

STORAGE NAME: h0915b.cp

DATE: April 6, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 915

RELATING TO: Victim/Witness Protection/Employment

SPONSOR(S): Rep. Cantens & others

COMPANION BILL(S): SB 0212(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY YEAS 9 NAYS 0
 - (2) CRIME AND PUNISHMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 915 expands current law as it pertains to liability of employers who retaliate against employees who testify as a witness or victim in a criminal or juvenile proceeding as follows:

- The bill amends section 960.001 to provide that any person who appears as a witness in a criminal or juvenile proceeding shall not be dismissed from employment for any reason relating to the nature or length of such service as a witness.
- The bill amends section 960.004 to provide that any employer who threatens to dismiss an employee for any reason relating to the nature or length of service as a witness in a criminal proceeding may be held in contempt of court.
- The bill provides that an employer who dismisses a victim or witness from employment or who withholds a witness's wages in violation of the section commits a non-criminal violation punishable by a fine not exceeding \$500.
- Additionally, the bill provides that in any civil action arising out of a violation of this section, the employer may be fined and found liable for compensatory damages, attorney's fees and punitive damages.

The Committee on Judiciary adopted a strike everything amendment which amends section 92.57 to provide that a person who testifies in a judicial proceeding may not be dismissed from employment, or threatened with dismissal from employment because of the nature of the person's testimony or because of absences from employment resulting from appearances as a witness. The original bill only applied to employees who testify in criminal cases while the strike everything amendment applies the protection to an employee who testifies in any judicial proceeding. The strike everything removes language from the bill which provides that a violation of the section is a noncriminal violation punishable by a fine not exceeding \$500. The strike everything amendment also removes language from the bill which provided that an employer may not withhold wages from an employee due to the employee's testimony.

The strike everything amendment is identical to SB 212 which was passed by the Senate on March 30, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 92.57 provides that a person who testifies in a judicial proceeding in response to a subpoena may not be dismissed from employment because of the nature of the person's testimony or because of absences from employment resulting from compliance with the subpoena. The statute also provides that in a civil action arising out of a violation of this section, the court may award attorney's fees and punitive damages to the person unlawfully dismissed in addition to the actual damages suffered by the person.

In Wiggins v. Southern Management Corp., 629 So.2d 1022 (Fla. 4th DCA 1993), an employee of a restaurant testified, without being subpoenaed, against her employer in an unemployment compensation hearing involving the employee's sister. The employee was then fired and brought a suit against the restaurant which claimed that her termination violated section 92.57. The trial court dismissed the case and the Fourth District affirmed the dismissal. According to the Fourth District, the statute does not prevent termination of an employee where the employee testified without being subpoenaed. The court noted, however, that the average person would be unaware that he or she should ask that a subpoena be issued before his or her testimony. The court further stated:

Thus, for all practical purposes, section 92.57, as currently written, protects only those person who are aware of its existence, which mostly frequently will be a witness [who is] represented by counsel. As a result, we would encourage the legislature to revisit this issue to determine whether the requirement of a subpoena is necessary to effect the legislative intent behind section 92.57.

Section 960.001 is titled, "Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems". The section outlines services that are to be provided for crime victims.

B. EFFECT OF PROPOSED CHANGES:

The bill amends section 960.001, F.S. by adding a subsection which provides that any person who appears as a witness in a criminal or juvenile proceeding shall not be dismissed from employment for any reason relating to the nature or length of such service as a witness. The bill further provides that any threat of dismissal for any reason relating to the nature or length of such service as a witness by an employer may be deemed a contempt of court. The bill additionally provides that any person who is dismissed from employment for any reason relating to the nature or length of service as a witness may bring a civil action against the person's employer for any violation of the section and shall be entitled to collect punitive damages and reasonable attorney fees in addition to compensatory damages for such violation.

The bill also creates section 960.004 which provides the following:

- The section defines "employer" as an individual or business organization that employs at least 10 or more employees who are regularly scheduled to work at least 35 hours a week.
- The section provides that the words "victim" or "witness" does not include defense witnesses or anyone accused of a crime.
- The bill provides that a victim or witness who is involved in the prosecution of a criminal or juvenile case, who is certified as such by the state attorney's office in the respective circuit, who is summoned to testify in court or at a deposition may not be dismissed from employment due to the nature or length of these activities.
- The bill provides that a threat of dismissal from employment to a victim or witness who was summoned to testify by the state attorney may be deemed contempt of court from which the summons is issued or the criminal or juvenile case is pending. Currently an employer may only be held liable for attorney's fees, actual damages and punitive damages if the employee brings a subsequent civil action. The court may not hold the employer in contempt unless the court has jurisdiction over the employer (i.e. the employer is a party to the proceeding in which the employee is testifying). This section would give the trial court before whom an employee is testifying

jurisdiction to find the employer in contempt of court if the employer threatens the employee with dismissal because of the testimony.

- The bill provides that an employer may not withhold wages, salary or other compensation from any full-time employee because of the employee's absence from work due to the employee's response to a victim or prosecution witness summons.
- The bill further provides that any person who dismisses a victim or witness from employment or withholds a victim's or witness's wages based on their testimony commits a noncriminal violation punishable by a fine not exceeding \$500 and shall be ordered by the court to pay the victim or witness any lost wages.
- The bill provides that any individual harmed by a violation of this section has the right to bring a civil action against the employer to collect compensatory damages, punitive damages and reasonable attorney's fees.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Courts may find employer-violators in contempt of court and award compensatory damages to employee-witnesses.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Employers may no longer threaten dismissal to testifying employees, employers be held in contempt for so doing, and courts may now award compensatory damages to employee-witnesses.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends section 960.001 and creates section 960.004.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 960.001 to prohibit an employer from dismissing any person who appears as a witness in a criminal or juvenile proceeding for any reason relating to the nature or length of such service as a witness. Provides that any threat of dismissal for testifying may be deemed a contempt of court. Provides that any person who is dismissed from employment for testifying may bring a civil action against employer.

Section 2: Creates section 960.004 which prohibits an employer from dismissing an employee for testifying in a criminal case. Provides that threatening dismissal for contempt of court may be deemed contempt of court. Prohibits withholding of compensation for witness testifying. Provides that a person who dismisses an employee or withholds compensation because of testimony commits a noncriminal violation punishable by a \$ 500 fine.

Section 3: Provides effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

This bill will have no impact on the Department of Corrections because a defendant cannot be put in prison for contempt of court.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not required counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

It is not uncommon for a person to be subpoenaed to testify in a case and then not actually testify at trial. The bill would not protect an employee in this situation from being fired.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Judiciary adopted a strike everything amendment which makes the following changes to section 92.57:

- The strike everything amendment provides that a person who testifies in a judicial proceeding may not be dismissed from employment, or threatened with dismissal from employment because of the nature of the person's testimony or because of absences from employment resulting from appearances as a witness. This removes the language in the statute which only applied the protection to an employee who was subpoenaed to testify. This amendment adds language to the statute prohibiting an employer from threatening to fire an employee.
- The strike everything amendment also adds language to the statute which provides that the court may hold an employer in contempt if the employer dismisses an employee or threatens to dismiss an employee because of his or her testimony as a witness. Currently, a trial court cannot hold an employer in contempt of court unless the employer is a party to the action in which the employee is testifying.
- The strike everything amendment further clarifies the statute by providing that in any civil action arising from a violation of this section, the court may award compensatory damages, attorney's fees and punitive damages.

The strike everything amendment is identical to SB 212.

VII. SIGNATURES:

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