



TRIAL LAWYERS SECTION THE FLORIDA BAR

SESSION 2010

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TLS

2010 Session

Bill Summary

PASSED BILLS:

HB 0001 (SB 0092) **Relating to Statutes of Limitations** (Porth)
This bill designates the "Jeffrey Klee Memorial Act." It eliminates statute of limitations for wrongful death actions for intentional torts resulting in death from acts described in specified provisions relating to murder & manslaughter. **Effective Date: upon becoming a law.**
Approved by Governor; Chapter No. 2010-45

SB 0150 (HB 0059) **Relating to Athletic Coaches** (Ring)
This bill requires the independent sanctioning authority of a youth athletic team to screen the background of current and prospective athletic coaches through designated state and federal sex offender registries and requires the independent sanctioning authority to disqualify any athletic coach appearing on a registry. It also requires said sanctioning authority to maintain documentation of screening results and disqualification notices.

The bill also creates a rebuttable presumption in civil action for the death or injury of a third person relating to sexual misconduct by a coach, if the sanctioning authority complies with background screening requirements. **Effective Date: July 1, 2010.**
Approved by Governor; Chapter No. 2010-94

SB 2440 (HB 0285) **Relating to Liability Releases for Minors** (Bennett)
This is the Parental Releases bill that provides statutory authority for natural guardians, on behalf of their minor children, to execute pre-injury releases waiving any claim or cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, for the inherent risks involved in an activity.

The bill defines the term "inherent risk" to mean the dangers or conditions, known or unknown, that are characteristic of, intrinsic to, or an integral part of the activity; the failure of the activity provider to warn of the inherent risks; and the risk that the minor child or another participant may act negligently or intentionally and contribute to the injury of the minor child.

The bill also provides specific language that must be included in a waiver or release, and be at least five points larger than the rest of the text of the waiver or release, in order for it to be enforceable. As long as the waiver or release includes the statutory language and waives no more than allowed by statute, there is a rebuttable presumption that the waiver or release is valid and that the minor child's injury or damage arose from an inherent risk. The bill clarifies that it is not limiting the ability of natural guardians, on behalf of their children, to waive any claim against a noncommercial activity provider to the extent authorized by common law. **Effective Date: Upon Becoming Law (April 27, 2010).**
Approved by Governor; Chapter No. 2010-27

HB 0341 (SB 1022) Relating to H. Lee Moffitt Cancer Center and Research Institute (Coley)

Among other things, this bill amends laws regarding the Moffitt Cancer Center to:

- Recognize that the Moffitt Cancer Center is a statewide resource for basic and clinical research and multidisciplinary approaches to patient care.
- Provide that the Moffitt Cancer Center and any approved not-for-profit subsidiary of the Center are corporations primarily acting as instrumentalities of the state for purposes of sovereign immunity.

Effective Date: July 1, 2010.

Approved by Governor; Chapter No. 2010-85

HB 0437 Relating to Contingency Fee Agreements Between the Department of Legal Affairs and Private Attorneys (Eisnaugle)

This bill prohibits the Department of Legal Affairs from entering into a contingency fee contract with a private attorney unless the Attorney General makes a written determination before entering such contract that contingency fee representation is both cost-effective and in the public interest. The bill further limits the amount of any contingency fee based on the amount recovered to no more 25% of the first \$10 million, with smaller percentages above \$10 million and a cap on the total fee of \$50 million. This bill also requires copies of executed contingency fee agreements, as well as payments of contingency fees, to be posted on the department's website, and requires an annual report to the Legislature detailing all such contracts. **Effective Date: July 1, 2010.**

Approved by Governor; Chapter No. 2010-7

HB 0449 (SB 1108) Relating to Sanctions for Certain Court Pleadings (Steinberg)

This bill will provide an exception to the imposition of sanctions against a represented party and will limit the authority of the court to impose sanctions on its own motion. Under the bill, represented parties are not subject to monetary sanctions for claims or defenses that would not be supported by the application of then-existing law to the material facts. This bill also reduces the court's ability to impose sanctions by providing that a court may only award monetary sanctions on its own initiative if the sanction is ordered before a voluntary dismissal or settlement of the claims by the party to be sanctioned. Under the bill therefore, a party with a frivolous claim filing a voluntary dismissal immediately prior to a court's imposition of sanctions, avoids the sanction. **Effective Date: July 1, 2010.**

Approved by Governor; Chapter No. 2010-129

HB 0525 (SB 0870) Relating to Statutes of Limitation for Sexual Battery (Dorworth)

This bill will eliminate statutes of limitations to the institution of criminal or civil actions relating to sexual battery of a child if the victim is under 16 years of age at time of offense. This applies to any such offense except an offense the prosecution of which would have been barred on or before July 1, 2010 by section 775.15 (2), F.S. **Effective Date: July 1, 2010.**

Approved by Governor; Chapter No. 2010-54

HB 0689 (SB 1224) Relating to Negligence / “Slip and Fall Bill” (Aubuchon)

This is the slip and fall bill that provides that if a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it. Under the bill constructive knowledge may be proven by circumstantial evidence showing either (1) that the dangerous condition existed for such a length of time that, in the exercise of ordinary care, the business establishment should have known of the condition; or (2) that the condition occurred with regularity and was therefore foreseeable. The bill clarifies that it is not intended to affect any common-law duty of care owed by business owners. **Effective Date: July 1, 2010.**

Approved by Governor, Chapter No. 2010-8

SB 2060 (HB 1107) Relating to Sovereign Immunity (Bennett)

This bill increases the current waiver-of-liability limits for the state and its agencies and subdivisions to \$200,000 per individual claim and \$300,000 per aggregate claim. The current liability limits are \$100,000 per individual claim and \$200,000 per aggregate claim. These amounts have not been raised since 1981. **Effective Date: October 1, 2010.**

Approved by Governor; Chapter No. 2010-26

HB 5401 Relating to Clerks of the Court (Criminal & Civil Justice Appropriations Committee)

This is the budget bill that contains Court Funding. To view the Conference Committee report/summary on exactly how the bill will affect the Courts System, follow this link (<http://bit.ly/b1s8qA>). **Effective Date: May 28, 2010, except as otherwise provided.**

Approved by Governor; Chapter No. 2010-162

BILLS NOT PASSED:

SB 1964 (HB 0701) Relating to Design Professionals (Negron)

This bill limits the tort liability of licensed engineers, surveyors and mappers, architects, interior designers, and landscape architects (design professionals). More specifically, this bill limits the potential tort claims for recovery of economic damages resulting from a construction defect that may be filed by a claimant contracting for the professional services of a design professional.

The tort liability limitation for design professionals does *not* apply if:

- The contract for professional services of the design professional requires professional liability insurance and the contracting party fails to maintain insurance coverage as specified in the contract;
- The contract requires professional liability insurance and the liability of the design professional is limited in the contract to an amount less than the liability insurance coverage required by the contract;
- The claim relates to economic damages resulting from personal injury;
- The claim relates to damage to property that is not the subject of the contract;

- The contract or agreement was entered into before July 1, 2010 (the effective date of the bill); or
- The professional services were performed before July 1, 2010 (the effective date of the bill).

This bill also conforms the sections in the individual practice acts governing the design professionals to the limitation of liability provision created in the bill.

Vetoed by Governor

HB 0013 (SB 0130) Relating to Judicial Proceedings in Civil Cases (Ambler)

This bill would have allowed local judicial circuits to create a program providing for additional appointments of senior judges provided that the state's costs for such appointments are by one or more parties. Under this bill:

- Any party may request appointment of a senior judge to conduct a non-dispositive hearing. Where the request is unilateral, the cost is not taxable against other parties.
- All parties may request appointment of a senior judge to conduct a dispositive hearing or the trial. The prevailing party's share of the costs advanced is taxable against a nonprevailing party.
- Jury trials are allowed in the voluntary trial resolution process involving a civil dispute if one party requests a jury trial. The trial resolution judge must preside over the trial, with the jury trial conducted according to the law governing civil jury trials.
- The use of the court resources is paid by the parties conducting the trial to the Operating Trust Fund.

HOUSE Died in Committee on Criminal & Civil Justice Appropriations

HB 0017 (SB 2222) Relating to Congressional Term Limits (Schenck)

This bill would have petitioned Congress to limit terms of members of Congress to 12 years.

HOUSE Died in Economic Development & Community Affairs Policy Council

SB 0096 (HB 0019) Relating to Exercise of Federal Power (Baker)

This bill would have urged Congress to honor the provisions of the United States Constitution and United States Supreme Court case law which limit the scope and exercise of federal power.

SENATE Died on Calendar

SB 0178 Relating to Tenth Amendment/Constitution of the United States (Lynn)

This bill would have urged Congress to cease and desist from certain mandates that are prohibited by the Tenth Amendment to the United States Constitution. It would demand that certain federal legislation be prohibited or repealed.

SENATE Withdrawn prior to introduction

HB 0035 (SB 1384) Relating to Mortgage Foreclosure Actions on Homestead Property (Soto)

This bill would have prohibited deficiency decrees in final judgments in foreclosure actions on homestead property and specified deficiency decrees as unenforceable.

HOUSE Died in Civil Justice & Courts Policy Committee

HB 0047 Relating to Court Actions Involving Families (Planas)

This bill would have provided purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The other purposes and legislative intent of this bill would have included that the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system, and to support the development of a unified family court and the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.

SENATE Died in Criminal & Civil Justice Policy Council

HB 0075 (SB 1778) Relating to Homestead Property Foreclosure Actions (Soto)

This bill would have specified the applicability to homestead property and certain foreclosure actions. It would have provided procedural requirements and limitations for plaintiffs, defendants, and courts in certain foreclosure actions and would have provided requirements for landlords following commencement of a foreclosure action. Also, the bill would have provided for disclosure of the foreclosure action to prospective tenants and authorized a tenant to terminate the lease upon receiving notice.

HOUSE Died in Civil Justice & Courts Policy Committee

SB 2242 Relating to Foreclosure (Judiciary)

This bill would have required that during foreclosure proceedings, a landlord continue to hold money deposited or advanced by a tenant in a specified manner. The bill would have required a landlord to disclose the existence of foreclosure proceedings to a prospective tenant and would exempt an agent of a landlord from liability for failing to notify prospective tenants of foreclosure proceedings under certain circumstances.

SENATE Died in Committee on Judiciary

HB 0079 (SB 0086) Relating to Excuse from Jury Service (Sands)

This bill would have provided that a mother who is breastfeeding a child under two years of age must be excused from jury service upon her request. It also would have added practicing psychologists to the list of persons a presiding judge is authorized to excuse from jury service upon his or her discretion.

HOUSE Died on Calendar

HB 0103 (SB 0368) Relating to Motor Vehicle Racing Events (Hays)

This bill would have allowed minors who are "nonspectators" at motorsport events at closed-course motorsport facilities to sign waivers of liability for persons owning, leasing, operating, sponsoring or sanctioning such events. Under the bill, waivers signed by minors would be valid only if they are also signed by the minor's parent or guardian.

HOUSE Died in Economic Development Policy Committee

SB 0138 (HB 0405) Relating to Public Meetings (Rich)

This bill would have amended the public meeting exemption to allow the risk manager and division heads of a governmental entity to attend the closed meeting if such manager or division head is identified by the chief administrative or executive officer as being involved in pending litigation. It would have required a person attending the closed attorney-client session to agree not to disclose any part of the discussion that took place during such session until conclusion of the litigation, unless ordered by a court. The bill also would have prohibited a person who is an adverse party of the litigation from attending the closed attorney-client session.

SENATE Died in Committee on Community Affairs

HB 0181 Relating to Senior Judges (Planas)

This bill would have revised the definition of terms “retired justice” & “retired judge” for purposes of assignment to temporary duty.

HOUSE Died in Civil Justice & Courts Policy Committee

SB 0790 Relating to Retired Justices and Judges (Dean)

This bill would have provided that a former justice or judge who has failed to win reelection or be retained after more than 12 years of service as a justice or judge may be qualified to serve as a retired justice or judge.

SENATE Died in Committee on Judiciary

SB 0186 (HB 0857) Relating to Judicial Nominating Commissions (Joyner)

This bill would have authorized the Board of Governors of The Florida Bar to appoint some of the members of judicial nominating commissions. It would have required that the composition of each judicial nominating commission satisfy certain prerequisites for racial and gender diversity and it would have provided that if, on July 1, 2010, the composition of a judicial nominating commission does not comply with the requirements, at least every other appointment to the commission must be a member of a racial or ethnic minority group or a woman until diversity requirements are satisfied.

SENATE Died in Committee on Judiciary

HB 0243 (SB 1916) Relating to Standards of Conduct (Robaina)

This bill would have revised provisions prohibiting doing business with one's agency. It would have expanded the list of entities with which a public officer or employee may not have a conflicting employment or contractual relationship and would also expand the prohibition to include certain association or affiliation. The bill also would have prohibited a member of the Legislature from representing persons or entities before certain governing or legislative bodies or agencies.

HOUSE Died in Committee on Governmental Affairs Policy

SB 0744 (HB 0443) Relating to Negligence/Products Liability Action (Richter)
This bill would have defined the terms “negligence action” and “products liability action.” The bill also would have required the trier of fact to consider the fault of all parties to an accident when apportioning damages in a products liability action alleging an additional or enhanced injury.

SENATE Died in Committee on Judiciary

SB 2634 (HB 0611) Relating to Attorney's Fees/Workers' Compensation Cases (Smith)
This bill would have provided that the finder of fact and law is not bound by provisions of state law relating to the provision of indemnity or medical benefits for employment-related accidents or injuries when awarding attorney's fees in cases involving first responders. It would have required that the finder of fact and law consider certain factors when awarding attorney's fees in such cases.

SENATE Died in Committee on Banking and Insurance

SB 2636 (HB 0735) Relating to State Judicial System (Siplin)
This bill would have construed application of the common and statute laws of England to this state. It would have required the Supreme Court to develop a plan for certain civics promotion and judicial branch education purposes and it also would have required the Auditor General and the OPPAGA to conduct biennial full audit reviews and examinations of the state courts system and the Judicial Qualifications Commission.

SENATE Died in Committee on Judiciary

SB 0780 (HB 0987) Relating to Foreclosure Proceedings/Payment of Fees (Lynn)
This bill would have required a financial institution that institutes a foreclosure proceeding against residential property to pay all fees associated with or owed by the property which accrue from the date the foreclosure action is initiated until the foreclosure is finalized.

SENATE Died in Committee on Banking and Insurance

SB 1474 (HB 0791) Relating to Emergency Health Care Providers (Thrasher)
This bill provides that certain emergency health care providers are agents of the state for purposes of sovereign immunity when acting pursuant to specified statutory obligations. It requires certain indemnity for the state from providers.

SENATE Died in Committee on Banking and Insurance

SB 0830 Relating to Health Care Provider/Immunity from Civil Liability (Bennett)
This bill would have provided immunity from civil damages to any health care provider, including one who is not an employee of a licensed hospital, providing emergency care or medical consultation services. It also would have provided such immunity unless such damages result from providing or failing to provide medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

SENATE Died in Committee on Health Regulation

HB 0865 (SB 1606) **Relating to Damages for Wrongful Death** (Rouson)
This bill would have repealed provisions preventing recovery of damages for wrongful death by adult children of a decedent or by parents of the adult child with respect to claims for medical negligence.

HOUSE Died in Civil Justice & Courts Policy Committee

SB 2556 (HB 1355) **Relating to Medical Devices** (Altman)
This bill would have required an owner, operator, or administrator responsible for a place of public assembly and the state agency responsible for a state building, to notify the local emergency medical services medical director of the location of an Automated External Defibrillator (AED), if an AED is located at the place of public assembly or in the state building. The bill also would have required the State Surgeon General to establish guidelines and recommendations for the placement and deployment of AEDs in places of public assembly as defined in the bill.

HOUSE Died in Messages

SB 1392 **Relating to Parole Commission** (Crist)
This bill would have changed the name of the "Parole Commission" to the "Florida Offender Review and Transition Commission" to more accurately reflect the roles of the commission.

SENATE Died in Policy & Steering Committee on Ways and Means

SB 1400 **Relating to State Judicial System** (Crist)
This bill would have required that \$50 from the Supreme Court filing fee be deposited into the State Courts Revenue Trust Fund. The bill also would have renamed the Operating Trust Fund in the state courts system as the "Administrative Trust Fund" and would have directed that fees from the foreign language court interpreters program be deposited into the Administrative Trust Fund within the state courts system.

SENATE Died in Senate

HB 1513 (SB 1994) **Relating to Clerks of the Court** (Bogdanoff)
This bill would have provided additional powers and duties of the Legislative Budget Commission and would have subjected the Florida Clerks of Court Operations Corporation to specified procurement requirements. It would have removed statements exempting the corporation from APA and would have revised & expanded duties & responsibilities of the corporation relating to budget requests. Also, the bill would have required the corporation to submit specified budgets & information to the Legislative Budget Commission.

HOUSE Died in Full Appropriations Council on Education & Economic Development

SB 2034 (HB 1529) **Relating to Arbitration Agreements/Medical Negligence Claims** (Wise)
This bill would have created certain safeguards for patients and consumers relating to the execution and enforceability of arbitration agreements in the medical services and nursing home care context, and would have included language detailing the issues and concerns surrounding arbitration agreements in this context, as well as the Legislature's intent to address those issues and concerns. The bill would

have specified that arbitration agreements executed prior to medical treatment or care (pre-dispute agreements), as well as arbitration agreements executed after medical treatment or care (post-dispute agreements) are voidable as against public policy if these agreements violate the Florida Arbitration Code (FAC) and the provisions created within the FAC under the bill. In addition, the bill would have delineated how arbitrators are to be selected in these arbitrations.

SENATE Died in Committee on Health Regulation

SB 2326 (HB 1541) **Relating to Summary Judgment** (Aronberg)

This bill encourages the Supreme Court to adopt rules authorizing a party to appeal an order denying a motion for summary judgment.

SENATE Died in Committee on Judiciary

SB 2692 **Relating to Litigation** (Siplin)

This bill would have required the division of total fault for parties and nonparties by judgment in negligence cases. The bill would have abrogated use of privilege and immunity defenses as to all statutory causes of action, abuse of process, malicious prosecution, and fraud upon the court and prohibits sheriffs, clerks of court, full-time deputy sheriffs, and deputy clerks of court from practicing law.

SENATE Died in Committee on Judiciary

HB 7031 (SB 2276) **Relating to Judiciary** (Criminal & Civil Justice Policy Council)

This bill would have repealed specified provisions of law relating to: terms of the Supreme Court, circuit courts, district courts of appeal, census commissions for judicial circuits, attendance or nonattendance of circuit court judges, calling cases on docket at end of circuit court term, executive officers of circuit courts, residence of circuit court clerks, compensation of marshal, and guardians of incapacitated world war veterans.

SENATE Died in Committee on Judiciary

SB 2464 **Relating to Hospital Liens** (Peaden, Jr.)

This bill would have provided that a hospital is entitled to a lien on the recovery of damages from a tortfeasor who caused or contributed to the illness or injury of a patient. It would have specified methods to resolve disputes between the hospital and patient concerning the amount of the hospital's charges and whether the amount of the patient's attorney's fees and costs apportioned to the hospital produce an equitable result.

SENATE Withdrawn from further consideration

SB 2528 **Relating to Emergency Volunteer Health Practitioners Act** (Sobel)

This bill would have cited this part as the "Uniform Emergency Volunteer Practitioners Act." It would have provided for the regulation of specified health services by the Division of Emergency Management of the DCA, in cooperation with the DOH, the AHCA, and the Board of Veterinary Medicine, while an emergency declaration is in effect. It also would have provided limitations on civil liability for volunteer health practitioners.

SENATE Died in Committee on Military Affairs and Domestic Security

SB 2640 **Relating to Circuit Courts** (Siplin)

This bill would have created a division of unified family court within each circuit court to coordinate or consolidate cases affecting a single family. It also would have created a division of teen court and a division of drug and mental health court within each circuit court and would require counties to fund treatment-based drug court programs.

SENATE Died in Committee on Judiciary

SB 2696 **Relating to Judiciary** (Siplin)

This bill would have proposed amendments to the State Constitution, relating to the judiciary, to provide a general revision of provisions relating to: state courts; courts administration, practices, and procedures; organization and jurisdiction of the Supreme Court, district courts of appeal, and circuit courts; eligibility criteria for judges; organization and jurisdiction of the Judicial Qualification Commission; funding of the state courts system.

SENATE Died in Committee on Judiciary

HB 5403 **Relating to Trust Funds** (Criminal & Civil Justice Appropriations Committee)

This bill would have provided technical, conforming changes to the proposed House of Representatives budget by realigning specific sources of funding into the most appropriate trust funds for appropriation. The bill also would have directed deposits of specified filing fees into the State Courts Revenue Trust Fund rather than the State Court's Operating Trust Fund, and additionally it would have provided for the deposit of certain court costs following criminal convictions and worthless check fees into the State Attorneys Revenue Trust Fund rather than the State Attorney's Grants and Donations Trust Fund. The bill would have further directed any unexpended balances of funds collected pursuant to these provisions also be transferred to the appropriate trust fund.

HOUSE Died in Conference Committee

HB 7071 **Relating to Repealing Budgeting Provisions** (Full Appropriations Council on Education & Economic Development)

This bill would have removed the requirement for state agencies and the judicial branch to submit certain budget summary information in accordance with the legislative budget instruction.

SENATE Died in Messages

SB 1570 **Relating to Court Actions Involving Families** (Rich)

This bill would have amended and created several sections of law to reflect legislative intent regarding the goal of implementing unified family court programs in the circuit courts. These additional provisions of legislative intent would have been added to statutory sections involving children and families.

SENATE Died in Committee on Judiciary

SB 2656**Relating to Fiscal Stability TF/State Courts System**

(Siplin)

This bill would have created the Fiscal Stability Trust Fund within the state courts system to be administered by the Supreme Court. It would have provided for the administration of the trust fund and the use of trust fund moneys and it also would have required balances to remain in the trust fund at the end of the fiscal year.

SENATE Died in Committee on Judiciary
