, State Constitution.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 38-0; House 116-0

CLERKS OF COURT

CS/CS/SB 2108 — Clerk of Court Funding

by Policy and Steering Committee on Ways and Means; Judiciary Committee; and Senator Pruitt

Clerks of the Court Budget

The bill revises the method for setting the budgets of the clerks of court. The clerks' budgets will no longer be based on the projected revenue increase for each clerk and set by the Florida Clerks of Court Operations Corporation (corporation). Instead, each clerk will prepare a budget request for the last quarter of the county fiscal year and the first three quarters of the next fiscal year and submit it to the corporation by October 1 of each year. The budget proposal will be based on four core services. Under each of the core services, the clerks will propose specific services along with a proposed unit cost. The Chief Financial Officer will assist the clerks and the corporation in developing the unit costs.

The corporation and the Chief Financial Officer will recommend unit costs for each clerk and a statewide total budget for all 67 clerks based on the unit costs and projected workload and make its recommendations to the Legislature and the Supreme Court by December 1 of each year. The Legislature will accept, reject, or modify the proposed unit costs and appropriate the clerks' statewide total budget each year in the General Appropriations Act. The corporation will then release funding quarterly to each clerk based on the previous quarter's performance of service units using the approved unit costs.

To phase in the changes made in the clerk budgeting process, the bill specifies that, for FY 2009-2010, the corporation must release funds monthly to individual clerks based on the statewide total appropriated in the General Appropriations Act. Beginning in FY 2010-2011, the new budgeting system required in the bill will be used to appropriate the clerks' budgets.

Florida Clerks of Court Operations Corporation

The bill provides that the corporation is the budget entity for the clerk of courts and is administratively housed in the Justice Administrative Commission (JAC). The corporation is not subject to the supervision or control of the JAC. Funding for the corporation and the clerks will be appropriated to this entity in the General Appropriations Act. Employees of the corporation are considered state employees and must be under the JAC's pay plan. However, employees of the corporation are not classified as career service employees. The corporation is excluded from ch. 120, F.S. (Administrative Procedure Act), as the other entities within the JAC are also not subject to ch. 120, F.S. The corporation will prepare a legislative budget request pursuant to ch. 216, F.S., for its operations.

In addition to the eight clerks of the court currently comprising the executive council of the corporation, the bill provides that one designee of the President of the Senate and one designee of the Speaker of the House of Representatives will be added to the council as ex officio members. The Chief Justice of the Florida Supreme Court must designate one additional member to represent the state courts system.

Collection of Fees

Under the bill, the court-related revenue collected by the clerk is remitted to the Clerks of Court Trust Fund (trust fund). The trust fund is transferred from within the Department of Revenue to the Justice Administrative Commission. The bill splits the current \$5.00 of the first \$85 of the \$295 for initial filing fees in circuit court between the Department of Financial Services (\$1.50) for performing clerk audits and the Florida Clerk of Courts Operations Corporation (\$3.50) for funding its operations. (Previously, the \$5.00 was deposited into the Department of Financial Services Administrative Trust Fund).

In addition, language requiring clerks to submit one-third of county filing fees to the state is removed because, under the bill, all clerk revenues will be remitted to the state. Ten percent of all court-related fines collected by the clerk must be deposited into the clerk's Public Records Modernization Trust Fund to be used exclusively for additional court-related operational needs and program enhancements.

OPPAGA Study

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA), in consultation with the Chief Financial Officer and the Auditor General, to study the efficiency of the operations and functions of the clerks of court and the courts. More specifically, OPPAGA is tasked with evaluating who is performing each court-related function, how each function is funded, and how efficiently these functions are performed. The Office of Program Policy Analysis and Government Accountability is required to report its findings to the President of the Senate and the Speaker of the House of Representatives by January 15, 2010.

Technology Review Workgroup

The Technology Review Workgroup must develop a proposed plan for identifying and recommending options for the implementation and integration of the clerk and court information technology systems. The plan must:

- Describe the approaches and processes for evaluating the existing computer systems and data-sharing networks of the state courts system and the clerks of the court;
- Identify the required business and technical requirements; and
- Examine the use of the additional service charges collected that are related to storage and access of public records.

The bill also limits clerk of court information technology purchases during the period of the study.

Miscellaneous Changes to Clerk Functions

The bill makes other changes including the following:

- Requires clerks to use collection agents for uncollected amounts due after 90 days;
- Requires the clerks to maintain office hours with the consent of the chief judge;
- Clarifies that the clerk must charge a fee not to exceed \$70 if a judicial sale is conducted by electronic means, in addition to the fee already assessed against the winning bidder for clerk services in making, recording, and certifying the sale and title;
- Specifies that the costs of electronic tax deed sales must be added to the other charges for the cost of these sales, including charges related to notice, which are included in the bid of the certificateholder of the property;
- Increases the surcharge imposed to fund a state court facility which a board of county commissioners or local government may charge, in addition to other penalties for noncriminal traffic infractions and other criminal traffic violations, to \$30 from \$15;
- Authorizes the board of county commissioners or certain local governments to impose a surcharge for any traffic infraction or criminal traffic offense for the purpose of securing payment of the principal and interest on bonds issued by the county on or after July 1, 2009, to fund state court facilities; and
- Requires the clerks to submit expenditure data to comply with the Transparency in Government Spending requirements of SB 1796.

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

Vote: Senate 39-0; House 75-32

REAL PROPERTY, PROBATE, AND TRUST LAW

CS/CS/SB 1552 — Lis Pendens

by Banking and Insurance Committee; Judiciary Committee; and Senator Bennett

This bill amends the law relating to a notice of lis pendens, which is a recorded notice that certain property interests may be affected by a lawsuit. Specifically, the bill amends the law to:

- Permit property to be sold exempt from claims asserted in an action when the lis pendens has expired or been withdrawn or discharged;
- Extend the time for a holder of an unrecorded interest to intervene in the action;
- Simplify the information necessary for filing a valid lis pendens; and
- Provide for the control and discharge of a lis pendens that no longer affects the property.

This bill stems from legislative recommendations of the Real Property, Probate, and Trust Law Section of the Florida Bar.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 39-0; House 115-0

CS/HB 599 — Administration of Estates

by Governmental Affairs Policy Committee and Rep. Hukill and others (SB 1396 by Senator Aronberg)

This bill stems from legislative recommendations of the Real Property, Probate, and Trust Law Section of The Florida Bar pertaining to the administration of estates of decedents and the Florida Uniform Disclaimer of Property Interests Act. The bill makes the following changes:

- Provides a definition of “minor” for purposes of the Probate Code;
- Deletes the definition of “incompetent” and replaces it with the definition of “incapacitated” for purposes of the Probate Code;
- Amends the statute of limitations for determining paternity in probate proceedings;
- Makes clarifications to provisions addressing the elective share;
- Modifies provisions relating to the assessment of attorney’s fees and costs when a request for the elective share is withdrawn, and adds a provision for the assessment of fees and costs when an election is not made in good faith;
- Updates limitations on exempt property by:
 - Increasing the dollar limitation on household goods from \$10,000 to \$20,000;
 - Changing the personal automobile exemption to a personal “motor vehicle” exemption based on gross weight and limiting the exemption to two motor vehicles; and
 - Including all qualified tuition plans authorized by Internal Revenue Code s. 529;

- Clarifies that, in instances in which the petitioner for summary administration is also the trustee of a trust that is a beneficiary of the decedent's estate, the beneficiaries of the trust are to be made aware of the petition for summary administration;
- Adds a savings provision to the Florida Uniform Disclaimer of Property Interests Act (FUDPIA) intended to protect practitioners from inadvertently disqualifying certain post-mortem disclaimers under relevant sections of the Internal Revenue Code;
- Modifies provisions of the FUDPIA to add consistency and correct minor typographical errors; and
- Adds a provision to ensure that the traditional statutory prohibition on disclaimers by insolvent beneficiaries remains unquestionably intact.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 39-0; House 114-0

CS/HB 631 — Estate Inventories and Accountings; Public-Records Exemptions

by Civil Justice and Courts Policy Committee and Rep. Hukill and others (CS/SB 1400 by Judiciary Committee and Senator Aronberg)

This bill requires confidentiality for and exempts from public-records requirements:

- Estate inventories filed in an estate proceeding;
- Any inventory of the elective estate; and
- Any accounting filed in the estate proceeding.

It provides that the confidential and exempt records shall be disclosed by the custodian for inspection or copying to the personal representative, the personal representative's attorney, an interested person as prescribed by statute, or by court order upon a showing of good cause. The bill provides that the public-records exemptions are subject to repeal and review under the Open Government Sunset Review Act and provides a statement of public necessity for the public-records exemptions.

This bill stems from legislative recommendations of the Real Property, Probate, and Trust Law Section of The Florida Bar.

If approved by the Governor, these provisions take effect on July 1, 2009, if HB 599 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

Vote: Senate 40-0; House 114-0

CS/HB 965 — Trust Administration

by Civil Justice and Courts Policy Committee and Rep. Grady and others (CS/CS/SB 1958 by Banking and Insurance Committee; Judiciary Committee; and Senator Gelber)

This bill stems from legislative recommendations of the Real Property, Probate, and Trust Law Section of The Florida Bar pertaining to the Florida Trust Code. The bill makes the following changes:

- Amends the definition of “beneficiary” to clarify that a permissible appointee is not a beneficiary unless the power of appointment is irrevocably exercised in favor of the appointee;
- Provides that persons who take trust property if a power of appointment is not exercised (“takers in default”) may represent and bind permissible appointees;
- Provides that a trust settlor creating a trust in Florida cannot designate the law of another state to govern the meaning and effect of the trust terms unless there is some demonstrable connection between the trust and the designated state;
- Provides that the designated representative must be specifically nominated. It also provides that the trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report;
- Allows for the delegation of investment functions to a qualified cotrustee even if the settlor reasonably expected the cotrustees to perform certain functions jointly;
- Applies the fiduciary delegation rules of s. 518.112, F.S., to delegation of investment functions of a trustee;
- Clarifies that except in cases of willful misconduct on the part of the trustee with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge, an excluded trustee is not liable as a consequence of the trustee’s actions; and
- Clarifies that the distribution date to the beneficiary of a trust refers to the time that the right to possession or enjoyment arises and is not necessarily the time that any benefit of the right is realized.

If approved by the Governor, these provisions take effect July 1, 2009.

Vote: Senate 39-0; House 115-0

TAX LAW

CS/CS/CS/SB's 2430 and 1960 — Taxation of Documents

by Policy and Steering Committee Ways and Means; Finance and Tax Committee; Judiciary Committee; and Senators Lawson and Gelber

Discretionary Surtax on Documents

This bill extends the authority of Miami-Dade County to impose a discretionary excise tax on documents subject to tax pursuant to ch. 201, F.S., in order to finance the Housing Assistance Loan Trust Fund. Absent the extension of the surtax, there would be an automatic imposition of the statewide rate of 70 cents per \$1,000 effective on October 1, 2011. However, with the extension of the surtax, the state tax on deeds in Miami-Dade County will remain at 60 cents per \$1,000. The bill extends the authority for Miami-Dade County to assess the discretionary surtax on documents by providing that the surtax will sunset on October 1, 2031.

In addition, the bill:

- Describes how the funds are to be allocated among the Department of Revenue's administrative costs, homeownership assistance, and rental housing units;
- Defines homeownership assistance;
- Authorizes creation of a housing assistance voucher program, under which vouchers may be used for down payment assistance for the purchase of single-family residences by low-income or moderate-income persons;
- Requires counties that levy the surtax (currently Miami-Dade County is the only county eligible) to adopt a housing plan every three years, to have adopted an affordable housing element of its comprehensive plan, and to have a report prepared for the county's governing body that explains how the housing assistance program is being implemented; and
- Provides for the Legislature's Office of Program Policy Analysis and Government Accountability to regularly review the surtax program and report to the President of the Senate and the Speaker of the House of Representatives.

In providing for the allocation of surtax revenues, the bill requires that no less than 35 percent shall be used to provide homeownership assistance for low-income and moderate-income families, and no less than 35 percent for construction, rehabilitation, and purchase of rental housing units. The remaining amount is to be allocated for homeownership assistance or rental housing units, at the county's discretion.

Transfer of Beneficial Ownership of Real Property

This bill expresses legislative findings and intent related to a 2005 decision of the Florida Supreme Court holding that the transfer of property between a grantor and its wholly owned grantee, absent any exchange of value, is without consideration or a purchaser and thus not

subject to the documentary stamp tax. Specifically, the bill states that the Supreme Court's decision in *Crescent Miami Center, LLC v. Florida Department of Revenue*, 903 So. 2d 913 (Fla. 2005), is inconsistent with the intent of the Legislature because it permits tax avoidance. Rather, the bill notes, the prior holding of the district court of appeal in this same case prevents tax avoidance and therefore is consistent with the intent of the Legislature at the time the relevant statute – s. 201.02, F.S. – was amended in 1990. Finally, the bill expresses the intent of the Legislature to impose documentary stamp tax when the beneficial ownership of real property is transferred to a new owner by the use of techniques applicable in the Supreme Court case in combination with transfers of ownership of, or distributions from, artificial entities.

Additionally, the bill amends s. 201.02, F.S., to provide for the application of documentary stamp tax on certain conveyances of property involving a conduit entity and to impose documentary stamp tax on the transfer for consideration of a beneficial interest in real property. Specifically, when a grantor conveys property to a conduit entity, and the grantor's ownership interest in the conduit entity is subsequently transferred for consideration within three years, tax shall be imposed on each transfer of an interest in the conduit entity at the rate of 70 cents for each \$100 of the consideration paid or given in exchange for the interest. The bill provides that a gift of an ownership interest in a conduit entity shall not be taxed to the extent there is no consideration in the transaction. The bill further provides that certain transfers for estate-planning purposes of an interest in a conduit entity to an irrevocable grantor trust are not subject to tax. The bill authorizes the Department of Revenue to adopt emergency rules to implement these changes. Under the provisions of the bill, the amendments to this statute apply to transfers for which the first transfer to a conduit entity occurs after July 1, 2009.

Documentary Stamp Tax Revenue Distributions

The bill provides for priority distribution of documentary stamp tax revenue for the benefit of Florida Forever bonds, Everglades Restoration bonds, and Preservation 2000 bonds issued prior to July 1, 2009, when required to meet these bond obligations.

If approved by the Governor, these provisions take effect July 1, 2009, except as otherwise expressly provided in the act.

Vote: Senate 39-0; House 118-0

PUBLIC RECORDS

HB 7037 — Open Government Sunset Review/Federal Attorneys and Judges

by Governmental Affairs Policy Committee and Rep. McBurney and others (CS/SB 1342 by Judiciary Committee)

This bill reenacts the public-record exemptions, for specified personal information relating to current or former U.S. attorneys and assistant U.S. attorneys and current or former federal judges and magistrates, found in s. 119.071(4)(d)3. and 4., F.S. The information covered by the public-

records exemptions includes: the home addresses, telephone numbers, social security numbers, and photographs of these officials; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of their spouses and children; and the names and locations of schools and day care facilities attended by their children. The exemptions will expire on October 2, 2009, unless saved from repeal through reenactment by the Legislature.

The bill reenacts the exemptions and makes amendments to s. 119.071, F.S., that include:

- Relocating, revising, and combining the public-records exemptions provided for identification and location information concerning federal attorneys, judges, and magistrates;
- Defining the term “identification and location information”;
- Eliminating social security numbers from the scope of information covered by the combined public-records exemption because there is an existing public-records exemption for social security numbers in s. 119.071(5), F.S.; and
- Requiring a federal attorney, judge, or magistrate to provide a written statement that efforts have been made to protect the information from disclosure through other means.

If approved by the Governor, these provisions take effect October 1, 2009.

Vote: Senate 40-0; House 114-0