

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: CS/SB 1626

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Department of Legal Affairs

DATE: April 12, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1626 amends current law with respect to the Attorney General’s duties and responsibilities.

The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the council’s annual summit;
- Provides that the Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General (OAG) for security services;
- Amends dates to keep Florida’s Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of “virtual currency” and amends the term “monetary instruments” to include “virtual currency” in the Money Laundering Act;
- Amends the Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and;
- Creates s. 960.201, F.S., providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

The bill will have a positive fiscal impact on the Statewide Council on Human Trafficking and surviving family members of first responders. The Department of Highway Safety and Motor Vehicles have been providing security services for the Attorney General and should be able to continue to absorb the costs with existing resources. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

## II. Present Situation:

The Attorney General is charged with all common law powers and duties pertaining to the office unless they have been expressly restricted or modified by statute or the state constitution.<sup>1</sup>

The Attorney General is the chief law officer of the state and, absent express legislative restriction, may exercise such power and authority as the public interest may require.<sup>2</sup> As chief legal officer of the state, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.<sup>3</sup>

The Attorney General is also the head of the Department of Legal Affairs.<sup>4</sup> The Department of Legal Affairs (DLA) is responsible for providing all legal services required by any executive department unless otherwise provided by law. Additionally, DLA administers certain trust funds and related programs that support crime victim services, criminal investigations,<sup>5</sup> and crime prevention.<sup>6</sup>

The Office of the Statewide Prosecution prosecutes crimes that impact two or more judicial circuits in the state. The Statewide Prosecutor is appointed by the Attorney General and serves a term of four years.<sup>7</sup> The office focuses on complex, often large scale, organized criminal activity, including violations of the Florida Money Laundering Act.<sup>8</sup>

## III. Effect of Proposed Changes:

This bill makes changes and updates in many subject areas of the Office of the Attorney General's jurisdiction and duties.

### Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking resides within DLA "for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support

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<sup>1</sup> Section 16.01, F.S., *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

<sup>2</sup> *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

<sup>3</sup> *State ex rel. Landis v. S.H. Kress & Co.*, 115 Fla. 189 (Fla. 1934).

<sup>4</sup> Section 16.015, F.S.

<sup>5</sup> Sections 16.555 and 16.556, F.S.

<sup>6</sup> Section 16.54, F.S.

<sup>7</sup> Section 16.56, F.S.; see also, DLA, "Office of Statewide Prosecution," available at

<http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 23, 2017).

<sup>8</sup> Sections 896.101 and 16.56(1)(a)13., F.S.

victims.”<sup>9</sup> One of the duties of the council is to hold an annual statewide policy summit, but there is no dedicated funding source for the council to spend on the annual policy summit. **Section 1** amends s. 16.617, F.S., to give the council the authority to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit.

### **Security Detail**

The Department of Highway Safety and Motor Vehicles assigns one Florida Highway Patrol officer as security detail for the Governor. The implementing bill for the 2016 General Appropriations Act provided for assignment of a patrol officer to each member of the Cabinet for the 2015-2016 and 2016-2017 fiscal years, as deemed appropriate by the Department of Highway Safety and Motor Vehicles or upon written request of the Cabinet member.<sup>10</sup> **Section 2** amends s. 321.04, F.S., to allow the Attorney General to request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services.

### **Florida Deceptive and Unfair Trade Practices Act**

The Attorney General is largely responsible, through the DLA, for enforcing the “Florida Deceptive and Unfair Trade Practices Act” (FDUPTA).<sup>11</sup>

A violation of the FDUPTA or related rules is statutorily defined as being tied to federal law relating to consumer protection.<sup>12</sup> In order to adopt any changes in the rules of the Federal Trade Commission Act, and therefore keep the Florida Statutes current, the date appearing in ss. 501.203(3) and 501.204(2), F.S., is amended in **Sections 3 and 4** of the bill to read “July 1, 2017.”

### **Charitable Trusts**

The Florida Trust Code appears in ch. 736, F.S. The Attorney General currently has the authority under s. 736.0100, F.S., to assert the rights of a qualified beneficiary of certain charitable trusts.<sup>13</sup>

**Sections 5-11** of the bill amend the Trust Code related to charitable trusts in numerous sections to accomplish two purposes. The first is to provide for the Attorney General to fulfill the role of the local state attorney in matters involving oversight of charitable trusts if it becomes necessary. The other purpose is to require delivery of notice to and give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of

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<sup>9</sup> Section 16.617, F.S.

<sup>10</sup> Current subsection (4) of s. 321.04, F.S., will expire on July 1, 2017. It was enacted “[i]n order to implement Specific Appropriation 2580 and section 85 of the 2016-2017 General Appropriations Act.”

<sup>11</sup> Part II of ch. 501, F.S., (Florida Deceptive and Unfair Trade Practices Act). If a violation occurs in a particular judicial circuit, the state attorney has the authority to enforce the act; however, the state attorney may defer to the DLA, or if the violation occurs in more than one judicial circuit, the DLA is the “enforcing authority.” s. 501.203(2), F.S.

<sup>12</sup> Sections 501.202(3), 501.203(3), and 501.204(2), F.S.

<sup>13</sup> Section 736.0110(3), F.S.

the trust or its beneficiaries.<sup>14</sup> These revisions in current law will allow the Attorney General to carry out the responsibilities set forth in s. 736.0110, F.S., in a more consistent and effective manner.

### Virtual Currency

**Section 12** of the bill creates a definition that recognizes the existence of “virtual currency” in the realm of finances.<sup>15</sup> In s. 896.101, F.S., of the Money Laundering Act, the new definition provides that virtual currency means “a medium of exchange in electronic or digital format which is not a coin or currency of the United States or another country.”<sup>16</sup> The term “monetary instruments” is amended to include the term “virtual currency.”<sup>17</sup> These changes will update the Money Laundering Act to account for emerging and new types of currency used in transactions.

### Crimes Compensation Act

The Crimes Compensation Act exists in ss. 960.01-960.28, F.S., and conveys many duties and responsibilities upon the Attorney General’s Victims’ Services Office. Under this Act, claims are filed and payment is made to crime victims according to the criteria set forth in ss. 960.065, 960.07, 960.12, and 960.13, F.S.

**Sections 13-15** of the bill amend the Crimes Compensation Act to create s. 960.201, F.S., specifically providing for compensation awards for loss of support to surviving family members of an emergency responder who dies in the line of duty while answering a call for service.

The bill defines “crime” in s. 960.03(3)(f), F.S., as “a felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.201, F.S., while answering a call for service in the line of duty.” “Emergency responder” means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic.

The bill amends s. 960.16, F.S., to waive the state’s subrogation rights for awards made under s. 960.201, F.S.

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<sup>14</sup> See ss. 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, and 736.1209, F.S. See also, *Delaware. ex rel. Gebelein v. Florida First National Bank*, 381 So.2d 1075 (Fla. 1st DCA 1979) and *Biden v. Lord*, 147 So.3d 632 (Fla. 1st DCA 2014).

<sup>15</sup> Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency. Bitcoin is one example of a convertible virtual currency. Bitcoin can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies. Notice 2014-21, “IRS Virtual Currency Guidance: Virtual Currency Is Treated as Property for U.S. Federal Tax Purposes; General Rules for Property Transactions Apply,” IR-2014-36, March 25, 2014, available at <https://www.irs.gov/uac/newsroom/irs-virtual-currency-guidance> (last visited March 23, 2017).

<sup>16</sup> A recent ruling by a Miami trial court dismissed a case in which the defendant was charged with a violation of s. 560.125(5)(a), F.S. (money service business), and money laundering (s. 896.101 (5)(a) and (5)(b), F.S.). Although the ruling was based in large part on other facts in the case, the court included the finding that “...Bitcoin has a long way to go before it is the equivalent of money. The Florida Legislature may choose to adopt statutes regulating virtual currency in the future. At this time, however, attempting to fit the sale of Bitcoin into a statutory scheme regulating money services is like fitting a square peg in a round hole.” *State v. Espinoza*, Case No. F14-2923, 11th Judicial Circuit, Miami-Dade County, Florida, order dated July 22, 2016.

<sup>17</sup> Section 896.101(e), F.S.

The DLA may award one claim, up to a maximum of \$50,000, to the emergency responder's surviving family members. If two or more persons are entitled to an award, then the award may be apportioned among the claimants at the discretion of the DLA. An award will be reduced or denied if the DLA has previously paid or approved a claim to the same victim or applicant regarding the same incident.

In evaluating the claim, the DLA must determine if the emergency responder had any contribution to his or her death due to his or her conduct, but may disregard such contribution if the record shows that the conduct occurred when he or she was acting as an intervener. The award amount may be reduced or denied by the DLA based on the outcome of the determination.

The DLA is authorized to adopt rules to implement these provisions.

#### **Effective Date**

The effective date of the bill is July 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

C. Government Sector Impact:

To the extent there is a fiscal impact related to Sections 13-15 of CS/SB 1626 (emergency responder death benefits), the Attorney General's Office reports that it can be absorbed by the Victims Compensation Trust Fund.

The Department of Highway Safety and Motor Vehicles have been providing security services for the Attorney General and should be able to continue to absorb the costs with existing resources.<sup>18</sup>

The Statewide Council on Human Trafficking will be able to apply for and accept grants, funds, gifts, and services from the state, the federal government, and other sources for the purpose of defraying the cost of the annual summit, as provided in Section 1.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Legal Affairs (DLA) is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 16.617, 321.04, 501.203, 501.204, 736.0110, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, 736.1209, 896.101, 960.03, 960.16, and 960.201.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 27, 2017:**

The committee substitute:

- Removed the amendment to s. 560.103, F.S., that added the term “virtual currency” to the Money Services Business chapter.
- Removed the amendment to s. 741.403, F.S., that added family to the address confidentiality program for victims of domestic violence.
- Amended s. 896.101(2)(e), F.S., to include the term “virtual currency” within the definition of “monetary instruments” in the Money Laundering Act.

- B. **Amendments:**

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None. This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>18</sup> Ch. 2016-16, s. 109, Laws of Florida.