

By Senator Campbell

33-29-00

1                                   A bill to be entitled  
2           An act relating to culpable negligence;  
3           creating s. 812.0301, F.S.; providing  
4           definitions; specifying the offense of culpable  
5           negligence causing public financial injury;  
6           specifying elements of the offense; providing  
7           penalties; requiring certain notice in certain  
8           state contracts; specifying that failure to  
9           provide such notice does not constitute a  
10          defense to the offense; providing for  
11          prosecuting such offenses; providing  
12          applicability; providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Section 812.0301, Florida Statutes, is  
17 created to read:

18           812.0301 Culpable negligence causing public financial  
19 injury.--

20           (1) For purposes of this act, the term:

21           (a) "Culpable negligence" means negligence of a gross  
22 and flagrant character which evinces a reckless disregard for  
23 public property and is so outrageous as to raise a presumption  
24 that the offender was indifferent to the consequences of his  
25 or her action or inaction.

26           (b) "Public property" means property, as defined in s.  
27 812.012, which is owned by the state, except funds held by the  
28 state for investment purposes, including public employee  
29 retirement or pension funds.

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1           (c) "State" means the state, any agency of the state,  
2 any political subdivision of the state, or any agency of a  
3 political subdivision of the state.

4           (2)(a) A person commits the offense of culpable  
5 negligence causing public financial injury if the state has  
6 entrusted public property to such person and the person  
7 through culpable negligence causes losses, or through inaction  
8 allows losses, in the value of such property of \$100,000 or  
9 more in any 12-month period or contract period, whichever is  
10 longer. For purposes of this paragraph, the term:

11           1. "Entrust" means giving custody or control by any  
12 means to a person or, in the case of a legal entity, to that  
13 entity's officers, directors, employees, or agents who have  
14 managerial authority over the public property or who could  
15 otherwise prevent financial injury, regardless of the  
16 existence of a fiduciary relationship.

17           2. "Causes losses or through inaction allows losses"  
18 means acting or failing to act under circumstances that would  
19 indicate that a loss of value would occur when such a loss  
20 could reasonably be foreseen and prevented, even though the  
21 loss was not actually intended.

22           (b) If the loss is valued at \$100,000 or more, but  
23 less than \$500,000, the offense is a misdemeanor of the first  
24 degree, punishable as provided in ss. 775.082 and 775.083.

25           (c) If the loss is valued at \$500,000 or more, the  
26 offense is a felony of the third degree, punishable as  
27 provided in ss. 775.082, 775.083, and 775.084.

28           (3) Any state contract with a contract value of  
29 \$50,000 or more shall include notice of the the provisions of  
30 subsection (2). Failure to provide this notice shall

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1 constitute a defense to the crime of culpable negligence  
2 causing public financial injury.

3 (4) Prosecutions for violations of this section may be  
4 brought on behalf of the state by any state attorney or by the  
5 statewide prosecutor. Only the Department of Legal Affairs,  
6 any state attorney, or any state agency having jurisdiction  
7 over conduct in violation of a provision of ss.  
8 812.012-812.037 or s. 812.081 may institute civil proceedings  
9 under this section.

10 (5) A person cannot be found guilty of culpable  
11 negligence when:

12 (a) Such person has a contract with the state and is  
13 in compliance with the terms of the contract; or

14 (b) The loss of public property directly results from  
15 that person following an express directive of the Legislature  
16 or a state agency rule.

17 Section 2. This act shall take effect July 1, 2000,  
18 and applies to acts or omissions that occur on or after that  
19 date.

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22 LEGISLATIVE SUMMARY

23 Specifies the offense of culpable negligence causing  
24 public financial injury and the elements of the offense  
25 and provides criminal penalties. Requires state contracts  
26 to provide notice of the elements of such offense and  
provides that failure to provide such notice constitutes  
a defense.