

# ***HOUSE OF REPRESENTATIVES***

## ***Judiciary Committee***

**Representative William Snyder, Chair**

**Representative Charles McBurney, Vice Chair**

### **2011 SUMMARY OF PASSED LEGISLATION**



#### ***Civil Justice Subcommittee***

**Representative Eric Eisnaugle, Chair**

**Representative Clay Ford, Vice Chair**

#### ***Criminal Justice Subcommittee***

**Representative Dennis Baxley, Chair**

**Representative Charles Van Zant, Vice Chair**

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**HB 4121 - Clove Cigarettes**

**By: Artilis**

**Tied Bills: None**

**Companion Bills: SB 1778**

**Committee(s) of Reference: Judiciary Committee; Health & Human Services Committee**

**Category: Health, Repeals of Existing Law**

**Keywords: Tobacco**

Currently s. 859.058, F.S., prohibits the sale, use, possession, or otherwise disposing of cigarettes or similar products that contain cloves, clove oil, or any derivative thereof. This bill repeals s. 859.058, F.S., removing the statutory prohibition on clove cigarettes.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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## **Civil Justice Subcommittee**

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### **CS/HB 59 - Service of Process**

**By: Civil Justice Subcommittee; Julien and others**

**Tied Bills: None**

**Companion Bills: CS/SB 328**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts, Law Enforcement**

**Keywords: Civil, Clerks of Court, Condominiums, Home Owner's Association, Sheriff**

Service of process is the formal delivery of a writ, summons or other legal process or notice to a person affected by that document. This bill:

- Requires a gated residential community, a condominium, or a cooperative to allow a process server entry into the common areas of an association where a defendant resides or is known to be;
- Requires a process server to write the date and time of service, the process server's identification number, and the process server's initials on the front page of the document served;
- Requires a process server to sign the return-of-service form and to list all initial pleadings served on the return-of-service form;
- Lowers a copy requirement from two to one. Current law allows for substituted service of process on certain state officials, provided that the process server furnish two copies of the documents;
- Allows parties to provide an electronic copy of process certified by the clerk of the court to the sheriff for service; and
- Allows substituted service of process on an employee of a corporation's registered agent if the registered agent is unavailable.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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### **CS/SB 142 - Negligence**

**By: Commerce and Tourism; Richter and others**

**Tied Bills: None**

**Companion Bills: CS/HB 201**

**Committee(s) of Reference: Judiciary; Commerce and Tourism; Budget**

**Category: Courts, Motorists**

**Keywords: Auto, Civil, Collisions, Tort Reform**

Under general tort law, the doctrine known as comparative negligence provides that a jury must apportion fault between all persons found to be liable for the injury. The liable parties are then responsible for their portion of the damages.

A product liability claim is a tort case filed against a manufacturer alleging that a product defect has caused an injury. Crashworthiness cases are a form of product liability lawsuits in which the plaintiff claims that a defect in the manufacture or design of an automobile caused or enhanced injuries suffered during an automobile accident. Florida courts do not allow juries to hear evidence relating to the initial cause of the automobile accident because the court views the initial accident and the subsequent enhanced injury as two separate incidents. This bill requires that:

- In a product liability action alleging that injuries received by a claimant in an accident were enhanced by a defective product, the trier of fact must consider the fault of all persons who contributed to the accident when apportioning the fault among them;
- A jury in a crashworthiness case must be appropriately instructed by the trial judge on the apportionment of fault; and
- These changes apply to all cases that have not been tried.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**HB 185 - Relief/Angela Isham/City of Ft. Lauderdale**

**By: Mayfield**

**Tied Bills: None**

**Companion Bills: CS/SB 34**

**Committee(s) of Reference: Civil Justice Subcommittee**

**Category: Local Government**

**Keywords: Claims, Claims Bill**

The bill compensates Angela Isham for damages sustained as the result of negligence by the City of Ft. Lauderdale. Based on a settlement agreement, the City agreed to pay \$600,000, in addition to the \$200,000 which has already been paid. Payment for attorney's fees, lobbying fees, and costs incurred is limited to 25 percent of the total award.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/HB 253 - Limited Liability Companies**

**By: Civil Justice Subcommittee; Stargel; McBurney and others**

**Tied Bills: None**

**Companion Bills: CS/SB 1152**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts, Economic Development**

**Keywords: Business, Civil, Commerce**

A limited liability company is a form of business entity where owners have limited personal liability for the debts and actions of the limited liability company, similar to a corporation, but have management and tax flexibility similar to a partnership. When a monetary judgment is entered against a member of a limited liability company, Florida law provides for a “charging order” that directs the limited liability company to pay profits and distributions intended for the judgment debtor to the judgment creditor. By entering a charging order, the judgment creditor is paid without disrupting management of the limited liability company. Last year, the Florida Supreme Court held that Florida’s statutory charging order provision is not the exclusive means by which a judgment creditor can execute a judgment against a debtor owning all of the interest in a single-member limited liability company and held that a court may order a judgment debtor to surrender all right, title, and interest in the debtor’s single-member limited liability company.

This bill provides, with one exception, that a charging order is the “sole and exclusive remedy” by which a judgment creditor may satisfy a judgment from a judgment debtor’s interest in a limited liability company. The exception arises in situations where a limited liability company has only one member and the court finds that distributions under a charging order will not satisfy the judgment in a reasonable time. This bill provides that it is intended to apply retroactively.

Subject to the Governor’s veto powers, the effective date of this bill is upon becoming a law.

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**CS/CS/HB 277 - Sovereign Immunity**

**By: Judiciary Committee; Civil Justice Subcommittee; Goodson and others**

**Tied Bills: None**

**Companion Bills: CS/CS/SB 594**

**Committee(s) of Reference: Civil Justice Subcommittee; Government Operations Subcommittee; Judiciary Committee**

**Category: Courts, Local Government**

**Keywords: Civil, County, Tort Reform**

A statute of limitations is a time period after which a lawsuit cannot be filed. Different types of lawsuits have different limits. Current law provides that the statute of limitations for a wrongful death action against the state or one of its political subdivisions is four years. The statute of limitations for a wrongful death action brought against a nongovernmental entity is two years. This bill changes the statute of limitations in a wrongful death action brought against the state or one of its agencies or subdivisions from four years to two years.

Current law requires that a claimant bringing a tort action against the state or one of its agencies or political subdivisions must present the claim in writing to the appropriate agency or political subdivision within three years after the claim accrues. This bill requires the claimant present the claim in writing to the appropriate agency or political subdivision within two years after the claim accrues if the claim is for wrongful death.

This bill also provides that if the agency or political subdivision does not act on the claim within 90 days, the claim is deemed denied. The bill tolls the statute of limitations during the time the agency or political subdivision is considering medical malpractice claims and wrongful death claims.

This bill applies to all causes of action arising on or after July 1, 2011.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/HB 325 - Estates**

**By: Judiciary Committee; Wood**

**Tied Bills: None**

**Companion Bills: CS/SB 648**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts, Retirement**

**Keywords: Civil, Property, Wills, Trusts**

When a person dies without a will or some other means of devising his or her estate such as a trust, the person is considered intestate. Current law provides that, in an intestate estate where all of the surviving descendants are also descendants of the surviving spouse, the surviving spouse receives the first \$60,000 plus one-half of the remaining estate. This bill provides that the surviving spouse in this situation receives the entire estate.

Current law provides that, if a will is unambiguous, a court may only look to the will itself to determine distribution of the estate, even if the actual terms of the will do not reflect the intent of the deceased. This bill allows a court to modify an unambiguous will to correct mistakes of law, to correct mistakes of fact, or to achieve the testator's tax objectives. This bill also provides for an award of attorneys' fees and costs directly against an individual in certain proceedings involving certain will challenges.

Current law allows a person to revoke a will. If the will was revoked through publication such revocation may be challenged on grounds of fraud, duress, mistake, or undue influence. If, however, the revocation was by action (such as physical destruction of the will), it may not be challenged. This bill provides that any will revocation may be challenged by an interested party, regardless of the method of revocation.

A revocable trust is a common substitute for a will that allows the individual who created the trust (known as the "settlor") the ability to reclaim the property from the trust at anytime by revoking the trust. Current law does not provide a means to challenge the revocation of a revocable trust where the revocation was procured under fraud, duress, mistake or undue influence. This bill provides that, after the death of the settlor, an interested party can challenge the past revocation of a revocable trust on the grounds that the revocation was procured by fraud, duress, mistake or undue influence.



Communication between a lawyer and a client is privileged information and the client may refuse to disclose those communications or prevent a third party from disclosing the privileged information. The bill provides that the lawyer-client privilege applies to certain communications between a lawyer and his or her client trustee, guardian, or personal representative.

The bill applies to all proceedings pending before the effective date and all cases commenced on or after that date.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law, except as otherwise provided.

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**CS/CS/SB 450 - Emergency Management**

**By: Judiciary; Military Affairs, Space, and Domestic Security; Bennett and others**

**Tied Bills: None**

**Companion Bills: CS/HB 215**

**Committee(s) of Reference: Military Affairs, Space, and Domestic Security; Judiciary; Rules**

**Category: Courts, Emergency Management**

**Keywords: Civil, County, Fire, Firefighters, Flood, Hurricane, Natural Disaster, Public Health, Sheriff, State Trooper, Tornado, Tort Reform**

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. The state's response to public health emergencies is also provided by law and empowers the State Health Officer to declare a public health emergency.

This bill provides immunity from civil damages relating to the provision of temporary housing, food, water, or electricity for persons who, gratuitously and in good faith, provide such housing, food, water, or electricity to emergency first responders or their immediate family members in response to a declared emergency or public health emergency. However, the immunity does not apply if the person acts in a manner that demonstrates a reckless disregard for the consequences of another. The immunity expires six months after the declaration or extension of the state of emergency.

The bill also provides that a person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who registers is presumed to have acted in good faith when providing temporary housing, food, water or electricity.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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## **HB 469 - Individual Retirement Accounts**

**By: Stargel and others**

**Tied Bills: None**

**Companion Bills: SB 978**

**Committee(s) of Reference: Civil Justice Subcommittee; Insurance & Banking Subcommittee; Judiciary Committee**

**Category: Banking, Courts, Retirement**

**Keywords: Civil, Retirement, Savings, Bankruptcy, Wills, Trusts**

An Individual Retirement Account is a form of retirement savings account that provides tax benefits to the owner of the account. The account is primarily used as a means of saving for retirement. When the owner of an Individual Retirement Account dies, the account may be transferred to a named beneficiary. When transferred to a beneficiary, it is known as an inherited Individual Retirement Account.

Florida law provides for protection of various assets from creditors, which protection also extends to bankruptcy proceedings. Under current Florida law, a regular Individual Retirement Account is exempt from creditor claims but an inherited Individual Retirement Account is not.

This bill provides that an inherited Individual Retirement Account retains the same protection from creditors that the original Individual Retirement Account enjoyed.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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## **CS/CS/CS/CS/HB 479 - Medical Malpractice**

**By: Judiciary Committee; Health Care Appropriations Subcommittee; Health & Human Services Access Subcommittee; Civil Justice Subcommittee; Horner; Campbell and others**

**Tied Bills: None**

**Companion Bills: CS/SB 1590**

**Committee(s) of Reference: Civil Justice Subcommittee; Health & Human Services Access Subcommittee; Health Care Appropriations Subcommittee; Judiciary Committee**

**Category: Courts, Health, Insurance**

**Keywords: Civil, Dentistry, Doctors, Insurance, Tort Reform**

This bill makes numerous changes to affect medical malpractice litigation in Florida:

- This bill creates an "expert witness certificate" that an expert witness who is licensed in another jurisdiction must obtain before providing an affidavit in the pre-suit portion of a medical negligence case or testifying in the case. A physician, osteopathic physician or dentist who provides deceptive, or fraudulent expert witness testimony related to the practices of medicine or dentistry may be disciplined;

- This bill provides for the creation of an informed consent form related to cataract surgery. Such a form is admissible in evidence and its use creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery;
- Current law prohibits medical malpractice insurance contracts that contain any right of the physician or dentist to "veto" any admission of liability or offer of judgment made within policy limits by the insurer. This bill allows such contracts and requires all medical malpractice contracts to say whether the insured has a veto;
- This bill provides that records, policies, or testimony of an insurer's reimbursement policies or reimbursement decisions relating to the care provided to the plaintiff are not admissible in any civil action. Also, a health care provider's failure to comply with, or breach of, any federal requirement is not admissible in any medical negligence case;
- This bill requires a claimant in a medical malpractice action to execute an authorization for release of health information to be furnished with the pre-suit notification; and
- This bill provides additional immunity from civil liability for volunteer team physicians.

This bill applies to causes of action accruing on or after October 1, 2011.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**CS/SB 504 - Child Visitation**

**By: Children, Families, and Elder Affairs; Bogdanoff**

**Tied Bills: None**

**Companion Bills: CS/HB 387**

**Committee(s) of Reference: Children, Families, and Elder Affairs; Judiciary; Budget**

**Category: Courts, Social Services**

**Keywords: Child Protection, Civil, Foster Care, Parental Rights, Family Law**

In 2007, the Legislature created the Keeping Children Safe Act to keep children in the custody of the Department of Children and Family Services or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. This bill amends the Keeping Children Safe Act to provide that:

- A finding of probable cause of sexual abuse by a parent or caregiver is required in order to create a presumption of detriment to a child;
- Persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court, and in order to begin or resume contact with the child, there must be an evidentiary hearing to determine whether contact is appropriate; and
- The court must conduct a hearing within seven business days of finding out that a person is attempting to influence the testimony of the child. The purpose of the hearing is to determine whether visitation with the person who is alleged to have influenced the testimony of the child is in the best interest of the child.

This bill also amends the legislative intent of the Keeping Children Safe Act to provide that it is the intent of the act to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**HB 609 - Relief/Harris & Williams/North Broward Hospital District**

**By: Coley**

**Tied Bills: None**

**Companion Bills: SB 16**

**Committee(s) of Reference: Civil Justice Subcommittee**

**Category: Local Government**

**Keywords: Claims, Claims Bill**

The bill compensates Laron S. Harris, Jr., by and through his parents, Melinda Williams and Laron S. Harris, Sr., and Melinda Williams and Laron S. Harris, Sr., individually, for damages sustained as the result of negligence by the North Broward Hospital District, d/b/a Coral Springs Medical Center. Based on a settlement agreement, the District agreed to pay \$2,000,000, in addition to the \$200,000 which has already been paid. Payment for attorney's fees, lobbying fees, and costs incurred is limited to 25 percent of the total award.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/HB 621 - Child Custody**

**By: Civil Justice Subcommittee; Renuart and others**

**Tied Bills: None**

**Companion Bills: CS/SB 1650**

**Committee(s) of Reference: Civil Justice Subcommittee; Economic Affairs Committee; Judiciary Committee**

**Category: Courts, Military**

**Keywords: Child Protection, Civil, Parental Rights, Soldier, Family Law**

Where the parents of a minor child are living apart, the parents must develop a parenting plan to be approved by the court. The plan outlines the responsibilities and time-sharing arrangements of the parents. In general, a change in the parenting plan requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child. However, there is a special exception for a parent who is deployed pursuant to military service commitments.

When a parent is unable to comply with a time-sharing schedule because of military service, courts are generally precluded from modifying the judgment or order as it existed on the date the parent left for service. However, a court may enter a temporary modification order if such modification is in the best interests of the child.

This bill provides that the activation, deployment or temporary assignment to military service cannot be the sole factor in the court's decision to grant a modification of permanent time-sharing and parental responsibility.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**HB 629 - Relief/Estate of Cesar Solomon/JTA**

**By: McBurney**

**Tied Bills: None**

**Companion Bills: SB 22**

**Committee(s) of Reference: Civil Justice Subcommittee**

**Category: Local Government**

**Keywords: Claims, Claims Bill**

The bill compensates the Estate of Cesar Solomon, for wrongful death as the result of negligence by the Jacksonville Transportation Authority. Based on a settlement agreement, the Authority agreed to pay \$1,050,000, in addition to the \$200,000 which has already been paid. Payment for attorney's fees, lobbying fees, and costs incurred is limited to 25 percent of the total award.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/CS/HB 647 - Protection of Volunteers**

**By: Judiciary Committee; Civil Justice Subcommittee; McBurney and others**

**Tied Bills: None**

**Companion Bills: CS/CS/SB 930**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts**

**Keywords: Civil, Non Profit, Tort Reform**

The Florida Volunteer Protection Act provides that any person who volunteers to perform any service for any nonprofit organization without compensation is not civilly liable for any act or omission in certain situations. It is unclear whether compensation from an outside source, such as from an employer who might continue to pay an employee who does volunteer work for a nonprofit organization, affects liability protection.

This bill provides that a person who volunteers for a nonprofit organization and is not paid by the nonprofit organization, regardless of whether the person is receiving compensation from another source, has the same protections as any other volunteer. This protection only applies if the volunteer is not acting as the agent of the source from which the volunteer is receiving compensation.

This bill applies to causes of action accruing on or after the effective date.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/SB 650 - Mobile Home Park Lot Tenancies**

**By: Regulated Industries; Jones and others**

**Tied Bills: None**

**Companion Bills: CS/HB 423**

**Committee(s) of Reference: Regulated Industries; Community Affairs; Rules**

**Category: Courts, Economic Development, Local Government**

**Keywords: Civil, Construction, Consumer Protection, Property, Regulation**

Mobile home parks are regulated by the state. Current law places various obligations on mobile home park owners including providing notices for eviction in the event of sale, following building codes and maintaining common areas. Current law requires a mobile home park owner to give tenants at least six months notice before eviction can take place due to a change of land use. A change of land use is where the land the park is on will be redeveloped into something other than a mobile home park.

This bill requires that, at the beginning of the six month eviction period, and if the tenants have created a homeowners' association, the park owner must offer to sell the park to the association. The association has 45 days to agree to the owner's asking price and terms. This bill also requires the state or a local government to consider the adequacy of parks for relocation when a mobile home park owner gives notice of a change of land use.

Mobile home owners also have obligations by lease and by law that include the obligation to follow building codes and the obligation to keep their rented lot sanitary and clean. Mobile home park owners report that they are being cited for offenses that were committed by their tenants. This bill requires a local government, when citing a violation of a local ordinance, to cite only the responsible party.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/SB 670 - Powers of Attorney**

**By: Judiciary; Joyner**

**Tied Bills: None**

**Companion Bills: CS/CS/HB 815**

**Committee(s) of Reference: Judiciary; Banking and Insurance; Rules**

**Category: Banking, Courts**

**Keywords: Business, Civil, Property, Family Law**

A power of attorney is a legal document in which a principal authorizes a person or entity (the agent or attorney-in-fact) to act on his or her behalf. There are three basic types of power of attorney: general power of attorney, which ceases when the principal becomes incapacitated; durable power of attorney, which continues once the person becomes incapacitated; and springing or contingent power of attorney, which becomes effective upon the occurrence of a specified event. This bill is a comprehensive revision of the statutes regulating powers of attorney based in large part on the Uniform Power of Attorney Act. Significant changes made by this bill include:

- All powers of attorney become effective upon execution, with the exception of powers of attorney based on military deployment;
- All powers of attorney must be signed by the principal, witnessed and signed by two people, and notarized;
- A power of attorney executed in another state is valid in Florida if the power of attorney complied with the laws of the state of execution;
- That a third person must accept or reject a power of attorney within a reasonable time;
- That a power of attorney must expressly provide what an agent can and cannot do and may not include a general provision granting the agent broad authority;
- That additional signatures or initials of the principal are required to exercise authority in certain areas;
- That a principal may appoint two or more agents and that they may act independently and exercise full authority;
- That the principal may designate successor agents;
- Limits on who may file a petition for judicial relief regarding a power of attorney; and
- That with respect to formalities of execution, the bill applies to all power of attorneys created on or after October 1, 2011, and that with respect to all matters other than formalities of execution, the bill applies to all powers of attorney regardless of date of creation.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**CS/SB 926 - Liability/Employers of Developmentally Disabled**

**By: Commerce and Tourism; Storms**

**Tied Bills: None**

**Companion Bills: CS/HB 405**

**Committee(s) of Reference: Commerce and Tourism; Children, Families, and Elder Affairs; Judiciary**

**Category: Courts, Social Services**

**Keywords: Business, Civil, Disability, Job Creation, Tort Reform**

Supported employment services are offered to help an individual with a developmental disability gain or maintain employment. This bill provides that an employer who employs a person with a developmental disability who received supported employment services is not liable for a negligent or intentional act or omission of the employee provided that the employer did not have actual notice of the act creating an unsafe condition in the workplace.

This bill also provides that a not-for-profit supported employment service that has provided employment services to a person with a developmental disability is not liable for the actions or conduct of that person as an employee occurring within the scope of employment.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**HB 951 - Recording of Real Property Documents**

**By: Albritton**

**Tied Bills: None**

**Companion Bills: CS/SB 1072**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts**

**Keywords: Civil, Property, Clerks of Court, Public Records**

Instruments affecting title to real property are recorded in the public records in order to provide a public record of the chain of title to the property, together with a record of encumbrances against the title.

Prior law only allowed original papers, properly signed, to be presented for recording. Recently, state law was amended to allow for electronic recording of real property instruments. However, several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2007 adoption of the Uniform Real Property Electronic Recording Act. Other recorders began accepting electronic documents for recording before rules were formally adopted.

The bill retroactively and prospectively ratifies the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. This bill provides that all such recorded documents are deemed to provide constructive notice of ownership and encumbrances.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/CS/CS/HB 1111 - Family Law**

**By: Judiciary Committee; Health & Human Services Committee; Civil Justice Subcommittee; Mayfield**

**Tied Bills: None**

**Companion Bills: CS/SB 1622, CS/HB 1475, CS/SB 1978**

**Committee(s) of Reference: Civil Justice Subcommittee; Health & Human Services Committee;**

**Judiciary Committee**

**Category: Courts**

**Keywords: Child Protection, Civil, Parental Rights, Alimony, Divorce, Family Law**

This bill conforms Florida's Uniform Interstate Family Support Act to the current version of Uniform Interstate Family Support Act, which was amended in 2008. The 2008 Uniform Interstate Family Support Act amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

Alimony is used to provide financial support to a financially dependent former spouse. By statute, there are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. The bill provides that a court must consider the four types of alimony listed by statute when deciding which type of alimony is appropriate.

By statute, a marriage is either short-term, moderate-term, or long-term based on the length of the marriage. The length of the marriage is one factor a court considers when determining which type of alimony is appropriate. Current law provides that only short-term and moderate-term marriages may have an award of durational alimony. This bill provides that a long-term marriage may have an award of durational alimony. This bill also provides that an alimony award may not leave the payor with significantly less net income than the net income of the recipient, absent exceptional circumstances.

Subject to the Governor's veto powers, regarding alimony, the effective date of this bill is July 1, 2011. Subject to the Governor's veto powers, regarding the Uniform Interstate Family Support Act, the effective date of this bill is upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act.

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**SB 1142 - Adverse Possession**

**By: Dockery**

**Tied Bills: None**

**Companion Bills: HB 927, SB 918**

**Committee(s) of Reference: Judiciary; Community Affairs; Budget**

**Category: Courts, Local Government**

**Keywords: Civil, Fraud, Property**

This bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title. This bill includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim, requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made, and provides for priority of property tax payments made by owners of record by requiring refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record.

This bill requires the Department of Revenue to develop a uniform statewide adverse possession return. This bill grants emergency rulemaking authority to the Department of Revenue for the purposes of creating this return.

This bill also prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property and against property that does not currently have a unique parcel identification number. It specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll and requires property appraisers to include a notation of an adverse possession claim in any searchable property database maintained by the property appraiser.

This bill provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/CS/CS/HB 1195 - Condominium, Cooperative, and Homeowners' Associations**

**By: Judiciary Committee; Economic Affairs Committee; Civil Justice Subcommittee; Moraitis; Grant**  
**Tied Bills: None**

**Companion Bills: CS/CS/CS SB 530; Includes parts of SB 1516; Includes parts of HB 1035**

**Committee(s) of Reference: Civil Justice Subcommittee; Economic Affairs Committee; Judiciary Committee**

**Category: Courts**

**Keywords: Civil, Foreclosure, Mortgage, Property, Regulation, Condominiums, Home Owner's Association**

The term "community association" refers to condominium, homeowners', and cooperative associations. Regarding community associations, the bill:

- Provides that a condominium, cooperative, or multifamily residential building that is less than four stories is exempt from installing a manual fire alarm system if the building has an exterior corridor providing a means of egress;
- Provides for the suspension of use rights and election rights of unit or parcel owners who are more than 90 days delinquent in the payment of a monetary obligation or for failure to comply with the association's governing documents. Voting rights of the suspended unit or parcel owner may not be exercised for any purpose including a quorum;
- Allows an association to demand payment from a unit or parcel owner's tenant for all unpaid monetary obligations of a unit owner owed to the association; and
- Provides for a statutory notice be sent to the tenant if the association demands payment from the unit or parcel owner's tenant for unpaid monetary obligations.

Regarding condominium associations, the bill:

- Allows condominium unit owners to consent to the disclosure of protected information, e.g. name and telephone numbers for a membership directory;
- Allows unit owners access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permits condominium associations to hold closed meetings to discuss personnel matters;
- Provides that an association may also include impact glass and other code-compliant windows for hurricane protection;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Provides for termination of a shared condominium and timeshare property where the improvements have been completely destroyed;
- Provides for the partial termination of a condominium property; and
- Provides that an association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments that came due before the association's acquisition of title of any other association which hold a superior lien interest on the unit.

Regarding homeowners' associations, the bill:

- Amends the definition of declaration of covenants to include multiple written instruments;
- Provides that a person who is 90 days delinquent on financial obligations to the association or who has been convicted of a felony is not eligible to run for election to the board;
- Provides that an association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments that came due before the association's acquisition of title of any other association which hold a superior lien interest on the unit; and
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/CS/SB 1196 - Construction Liens**

**By: Commerce and Tourism; Regulated Industries; Bogdanoff**

**Tied Bills: None**

**Companion Bills: CS/CS/HB 941**

**Committee(s) of Reference: Regulated Industries; Judiciary; Commerce and Tourism**

**Category: Courts**

**Keywords: Civil, Commerce, Construction, Liens, Property**

The construction lien law allows persons who are enhancing an owner's property to file a lien for the value of the improvement. In certain circumstances, a construction lien may be placed against a lessor's property for work done on behalf of a lessee. However, a lessor may limit or prohibit such liens provided the lessor includes a prohibition in the lease and records notice thereof in the public records. Related to construction liens against leased property, this bill:

- Adds an additional means by which the lessor may record notice in the public records, namely by recording a memorandum of a lease;
- Provides that a blanket limitation on liens need not apply to all leaseholds within the property;
- Requires a lessor claiming that leases prohibit liens to provide a copy of the relevant portions of the lease within 30 days, upon demand of a potential lienor;
- Amends the notice of commencement form to require adding the name of a lessee when the lessee is making improvements; and
- Requires a statement on the notice of commencement that the ownership interest is a leasehold interest if the owner listed is a lessee.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**HB 1247 - Parental Notice of Abortion**

**By: Stargel and others**

**Tied Bills: None**

**Companion Bills: SB 1770**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts, Health**

**Keywords: Abortion, Child Protection, Civil, Family Law, Doctors, Parental Rights, Reform**

In 2004, the voters approved an amendment to the Florida Constitution to authorize the Legislature to create a parental notification statute. This bill makes several revisions to the parental notification law including:

- Adding a requirement that constructive notice of a minor's abortion must be mailed to the parent or legal guardian via first class mail in addition to certified mail;
- Requiring that actual notice provided by telephone be followed up with written confirmation;
- Requiring that when abortions are performed due to a medical emergency that the physician make reasonable attempts whenever possible, and without endangering the life of the minor, to contact the parent or legal guardian;
- Requiring follow up notification to the parent or legal guardian after an abortion is performed due to a medical emergency;
- Requiring written waivers of persons entitled to notice to be notarized and dated not more than 30 days prior to the abortion;
- Requiring petitions for judicial waiver to be filed in the circuit court where the minor resides;
- Requiring a court to rule on a minor's petition within three business days and to provide for a subsequent hearing within 48 hours if the petition is not ruled on in three business days;
- Removing the provision finding that failure of a trial court to rule is considered a granting of the petition and requiring a ruling in each case;
- Providing factors for the court to consider when determining a minor's maturity to decide whether to have an abortion without parental involvement; and
- Providing that financial considerations are not to be included in determining what is in a minor's best interest.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011, or upon the adoption of rules and forms by the Florida Supreme Court, whichever occurs first.

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**CS/HJR 1471 - Religious Freedom**

**By: Judiciary Committee; Plakon; Precourt and others**

**Tied Bills: None**

**Companion Bills: SJR 1218**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Constitutional Amendments**

**Keywords: Religion**

The Joint Resolution proposes an amendment to the Florida Constitution relating to religious freedom. The resolution:

- Repeals a limit on the power of the state and its subdivisions to spend funds “directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution;”
- Provides that government may not deny the benefits of any program, funding, or other support on the basis of religious identity or belief, except to the extent required by the First Amendment to the United States Constitution.

If approved by 60 percent of the voters in the 2012 general election, the resolution will take effect on January 8, 2013.

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**CS/SB 1676 - Sovereign Immunity**

**By: Judiciary; Thrasher and others**

**Tied Bills: None**

**Companion Bills: CS/CS/HB 1393, SB 1924, Includes parts of CS/CS/CS/SB 1972**

**Committee(s) of Reference: Health Regulation; Judiciary; Budget (w/d)**

**Category: Courts, Health**

**Keywords: Civil, Local Governments, Public Meetings, Public Records, Tort Reform**

Sovereign immunity is a legal concept that prohibits lawsuits against the government, unless the government waives the protection. The state has long provided a limited waiver of its sovereign immunity for ordinary tort liability, including medical malpractice. This bill provides that any nonprofit independent college or university in this state which owns or operates an accredited medical school and which has agreed in a contract or affiliation agreement to provide patient services as agents of a teaching hospital is protected by sovereign immunity when operating at that teaching hospital. The contract must provide for indemnification of the teaching hospital by the college or university; and must also provide that the portions of the college, university, or medical school, which are directly providing services pursuant to the contract, are subject to public records law.

This bill applies to causes of action accruing on or after the effective date.

Subject to the Governor’s veto powers, the effective date of this bill is upon becoming a law.

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**HB 4067 (ch. 2011-10, L.O.F.) - Residence of Clerk of the Circuit Court**

**By: McBurney**

**Tied Bills: None**

**Companion Bills: SB 1100**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Courts, Repeals of Existing Law**

**Keywords: Clerks of Court**

Current law requires that the clerk of a circuit court, or a deputy clerk, must reside within two miles of the county seat. This bill repeals the requirement.

This bill became law on April 27, 2011, chapter 2011-10, Laws of Florida, and becomes effective July 1, 2011.

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**CS/HJR 7111 - Judiciary**

**By: Judiciary Committee; Civil Justice Subcommittee; Eisnagle and others**

**Tied Bills: None**

**Companion Bills: HJR 1097; HJR 7037; SJR 1664; SJR 1704; SJR 2084**

**Committee(s) of Reference: Civil Justice Subcommittee; Judiciary Committee**

**Category: Constitutional Amendments, Courts**

**Keywords: Appellate Court, Judge, Judicial Qualifications, Justice, Reform, Rules, Supreme Court**

This joint resolution proposes a constitutional amendment to:

- Currently, justices are selected by the Governor from a list of qualified candidates selected by a nominating commission. This joint resolution adds a requirement that a Supreme Court justice selected by the Governor must be confirmed by the Senate to take office. If the Senate does not reject a nominee within 90 days, the nominee is deemed confirmed;
- Current law allows the Supreme Court to adopt rules for the practice and procedure in all courts. Court rules may be repealed by a two-thirds vote of the Legislature. This proposed amendment provides for the repeal of a court rule by general law (a simple majority), provided that the Legislature gives reasons for the repeal. The court may not readopt a rule without conforming the rule to the reasons for the repeal, and if repealed again it may not be readopted without Legislative approval; and
- Currently, investigative files of the Judicial Qualifications Commission are confidential. This joint resolution would allow the House of Representatives, at the Speaker's request, to review all investigative files of the Judicial Qualifications Commission.

If approved by 60 percent of the voters in the 2012 general election, the resolution will take effect on January 8, 2013.

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## **Criminal Justice Subcommittee**

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### **CS/HB 3 - Assault or Battery of a Law Enforcement Officer**

**By: Criminal Justice Subcommittee; Nehr and others**

**Tied Bills: None**

**Companion Bills: SB 464**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Law Enforcement**

**Keywords: Assault, Police, Sheriff, State Trooper**

The bill creates s. 784.071, F.S., establishing a “blue alert.” A blue alert is issued at the request of an authorized person at a law enforcement agency if a law enforcement officer has been killed, suffered serious bodily injury, has been assaulted with a deadly weapon, or is missing while in the line of duty under circumstances evidencing concern for the officer. The bill specifies other conditions that must be met before the alert can be issued.

The bill requires the Florida Department of Law Enforcement, in cooperation with the Department of Highway Safety & Motor Vehicles and the Department of Transportation to activate the Emergency Alert System and issue a blue alert.

The bill provides that the blue alert will be immediately disseminated to the public through the emergency alert system by broadcasting the alert on television, radio, and the dynamic message signs that are located along the state’s highways.

Subject to the Governor’s veto powers, the effective date of this bill is October 1, 2011.

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### **CS/CS/HB 39 - Controlled Substances**

**By: Judiciary Committee; Criminal Justice Subcommittee; Adkins; Rouson and others**

**Tied Bills: None**

**Companion Bills: CS/CS/SB 204**

**Committee(s) of Reference: Criminal Justice Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee**

**Category: Health, Law Enforcement**

**Keywords: Drug Abuse, Drugs, Criminal**

The bill adds the following synthetic cannabinoids and synthetic cannabinoid-mimicking compounds often referred to as “K2” or “Spice,” which are used as recreational drugs, to Schedule I of Florida’s controlled substance schedules:

- 2-[ (1R, 3S) -3-hydroxycyclohexyl] -5- (2-methyloctan-2-yl) phenol, also known as CP 47, 497 and its dimethyloctyl (C8) homologue;
- (6aR, 10aR) -9- (hydroxymethyl) -6, 6-dimethyl-3- (2-methyloctan-2-yl) -6a, 7, 10, 10a-tetrahydrobenzo [ c ] chromen-1-ol, also known as HU-210;
- 1-Pentyl-3- (1-naphthoyl) indole, also known as JWH-018;



- 1-Butyl-3- (1-naphthoyl) indole, also known as JWH-073; and
- 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl) indole, also known as JWH-200.

As a result, anyone in possession of the above-listed synthetic cannabinoids will be guilty of a third degree felony in conformity with other Schedule I hallucinogens. This offense will be ranked in Level 3 of the offense severity ranking chart. However, possession of 3 grams or less of synthetic cannabinoids will be a first degree misdemeanor, unless the synthetic cannabinoid is in powdered form. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver synthetic cannabinoids will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The offense of purchase of synthetic cannabinoids will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2011.

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**CS/CS/CS/HB 45 - Regulation of Firearms and Ammunition**

**By: Judiciary Committee; Community & Military Affairs Subcommittee; Criminal Justice Subcommittee; Gaetz and others**

**Tied Bills: None**

**Companion Bills: CS/CS/CS/SB 402**

**Committee(s) of Reference: Criminal Justice Subcommittee; Community & Military Affairs Subcommittee; Judiciary Committee**

**Category: Local Government**

**Keywords: Weapons, Regulation, Local Governments, Fine**

The bill prohibits specified entities from enacting or causing to be enforced local ordinances or administrative rules or regulations that impinge upon the Legislature’s exclusive occupation of the field of firearm and ammunition regulation. The bill sets forth various exceptions to this prohibition, which include:

- Zoning ordinances that encompass firearms businesses along with other businesses;
- Law enforcement agencies who enact and enforce regulations related to firearms issued to or used by officers in the course of their official duties;
- The entities subject to the bill’s prohibitions from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge’s jurisdiction; or
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating shooting ranges managed by the Commission.

The bill requires the court to declare any ordinance, rule, or regulation enacted in violation of the prohibition invalid and to issue an injunction prohibiting its enforcement. If the court determines that the violation was knowing and willful, the court must assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. Knowing and willful violations are also cause for immediate termination of employment.

The bill also authorizes a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the statute to file suit for declarative and injunctive relief and for actual damages caused by the violation. The bill requires the court to award the prevailing plaintiff in any such suit attorneys fees and costs, including a contingency fee multiplier, and the actual damages incurred (the actual damages award cannot exceed \$100,000).

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**CS/CS/HB 75 - Offense of Sexting**

**By: Judiciary Committee; Criminal Justice Subcommittee; Abruzzo and others**

**Tied Bills: None**

**Companion Bills: CS/CS/SB 888**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Law Enforcement**

**Keywords: Juvenile Justice, Criminal**

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as "sexting." The bill creates the offense of sexting. It specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possesses a photograph or video that was transmitted or distributed by another minor as described above.

A minor does not commit sexting if the minor did not solicit the photograph or video, took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official, and did not transmit or distribute the photograph or video to a third party.

The bill specifies that the transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed by the minor within the same 24-hour period. The bill also provides that the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if such photographs or videos were transmitted or distributed by the minor in the same 24-hour period.

A minor who commits sexting is subject to the following penalties:

- A first violation is a non-criminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine;
- A minor commits a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed a noncriminal sexting offense;
- A minor commits a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a first degree misdemeanor sexting offense;

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**CS/HB 105 - Open House Parties**

**By: Judiciary Committee; Goodson and others**

**Tied Bills: None**

**Companion Bills: CS/SB 746**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Law Enforcement, Courts**

**Keywords: Drugs, Sentencing**

Under current law, it is a second degree misdemeanor offense if a person knowingly hosts an open house party where alcohol or drugs are possessed or consumed by a minor without having taken reasonable steps to prevent such possession or consumption. This bill enhances the open house party offense to a first degree misdemeanor for a second or subsequent open house party conviction. The bill provides a first degree misdemeanor penalty for a violation of the open house party law that causes or contributes to causing serious bodily injury or death to a minor. The bill also provides a first degree misdemeanor penalty for a violation of the open house party law if a minor causes or contributes to causing serious bodily injury or death to another as a result of the minor's consumption of alcohol or drugs at the open house party.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/CS/HB 155 - Privacy of Firearm Owners**

**By: Health & Human Services Committee; Criminal Justice Subcommittee; Brodeur and others**

**Tied Bills: None**

**Companion Bills: CS/CS/CS/SB 432**

**Committee(s) of Reference: Criminal Justice Subcommittee; Health & Human Services Committee; Judiciary Committee**

**Category: Health**

**Keywords: Weapons, Insurance, Regulation, Hospital**

The bill prohibits a licensed health care practitioner or licensed health care facility from intentionally entering any disclosed information concerning firearm ownership into a patient's health record if the information is not relevant to the patient's medical care or safety or the safety of others. Additionally, licensed health care providers and health care facilities:

- Should refrain from inquiring, whether oral or written, about the patient's or patient's family member's ownership of firearms or ammunition unless the information is relevant to the patient's medical care or safety, or the safety of others;
- Are prohibited from discriminating against a patient based upon whether the patient exercises his or her constitutional right to own and possess firearms or ammunition; and
- Must respect a patient's right to own or possess a firearm and refrain from harassing a patient about firearm ownership during an examination.

Non-compliance by licensed health care practitioners and health care facilities constitutes grounds for disciplinary action under ss. 456.072 and 395.1055, F.S.

Additionally, the bill specifies that patients have the right to decline to answer or provide any information concerning the ownership of a firearm and that a patient's decision not to answer does not alter existing law regarding a physician's authority to choose patients.

The bill amends Florida's Patient's Bill of Rights and Responsibilities (s. 381.026, F.S.) to include the above-described provisions.

The bill provides an emergency medical technician or paramedic the authority to inquire in good faith, about the possession or presence of a firearm if they believe that it is relevant to the treatment of a patient during the course and scope of a medical emergency or if the presence or possession of a firearm poses a threat of imminent danger to the patient or others.

Insurers issuing the types of policies regulated pursuant to Chapter 627 are prohibited from discriminating, denying coverage, or increasing premiums on the basis that an insured or applicant possesses or owns a firearm or ammunition. However, insurers are allowed to consider the fair market value of firearms or ammunition when setting premiums for scheduled personal property coverage.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/CS/SB 170 - Electronic Filing and Receipt of Court Documents**

**By: Budget Subcommittee on Criminal and Civil Justice Appropriations; Judiciary; Bennett**

**Tied Bills: None**

**Companion Bills: CS/CS/HB 443**

**Committee(s) of Reference: Judiciary; Budget Subcommittee on Criminal and Civil Justice Appropriations; Budget**

**Category: Courts**

**Keywords: Clerks of Court**

The bill creates ss. 27.341 and 27.5112, F.S., which are both entitled, "Electronic filing and receipt of court documents." The bill:

- Requires the state attorney and the public defender offices to electronically file court documents with the clerk of the court and to electronically receive court documents from the clerk of the court;
- Expresses the expectation of the Legislature that each state attorney and public defender consult with specified entities in implementing the bill's electronic filing and receipt of court documents requirement;
- Requires the Florida Prosecuting Attorneys Association and the Florida Public Defender Association to report to Legislative leaders by March 1, 2012, on the progress made to use the Florida Courts E-Portal, or other clerks' offices portals for purposes of electronic filing and receipt of court documents; and
- Requires parties represented by attorneys in hearings under the Department of Administrative Hearings' Adjudication of Disputes Program and in the Worker's Compensation Appeals Program to file all documents electronically.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/CS/SB 234 - Firearms**

**By: Rules; Criminal Justice; Evers and others**

**Tied Bills: None**

**Companion Bills: CS/CS/HB 517**

**Committee(s) of Reference: Criminal Justice; Judiciary; Rules**

**Category: Law Enforcement, Repeals of Existing Law**

**Keywords: Weapons, Criminal**

Generally, it is unlawful for a person to openly carry a firearm. The bill specifies that it is not a crime for a concealed firearm permit holder, who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not necessary in self-defense.

The bill also repeals s. 790.28, F.S., which limits Florida residents to the purchase of rifles and shotguns in contiguous states. As a result, Florida residents will be permitted to purchase rifles and shotguns in any state (not just contiguous states) so long as federal requirements are met, which include:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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#### **SB 240 - Violations of Injunctions for Protection**

**By: Joyner**

**Tied Bills: None**

**Companion Bills: HB 101**

**Committee(s) of Reference: Criminal Justice; Judiciary; Budget**

**Category: Law Enforcement**

**Keywords: Assault, Criminal**

The bill adds the following to the list of ways in which a person could violate injunctions for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

Violation of an injunction for protection is a first degree misdemeanor offense.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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#### **CS/CS/CS/HB 251 - Sexual Offenses**

**By: Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; Dorworth and others**

**Tied Bills: None**

**Companion Bills: CS/CS/SB 488; includes parts of CS/HB 595; CS/CS/SB 846**

**Committee(s) of Reference: Criminal Justice Subcommittee; Appropriations Committee; Judiciary Committee**

**Category: Courts, Law Enforcement**

**Keywords: Criminal, Assault, Child Protection, Internet, Police, Sheriff**

The bill creates the "Walk in Their Shoes Act." This bill does the following:

- Expands the admissibility of collateral crime or “similar fact” evidence in cases where a person is charged with child molestation or a sexual offense;
- Allows the use of a registered service or therapy animal when taking the testimony of children in any proceeding involving a sexual offense;
- Prohibits a court from granting a criminal defendant’s request to duplicate or copy material depicting sexual performance by a child or child pornography as long as the state attorney makes the material reasonably available to the defendant for inspection;
- Requires licensed facilities providing emergency room services to gather forensic medical evidence from victims of sexual assault who have reported a sexual battery to a law enforcement agency or who have requested such evidence be gathered for purposes of filing a report in the future;
- Amends the statute of limitations for video voyeurism offenses to authorize commencement of prosecutions within one year from either the date the victim learns of the existence of the video recording or the date the recording is confiscated by law enforcement, whichever occurs first;
- Adds crimes to the list of offenses for which an additional \$151 surcharge will be assessed against a convicted defendant in order to fund to the Rape Crisis Program Trust Fund;
- Amends s. 960.003, F.S., to require hepatitis testing to the same extent as HIV testing and to provide for follow-up HIV testing if medically appropriate. The bill also requires the court, upon a victim’s request, to order specified defendants to undergo hepatitis and HIV testing within 48 hours of the filing of the formal charging document or, if such time has passed, within 48 hours of a victim’s request;
- Requires Internet safety to be taught at public schools;
- Requires a law enforcement officer investigating a sexual battery to provide or arrange for the victim's transportation to an appropriate facility, and to permit the victim to review the officer’s final report for accuracy;
- Makes it a second degree felony for a person to "intentionally view" specified items that portray sexual conduct by a child; and
- Appropriates \$1.5 million nonrecurring General Revenue funds to a nonprofit organization for the purposes of educating adults and children about sexual abuse topics through an in-school curriculum and for maintaining a 24-hour crisis hotline.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2011, except as otherwise specified.

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**CS/CS/HB 339 - Possession of Stolen Credit or Debit Cards**

**By: Judiciary Committee; Criminal Justice Subcommittee; Perman and others**

**Tied Bills: None**

**Companion Bills: CS/SB 920**

**Committee(s) of Reference: Criminal Justice Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee**

**Category: Law Enforcement**

**Keywords: Credit, Fraud**

The bill provides that a person commits a third degree felony if a person knowingly possesses, receives, or retains custody of a credit or debit card that has been taken from the possession, custody, or control of another without the cardholder's consent with the intent to impede the recovery of the credit or debit card by the cardholder.

The bill also specifies that this new offense does not apply to a retailer or retail employee who, in the ordinary course of business, possesses, receives, or returns a credit card or debit card that the retailer or retail employee does not know was stolen; or who possesses, receives, or retains a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**HB 347 - Vehicle Crashes Involving Death**

**By: Diaz; Trujillo and others**

**Tied Bills: None**

**Companion Bills: SB 514**

**Committee(s) of Reference: Criminal Justice Subcommittee; Transportation & Highway Safety Subcommittee; Judiciary Committee**

**Category: Law Enforcement**

**Keywords: Auto, Criminal, Highway Safety**

The bill creates the "Ashley Nicole Valdes Act," in honor of an eleven year old hit-and-run victim.

The bill provides that a person arrested for failure to stop a vehicle at the scene of an accident involving the death of any person and who has previously been convicted of s. 316.027, F.S. (leaving the scene of an accident), s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways), s. 316.193, F.S. (driving under the influence), or a felony violation of s. 322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified), must be held in custody until first appearance.



The bill prevents judges who issue warrants for failure to stop a vehicle at the scene of an accident involving death from setting a predetermined bond amount in an arrest warrant. The bill also prevents local jurisdictions from placing such offense on a bond schedule with predetermined bond amounts.

Subject to the Governor's veto powers, the effective date of this bill is October 1, 2011.

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**CS/CS/HB 369 - Faith- and Character-based Correctional Institution Programs**

**By: Judiciary Committee; Criminal Justice Subcommittee; Rouson and others**

**Tied Bills: None**

**Companion Bills: CS/SB 2010, HB 4215, SB 2018**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Corrections**

**Keywords: Inmates, Prisons, Private Prisons, Department of Corrections**

The bill rewords the "faith-based programs for inmates" section of statute to add secular language.

The bill adds legislative intent language to s. 944.803, F.S., encouraging the Department of Corrections to expand the faith- and character-based initiative through the use of faith- and character-based institutions while phasing out the faith-based/self improvement dormitories.

The bill provides that peer-to-peer programs must be allowed at faith- and character-based institutions when appropriate.

This bill removes:

- Obsolete requirements that the Department of Corrections establish and operate six new faith based programs;
- Provisions that require 80 percent of the inmates participating in the faith-based/self improvement dormitory program to be within 36 months of release;
- Faith- and character-based program priority assignments given to inmates who have shown an indication for substance abuse; and
- Requirements regarding chaplain assignments in correctional institutions, dormitories, and community correctional centers.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/SB 400 (ch. 2011-33, L.O.F.) - Treatment-based Drug Court Programs**

**By: Criminal Justice; Wise and others**

**Tied Bills: None**

**Companion Bills: CS/HB 81**

**Committee(s) of Reference: Criminal Justice; Judiciary; Budget**

**Category: Courts, Corrections**

**Keywords: Criminal, Sentencing, Drug Testing**

The bill expands the eligibility criteria for post-adjudicatory treatment-based drug court programs by:

- Increasing the number of sentencing points allowed for admission into a post-adjudicatory treatment-based drug court program from 52 to 60; and
- Allowing an offender to be placed into a post-adjudicatory drug court program after violating the terms of his or her probation or community control.

The bill also allows a drug court participant to have all of his or her probation and community control violations heard by the judge presiding over the post-adjudicatory drug court.

The bill became law on May 5, 2011, chapter 2011-33, Laws of Florida, and becomes effective July 1, 2011.

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**CS/CS/HB 563 - Injunctions for Protection Against Domestic Violence, Repeat Violence, Sexual Violence, or Dating Violence**

**By: Judiciary Committee; Criminal Justice Subcommittee; Jones and others**

**Tied Bills: None**

**Companion Bills: CS/SB 438**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Law Enforcement, Courts**

**Keywords: Assault, Clerks of Court, Criminal, Domestic Violence, Grant, Police, Sheriff**

The bill requires the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. The bill requires notification to be made within 12 hours after the sheriff or other law enforcement officer has served the injunction upon the respondent. Such notification must include the date, time, and location in which the protective injunction was served.

The bill also provides that the Florida Association of Court Clerks and Comptrollers may apply for any available grants to fund the development of the automated process.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**CS/SB 618 - Juvenile Justice**

**By: Criminal Justice; Evers**

**Tied Bills: None**

**Companion Bills: Includes parts of CS/CS/HB 4157; parts of HB 1233; parts of CS/SB 1850**

**Committee(s) of Reference: Criminal Justice; Budget Subcommittee on Criminal and Civil Justice**

**Appropriations; Budget**

**Category: Repeals of Existing Law**

**Keywords: Criminal, Juvenile Justice**

The bill repeals and amends numerous sections of ch. 985, F.S., to remove obsolete language, to more accurately reflect current practices of the Department of Juvenile Justice, and to authorize the Department of Juvenile Justice to continue providing staff development and training to department program staff. The specific provisions which the bill deletes are as follows:

- The definition of “serious or habitual juvenile offender program” (SHOP) in s. 985.03(48), F.S., the legislative intent language relating to SHOP in s. 985.02(5), F.S., and the statute implementing this program in s. 985.47, F.S., two statutes implementing the intensive residential treatment program for offenders under 13 years of age (JR. SHOP) in ss. 985.483 and 985.486, F.S., and the definition of “training school” in s. 985.03(56), F.S.;
- References in s. 985.494, F.S., to SHOP, JR. SHOP, the early delinquency intervention program, and the sheriff’s training and respect (STAR) programs (formerly known as juvenile boot camps);
- References to the STAR program in s. 985.445, F.S., which authorizes the court to place a child adjudicated for a grand theft of a motor vehicle offense into a STAR program;
- An obsolete statute, s. 985.636, F.S., relating to inspectors within the Inspector General’s Office being sworn law enforcement officers, if the Secretary of the Department of Juvenile Justice deems it necessary to enforce criminal law and conduct criminal investigations relating to state operated facilities; and
- Obsolete references to the Juvenile Justice Standards and Training Commission which provided staff development and training until it expired in 2001 and the Department of Juvenile Justice took over those duties. The bill codifies current practice by specifying that the Department of Juvenile Justice is responsible for staff development and training.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2011.

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**CS/SB 664 - Missing Person Investigations/Silver Alert**

**By: Judiciary; Benacquisto and others**

**Tied Bills: None**

**Companion Bills: CS/HB 513**

**Committee(s) of Reference: Criminal Justice; Judiciary; Budget Subcommittee on Criminal and Civil Justice Appropriations; Budget (w/d)**

**Category: Law Enforcement**

**Keywords: Elderly, Police, Sheriff, State Trooper**

The bill amends the definition of “missing endangered person” in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The Silver Alert was developed to broadcast information in a timely manner to the general public about a missing elderly person who suffers from irreversible deterioration of intellectual faculties.

The bill also provides that only the law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The bill provides immunity from civil liability to entities who act in good faith when requested to record, report, transmit, display, or release information pertaining to a Silver Alert.

Subject to the Governor’s veto powers, the effective date of this bill is July 1, 2011.

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**CS/SB 844 (ch. 2011-38, L.O.F.) - Violations/Probation/Community Control/Widman Act**

**By: Budget; Benacquisto and others**

**Tied Bills: None**

**Companion Bills: CS/HB 575**

**Committee(s) of Reference: Criminal Justice; Judiciary; Budget**

**Category: Courts, Law Enforcement**

**Keywords: Criminal, Sentencing**

Section 948.03, F.S., contains a standard condition requiring probationers to live without violating the law. Thus, if a person on probation is arrested for a new criminal offense, that person can also be arrested for violating the terms of probation. Section 948.06, F.S., sets forth two ways in which a probationer can be arrested for violating probation:

- Whenever there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, a law enforcement officer who is aware of the probationary status of the probationer or a probation supervisor may arrest the probationer without a warrant and return him or her to the court granting such probation; and
- A probation officer may file an affidavit with the court alleging a violation of probation. After the court evaluates the facts alleged in the affidavit, the court may issue a warrant for the probationer’s arrest or in some instances, a notice to appear.

The bill provides a third way in which a probationer can be arrested for violating probation:

- The court may order the arrest of a probationer pursuant to the court finding that the probationer has committed a new law violation and that there exist reasonable grounds to believe that the probationer or offender has therefore violated his or her probation in a material respect.

The bill also allows the court to consider the likelihood of a prison sanction on the violation of probation based on the new law violation as a factor in determining bail.

The bill became law on May 9, 2011, chapter 2011-38, Laws of Florida, and becomes effective October 1, 2011.

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**CS/HB 997 - Juvenile Civil Citations**

**By: Justice Appropriations Subcommittee; Pilon and others**

**Tied Bills: None**

**Companion Bills: CS/SB 1300**

**Committee(s) of Reference: Criminal Justice Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee**

**Category: Law Enforcement, Local Government**

**Keywords: Civil, Criminal, Juvenile Justice, Police, Sheriff**

The bill requires that a civil citation or similar diversion program be established at the local level. The bill specifies that the program may be operated by:

- A law enforcement agency;
- The Department of Juvenile Justice;
- A juvenile assessment center;
- A county or municipality; or
- An entity selected by a county or municipality.

The bill requires the Department of Juvenile Justice to develop guidelines for the civil citation program which include intervention services that are based upon proven civil citation or similar diversion programs within Florida.

The bill restricts civil citation or similar diversion programs to only first-time misdemeanor offenders and requires juveniles participating in a civil citation or similar diversion program to participate in no more than 50 community service hours and intervention services as indicated by an assessment of the juvenile's needs. Upon completion of the civil citation or similar diversion program, the agency who issued the citation must report the outcome to the Department of Juvenile Justice.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**HB 1029 - Interstate Compact for Juveniles**

**By: Brodeur**

**Tied Bills: None**

**Companion Bills: SB 1494**

**Committee(s) of Reference: Criminal Justice Subcommittee; Rulemaking & Regulation Subcommittee; Judiciary Committee**

**Category: Corrections, Law Enforcement**

**Keywords: Juvenile Justice**

The bill reenacts s. 985.802, F.S., relating to Execution of Interstate Compact for Juveniles (compact), and s. 985.8025, F.S., relating to State Council for Interstate Juvenile Offender Supervision. The compact governs interstate movement of juveniles on probation and parole as well as extradition across state lines of runaways, escapees, absconders and juveniles charged as delinquent. The compact became effective in August 2008, but due to a sunset provision, expired on August 26, 2010.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

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**CS/HB 1039 - Controlled Substances**

**By: Justice Appropriations Subcommittee; Patronis and others**

**Tied Bills: None**

**Companion Bills: CS/SB 1886**

**Committee(s) of Reference: Criminal Justice Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee**

**Category: Health, Law Enforcement**

**Keywords: Criminal, Drug Abuse, Drugs**

The bill adds the following substances, currently marketed as "bath salts", to Schedule I of Florida's controlled substance schedules:

- 3,4-Methylenedioxy methcathinone;
- 3,4-Methylenedioxy pyrovalerone (MDPV);
- Methy methcathinone;
- Methoxy methcathinone;
- Fluoromethcathinone; and
- Methylethcathinone.

As a result, anyone in possession of these substances will be guilty of a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The purchase of these substances will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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**HB 4159 - State Attorneys**

**By: Ray**

**Tied Bills: None**

**Companion Bills: CS/SB 1092**

**Committee(s) of Reference: Criminal Justice Subcommittee; Judiciary Committee**

**Category: Courts, Repeals of Existing Law**

**Keywords: Criminal, Sentencing**

The bill removes the following reporting requirements for state attorneys:

- The requirement to submit a quarterly report to the Florida Prosecuting Attorneys Association regarding defendants who do not receive a minimum mandatory sentence pursuant to the "10-20-Life" statute;
- The requirement to submit an annual report to the Legislature and the Governor regarding the prosecution and sentencing of defendants pursuant to the "10-20-Life" statute;
- The requirement to adopt uniform criteria when deciding to pursue habitual felony offender, habitual violent felony offender, or violent career criminal sanctions and to report such criteria to the Florida Prosecuting Attorneys Association; and
- The requirement to develop written policies and guidelines to govern determinations for direct filing an information on a juvenile and submit those guidelines to the Legislature and the Governor.

Sentencing deviation information required by ss. 27.366 and 775.087, F.S., will still be documented in a defendant's case file and will still be available to the public.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2011.

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