

ADVISORY BULLETIN

Florida Association of Court Clerks/Comptrollers

Ref: 2009 Bills Effective July 1, 2009

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This is a list of bills that are effective July 1, 2009. These bills have passed the Legislature but have not yet been signed by the Governor. As such, they are not yet law. Please make sure to read the text of the entire bill in order to assess the full impact to your operations.

EFFECTIVE JULY 1, 2009

HB 115 Sexual Offenders and Predators

The bill requires that a sexual predator's or sexual offender's home telephone number and any cellular telephone number be provided as part of the process of registering and re-registering sexual predators and sexual offenders. Failure to provide this information as part of the registration and re-registration process would result in a third degree felony. The bill also provides that a person who has been convicted of a violation of s. 847.0135(4), F.S., relating to traveling to meet a minor for the purpose of engaging in unlawful sexual activity will be required to register as a sexual predator or offender.

SB 126 Children/Confidential Records

This bill requires that a case record for a child under the supervision of, or in the custody of, the Department of Children and Families (DCF or the department) be maintained in a complete and accurate manner, and be made available for inspection and copying, upon the request of, and at no cost to, the child and the child's guardian ad litem, attorney, or caregiver. The release of the case record must be in a manner and setting appropriate to the age and maturity of the child and the nature of the information being released. The bill provides for sanctions and penalties if a person or entity fails to provide the child's case record or does not do so within a reasonable time.

This bill authorizes a court to approve the release of confidential information contained in a case record if the court determines that the information is necessary to ensure access to appropriate services for the child or for the safety of the child.

Additionally, the bill authorizes the sharing of confidential and exempt information among all state and local agencies and programs that provide services to children or are responsible for children's safety, if the information is reasonably necessary to assure access to services or the safety of the child. The bill provides that records or information made confidential by federal law may not be shared. The bill also authorizes access to confidential and exempt child abuse records by persons with whom the department is seeking to place a child or with whom placement has been granted.

SB 216 Campaign Financing/Local Government Expenditures

The bill prohibits a local government or person acting on its behalf from spending, and prohibits any person or group from accepting, public money for a political advertisement or electioneering communication in connection with an issue, referendum, or amendment that the public will vote on at an election.

SB 252 Local Government/Code of Ethics

This bill applies the conduct, financial disclosure, gift, and honoraria provisions of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, F.S., to the employees, directors, and officers of private entities that perform the functions of a political subdivision's chief administrative officer or employee. The bill creates a new penalty provision applicable to persons who are subject to the Code of Ethics but are not considered public officers or employees. The bill also makes the Governor the disciplinary official for these persons.

SB 412 Service of Process

The bill increases the fee 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 and 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.

HB 479 Retirement

The bill revises the termination and re-employment provisions for all FRS retirees, including those elected or appointed to an elective public office. The bill combines the requirements for regular class, senior management class and elected class employees such that if the DROP termination date is after July 1, 2010, there must be a 6 month severance in employment in order to become reemployed.

Specifically, for a member who is elected or appointed to an elective office and who is participating in the Deferred Retirement Option Program is not subject to termination or reemployment limitations until the end of his or her current term of office or, if the officer is consecutively elected or reelected to an elective office eligible for coverage under the Florida Retirement System, until he or she no longer holds an elective office. Additionally, an elected officer's DROP account may not accrue additional monthly benefits, but does continue to earn interest. However, an officer whose DROP participation begins on or after July 1, 2010, may not continue to earn such interest. An elected officer may voluntarily terminate his or her elective office at any time and receive his or her DROP proceeds. However, until termination occurs, an elected officer whose termination limitations are extended is ineligible for renewed membership in the system and may not receive pension payments, DROP lump sum payments, or any other state payment other than the statutorily determined salary, travel, and per diem for the elective office. Upon termination, the elected officer shall receive his or her accumulated DROP account, plus interest, and shall accrue and commence receiving monthly retirement benefits, which must be paid on a prospective basis only.

SB 526 Court Costs

The bill increases the court cost to \$151 and expands the list of criminal statutes referenced to require that the \$151 court cost be imposed against offenders convicted of a crime against a minor.

HB 569 Financial Instruments

The bill expands the scope of the applicable Florida Statutes by providing an option for state and local government funds to be deposited into money market deposit accounts and other financial instruments insured by the FDIC. The magnitude of fiscal impact on state and local governments is indeterminate because the amount of accrued interest will be dependent upon the amount of principal invested, the

interest rate being applied, and protocols for crediting interest. The bill also removes a limitation on the conditions under which local governments can deposit surplus public funds in certain depository institutions. As a result, the range of depository institutions available is increased.

HB 599 Administration of Estates

This bill makes multiple changes to the probate code and the administration of estates and clarifies existing law. This bill provides, in part, that:

- The definition of a "minor," which is identical to the definition in the Florida Guardianship Code;
- A four year statute of limitations does not apply to actions to determine heirs in a probate proceeding;
- A transfer in satisfaction of the elective share is an irrevocable transfer by the decedent during his or her life to an elective share trust;
- The unsatisfied balance of the spouse's elective share right is to be satisfied from the actual assets in non-qualifying trusts described in s. 732.2075(1), F.S.;
- The responsibility for the satisfaction of the remaining elective share balance is to be apportioned among the direct recipients in each class with each class only responsible to the extent that the assets in the previous class did not satisfy the remaining elective share balance;
- The court may assess fees and costs if it determines that a spouse made or pursued an election in bad faith;
- The amount of a decedent's household property exempt from creditor's claims is increased from \$10,000 to \$20,000;
- A person is insolvent for purposes of ch. 739, F.S., when the sum of a person's debts is greater than his or her assets at fair valuation and the person is generally not paying his or her debts as they become due.

HB 631 Public Records/Estate Inventories and Accountings

This bill provides a public record exemption for estate accountings as well as inventories and accountings that are filed with the clerk of court in a probate proceeding in connection with the spousal elective share procedure. This bill provides that only specific persons may inspect or copy the inventories and accountings. In addition, the bill provides for retroactive application of the public record exemption.

SB 718 Discretionary Sales Surtax

The bill amends the discretionary sales surtax provision for the "Indigent Care and Trauma Center Surtax" to delete the exclusion of a county that has a population of at least 800,000 residents and that is consolidated with one or more municipalities (Duval County) from levying this surtax. Thus, this surtax is available to any county having a population of over 800,000 residents.

HB 949 Grounds for Nonrecognition of Foreign Defamation Judgments

The state is not required to recognize or enforce a judgment of a court in a foreign country. The state has elected, however, to recognize and enforce most foreign country judgments, with certain exceptions. This bill adds an exception to recognition to provide that a Florida court is not required to recognize or enforce a foreign country defamation judgment if the law of that country does not contain the same constitutional free speech protections as would apply in a Florida court.

SB 1000 Discretionary Sales Surtax/Fire Rescue Services

This bill authorizes a county to levy by ordinance a discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities, which shall take effect if the surtax is approved by a majority of the electors of the county voting in a referendum held for that purpose. The bill provides for the distribution of the discretionary surtax proceeds and requires a reduction in ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services upon the discretionary sales surtax taking effect.

SB 1018 Guardians Ad Litem

The bill provides that a person certified by a not-for-profit legal aid organization may serve as a guardian ad litem (GAL) in dissolution of marriage cases, after the organization has conducted a security background investigation and provided training to the person. The bill also makes it a first-degree misdemeanor for an applicant to willfully, knowingly, or intentionally fail to disclose any material fact relating to his or her qualifications to be a GAL.

SB 1552 Lis Pendens

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 to be exempt from all 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 is a product of the Real Property, Probate, and Trust Law Section of the Florida Bar.

SB 1718 State Judicial System

Portion of this bill are effective June 1, 2009, and have been reported in a previous advisory. The majority of the bill, however, is effective July 1, 2009. Those provisions are shown below.

Effective July 1, 2009, this bill:

- Provides for a decreased tenant eviction filing fee;
 - Specifies that the interest earned on county investment is deemed the interest of the county;
 - Provides for the waiver of filing fees for those persons determined to be indigent;
 - Reinstates the \$18 fee assessed against a person who elects to attend driver improvement school and fails to attend and expands the \$12.50 administrative fee to be applicable to not only violations of ch. 316, but also violations of chapters 320 and 322;
 - Provides that court costs due are to be recorded in the Official Records creating a lien on real property;
 - Provides that the Clerk of Court Operations Corporation (CCOC) identify the amount need to fund Clerk budgets for the current state fiscal year and sets the budget cap for the state fiscal year 2009-2010 at \$451,380,312;
 - Requires the Clerks to implement electronic filing no later than October 1, 2009, a status report due by March 1, 2010;
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- Requires the same studies as listed in SB 2108, the Office of Program Policy Analysis and Government Accountability study of court-related functions and the Technology Review Workgroup review of the implementation options for a statewide integrated computer system. Further, the section clarifies that this section of the bill supersedes the portion of SB 2108 that requires a moratorium on IT spending to provide that, until July 1, 2011, each Clerk must submit a monthly summary of all new hardware and software purchases in excess of \$25,000;
- Provides that if the bill passes, the distribution of certain fees will change slightly. These changes will be clarified by statutory revision as they work to put the statutes together.

SB 1986 Health Care

The bill amends multiple sections of law to address systemic health care fraud and decrease health facility regulation. The bill increases the Medicaid program's authority to address fraud, particularly as it relates to home health services. Health care facility and health care practitioner licensing standards are increased to keep fraudulent actors from obtaining a health care license in Florida. The bill creates disincentives to commit Medicaid fraud by: increasing the administrative penalties for committing Medicaid fraud; posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website; and creating additional criminal felonies for committing health care fraud.

SB 2276 DNA Database

This bill requires that persons who are arrested for or charged with any felony offense submit a DNA sample at the time they are booked into a jail, correctional facility, or juvenile facility. This requirement will occur, as funding is provided, over the next 10 years. The first phase will begin on January 1, 2011, and will require the DNA sample from persons arrested for felony crimes set forth in chapters 782 (murder), 784 (assault and battery), 794 (sexual battery), and 800 (lewd or lascivious acts), F.S.

The bill is also a reorganization of s. 943.325, F.S., commonly known as the DNA Database statute. This has required a substantial rewording of the section; however, current law is mostly clarified or simplified.
