

STORAGE NAME: h0915a.jud

DATE: March 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
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 & PUNISHMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill expands current law as it pertains to liability of employers who retaliate against employees who testify as a witness of victim in a criminal or juvenile proceeding in Section 960.001, F.S. Employers who dismiss, or threaten to dismiss, employees may be held in contempt of court. Additionally, 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 strike all amendment places the protection in Section 92.57, F.S. and substantially amends that section. It prohibits the dismissal of individuals testifying in any judicial proceeding, whether or not that testimony is in response to a subpoena. It expands the current law to threats of dismissal, permits the employer to be held in contempt of court, and permits an award of compensatory damages, in addition to attorneys fees and punitive damages.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, the law only imposes liability upon employers who dismiss testifying employees from employment based on the nature of the employee's testimony or the absences from employment resulting from testifying. The employee must have testified in a judicial proceeding pursuant to a subpoena. If an employer violates the current law, it may be liable to the dismissed employee for attorney's fees, actual damages and punitive damages.

The law as it exists does not provide any relief to a dismissed employee who voluntarily testifies. It also does not protect employees who are only threatened with dismissal from employment. While the law allows a dismissed employee to recover attorney's fees and damages in a subsequent civil action arising out of a violation of this section, it provides no sanctions against the employer in the proceeding which the employee is testifying as the court may not have jurisdiction over the employer.

Florida courts have recognized a public policy of securing truthful testimony in all judicial proceedings. *Wiggins v. Southern Management Corp.*, 629 So. 2d 1022 (Fla. 4th DCA 1993). Florida courts interpreting section 92.57, F.S., have ruled the plain language of the statute does not afford protection to employees who voluntarily testify. Accordingly, judges and jurors are not assisted in their truth seeking endeavors when these employees have to fear retaliatory termination, or threats of termination, as a result of their testimony.

B. EFFECT OF PROPOSED CHANGES:

The original bill amended section 960.001, F.S. which deals with individuals testifying in criminal or judicial proceedings. The strike all amends section 92.57, F.S., to broaden the protection afforded to a testifying employee. First, employees who voluntarily testify in judicial proceedings are covered by the bill. Second, employees who are threatened with dismissal from employment are protected by the bill. These changes promote the public policy of securing truthful testimony in all judicial proceedings.

Both the original bill and the strike all expand the sanctions that can be imposed upon an offending employer. Currently, an employer may only be held liable for attorney's fees, actual damages and punitive damages in a subsequent civil action. This bill would also allow the court, in the proceeding which the employee is testifying, to hold the employer in contempt. Currently, 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). See *Ponke v. AA Boca, Inc.*, 429 So.2d 415 (Fla. 4th DCA 1983). The contempt provision further promotes the public policy of securing truthful testimony as it empowers the court to subject the employer to immediate sanctions.

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?

Yes. Employees may not threaten dismissal to employees testifying in a judiciary proceeding.

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

N/A

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?

N/A

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

N/A

4. Individual Freedom:

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

The bill decreases an employer's flexibility to respond to personnel needs of the business.

The bill increases an employee's flexibility as a witness without subpoena.

- 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?

N/A

- 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:

Original bill 960.001, F.S.; strike all 95.27, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See II. B.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Both the original bill and the strike all amendment are discussed in the body of this analysis.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Jo Ann Levin

Don Rubottom