

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1530

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senators Villalobos and Fasano

SUBJECT: Fraud Prevention

DATE: April 23, 2003

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|----------------|------------|---------------------|
| 1. | <u>Greenbaum</u> | <u>Roberts</u> | <u>JU</u> | <u>Favorable</u> |
| 2. | <u>Kruse</u> | <u>Maclure</u> | <u>CM</u> | <u>Favorable/CS</u> |
| 3. | _____ | _____ | <u>ACJ</u> | _____ |
| 4. | _____ | _____ | <u>AP</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute for Senate Bill 1530 creates a Fraud Prevention Unit to be located in the Office of the Attorney General. The mission of the unit is to improve the state's response to fraud and crimes related to fraud using cooperative efforts between state agencies, businesses in the private sector, and private citizen volunteers. This committee substitute requires the unit, among other things, to:

- Establish a Statewide Complaint Receipt and Referral Center;
- Create a public and private partnership to address criminal fraud affecting citizens and businesses;
- Provide information to the public and businesses about types of fraud, how to avoid becoming a victim of fraud, and the resources available to victims of fraud;
- Support the development of a coordinated service network to assist fraud victims;
- Support projects that initiate or expand local crime-prevention efforts;
- Design its efforts to focus primarily on organized multi-jurisdictional fraud, white collar crime, and other types of fraud that involve large numbers of victims; and
- Use and promote the services of the Federal Trade Commission.

The committee substitute provides that the Attorney General may use volunteers to assist the Fraud Prevention Unit, with such volunteers being entitled to immunity from civil liability under the Florida Volunteer Protection Act. The committee substitute further states that the Fraud Prevention Unit shall be developed using funds and resources donated by businesses and others. Private businesses, state agencies, and local agencies may temporarily assign employees to work with the unit. The effective date of the committee substitute is July 1, 2004.

This committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Strikeforce Against Fraudulent Enterprises

In 1999, the Strikeforce Against Fraudulent Enterprises (SAFE) was developed as an initiative of the Governor and Cabinet in response to the growing number of sophisticated fraudulent acts and the lack of expertise in any one agency to combat fraudulent activity. SAFE is a coalition of 25 state, federal, and private agencies working in partnership to combat fraud in the state. SAFE initiatives include the development of a fraud database for sharing investigative fraud intelligence and a public awareness campaign to help citizens from becoming victimized.¹ As of November 2000, the database contained more than 200,000 entries.²

In September 2000, SAFE hosted the Public/Private Partnership on Fraud Summit. More than 100 individuals representing state investigative and regulatory agencies and Florida's business community attended the summit. The purpose of the summit was to discuss Florida's current and anticipated fraud problems, as well as to initiate a stronger partnership between the public and private sectors to combat fraudulent activity. The following information was reported at the summit.

- The economic losses from fraud greatly exceed the financial costs associated with violent crime, and it is estimated that fraud costs U.S. businesses more than \$400 billion annually.
- In 2000, fraud-related arrests in Florida totaled 5,802, up from 5,304 in 1999.
- In FY 1998-1999, the Medicaid Fraud Unit in the Office of the Attorney General opened 376 criminal cases, which netted \$2,784,685 and brought about civil settlements totaling more than \$3.4 million.
- Financial awards from all civil, consumer, and civil RICO cases pursued by the Office of the Attorney General amounted to more than \$27 million in 1999-2000.
- The Department of Banking and Finance opened 560 fraud-related cases in 1998-1999, and closed 83 cases, consisting of 1,921 total victims, \$51.9 million in losses, \$20.6 million in court-ordered restitution, and \$201,500 in voluntary restitution.
- In 1999, the Department of Insurance received more than 7,000 complaints, conducted more than 1,500 investigations, and affected nearly 500 arrests. The department estimated that insurance fraud costs Floridians approximately \$6.4 billion annually, equating to \$1,500 in higher insurance premiums for each Florida family.³

As of March 2001, according to the Office of Statewide Intelligence (OSI) within the Florida Department of Law Enforcement (FDLE), economic crime and fraud continued to be a major

¹ Florida Department of Banking and Finance, *State of Florida 2001 Citizens' Report* 13, available at http://www.dbf.state.fl.us/aadir/citizens_report/pop01/report2001final.pdf (last visited April 15, 2003).

² Tim Moore, Secretary, Department of Law Enforcement, Public Testimony at the Cabinet, *Cabinet Meeting Transcript* 25 (Nov. 16, 2000), at <http://www.myflorida.com/myflorida/cabinet/agenda00/1116/trans.html> (last visited April 15, 2003).

³ Florida Department of Law Enforcement, Citizens Resource Center, Publications, *Florida's Public/Private Partnership on Fraud 2000 Summit Highlights*, at http://www.fdle.state.fl.us/publications/SAFE_Summit/Summit2000minutes.htm (last visited April 15, 2003).

threat to citizens, businesses, and government in the State of Florida. The OSI conducted a survey of state agencies that have the responsibility of responding to fraud complaints and found that the problem was overwhelming not only because of the number of complaints, but also because of the lack of resources and expertise to respond to the problem. The survey revealed that fraudulent complaints could be placed in three categories: fraud against citizens; fraud against corporations; and fraud against the government. Based on the survey results, information from SAFE, and information from the Florida Computer Crimes Center, the OSI made the following recommendations.

- The SAFE initiative should be continued and receive increased resources.
- Close coordination should be maintained by all state agencies working fraud investigations to ensure that major fraud problems in the state are being addressed with an appropriate response.
- A screening mechanism should be developed to allow agencies to prioritize the deployment of limited investigative resources.
- Emphasis should be maintained within the Florida Computer Crimes Center on fraudulent activities and identity theft.⁴

Office of the Attorney General

The Office of the Attorney General has several crime units that deal with various aspects of fraud. The Economic Crimes Unit is the enforcement authority for all multi-circuit violations of the Florida Deceptive and Unfair Trade Practices Act. The unit protects consumers by initiating investigations against entities that employ unfair methods of competition or unconscionable, deceptive, and unfair practices in any trade or commerce.⁵ The Medicaid Fraud Control Unit became part of the Attorney General's Office in July 1994, and oversees Florida's \$12 billion per year Medicaid program.⁶ The Attorney General's Office also provides the public with information on ongoing consumer investigations and with resources for crime victims.⁷

Department of Agriculture and Consumer Services

The Division of Consumer Services within the Department of Agriculture and Consumer Services functions as Florida's clearinghouse for consumer information, protection, and complaints. The division's website has information on avoiding the latest frauds and scams and also provides the procedures for filing complaints.⁸ The department also maintains complaint reports for regulated professions and in some cases has the authority to fine a member of a regulated profession in violation of a rule or statute.⁹

⁴ Florida Department of Law Enforcement, Office of Statewide Intelligence, *Fraud Assessment* (March 2001), available at <http://www.fdle.state.fl.us/OSI/CrimeBriefs/fraud.pdf> (last visited April 15, 2003).

⁵ Office of the Attorney General, AG Programs and Units, *Economic Crimes Unit*, at <http://myfloridalegal.com/agunits> (last visited April 15, 2003).

⁶ *Id.* at *Medicaid Fraud Control Unit*.

⁷ *Id.* at *Consumer Investigations and Crime Victims Services*.

⁸ Florida Department of Agriculture and Consumer Services, *Division of Consumer Services*, available at <http://www.800helpfla.com/> (last visited April 15, 2003).

⁹ Section 482.161(7), F.S.

Federal Trade Commission

The federal government provides resources to citizens to help prevent fraud. The Bureau of Consumer Protection within the Federal Trade Commission (FTC) is mandated to protect consumers against unfair, deceptive, or fraudulent practices. The bureau enforces a variety of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the FTC. Its actions include individual-company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education.¹⁰ The bureau's website provides educational information and publications with advice on avoiding scams, as well as tips to consumers on specific topics such as automobiles, credit, e-commerce and the Internet, identity theft, and telemarketing.¹¹

White Collar Crime

Fraud is usually associated with white collar crime. The White Collar Crime Victim Protection Act states that “[d]ue to the frequency with which victims, particularly elderly victims, are deceived and cheated by criminals who commit nonviolent frauds and swindles, frequently through the use of the Internet and other electronic technology and frequently causing the loss of substantial amounts of property, it is the intent of the Legislature to enhance the sanctions imposed for nonviolent frauds and swindles, protect the public's property, and assist in prosecuting white collar criminals.”¹² The definition of white collar crime includes references to felony offenses specified in several provisions of the Florida Statutes and also defines a white collar crime as:

- A felony offense that is committed with intent to defraud or that involves a conspiracy to defraud;
- A felony offense that is committed with intent to temporarily or permanently deprive a person of his or her property or that involves a conspiracy to temporarily or permanently deprive a person of his or her property; and
- A felony offense that involves or results in the commission of fraud or deceit upon a person or that involves a conspiracy to commit fraud or deceit upon a person.¹³

Volunteer Protection

If a Florida citizen wishes to volunteer with a state agency, that citizen is protected from liability under certain conditions. The Florida Volunteer Protection Act, in s. 768.1355(1), F.S., states that “[a]ny person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any act or omission by such person which results in personal injury or property damage if:

¹⁰ Federal Trade Commission, *Bureau of Consumer Protection*, at http://www.ftc.gov/ftc/BCPsite_DONOTERASE/home.html (last visited April 15, 2003).

¹¹ *Id.* at *Consumer Information*, at <http://www.ftc.gov/ftc/consumer.htm> (last visited April 15, 2003).

¹² Section 775.0844(2), F.S.

¹³ Section 775.0844(3), F.S.

- (a) Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- (b) The injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties.”

The term “nonprofit organization” means any organization which is exempt from taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or local governmental entity.

III. Effect of Proposed Changes:

Section 1 of the committee substitute creates, within subsection (1), the Fraud Prevention Unit (FPU) in the Office of the Attorney General. The committee substitute states that the unit’s mission is to improve the state’s response to fraud and crimes related to fraud using cooperative efforts among state agencies, businesses in the private sector, and private citizen volunteers.

Subsection (2) directs the FPU to establish a Statewide Complaint Receipt and Referral Center. The purpose of the center is to provide immediate information and general assistance to victims of fraud and serve as a bridge between the public, state agencies, consumer organizations, and private businesses. The goals of the center include fraud prevention, fraud reporting, and restoration of victims, which includes returning the victim’s credit and name to their original status. The committee substitute requires the center to establish a program for collecting and analyzing information and data concerning fraud. The center must:

- Provide a statewide methodology to manage complaint information from consumers, businesses, regulatory and enforcement agencies, and consumer-support organizations;
- Identify related complaints;
- Collect, analyze, and produce accurate data concerning the scope of fraud;
- Develop and implement timely prevention and education programs to reduce fraud victimization and provide response strategies to fraud victims; and
- Share complaint information and fraud data among public and private investigations.

Subsection (3) states the responsibilities of the FPU, which include, but are not limited to:

- Creating an effective public and private partnership to cooperatively address criminal fraud within the state as it affects individual citizens and businesses. The partnership must include professionals in the fields of communications, financial services, insurance, information management, law, marketing, technology, retail sales, government, and law enforcement;
- Providing timely information to the public regarding the types of fraud and efforts that can be taken to reduce the possibility of becoming a victim of such fraud;
- Providing information to the public encouraging the use of new and innovative refinements for fraud prevention, including the use of Internet resources to access government and private-sector programs designed to assist fraud victims;
- Furthering the goal of a statewide fraud prevention network by supporting the initiation or expansion of statewide and local efforts regarding crime prevention, awareness, and education;

- Supporting the development of a coordinated service network;
- Promoting a greater awareness of fraud and encouraging a cooperative response to fraud by state and local law enforcement officers and prosecutors, private security officers, and business representatives;
- Strengthening and expanding options for communication to fraud victims to assist them in detecting the extent of the fraud perpetrated against them, assist them during the investigation and prosecution of the criminal fraud, and assist them in recouping losses from fraud and managing the consequences of such fraud;
- Providing general support and assistance for fraud victims during their involvement with the criminal justice system;
- Providing information to fraud victims to assist them in dealing with the ramifications of fraud, such as information relating to reestablishing credit ratings; and
- Assisting in the identification and delivery of training and awareness programs related to fraud detection, investigation, prevention, and consequence management.

The committee substitute does not describe the organizational structure of the public and private partnership. Other public and private partnerships, such as Enterprise Florida, Inc., have explicit organizational structures described in statute.¹⁴

Subsection (4) establishes guidelines for projects supported by the FPU which initiate or expand local crime prevention efforts. The projects shall:

- Use suitable outreach and educational techniques to raise the awareness of the public to potential fraud, efforts that can be taken to avoid becoming a victim, and responses to take when fraudulent activity has occurred;
- Develop and deliver crime prevention information to the elderly regarding fraud, theft, grand theft, and burglary;
- Develop programs to provide literature on training, information, and prevention to law enforcement officers, elderly care custodians, health practitioners, and social service providers regarding fraud perpetrated on the elderly as well as other segments of the state's population;
- In cooperation with the Criminal Justice Standards and Training Commission, establish curricula for training law enforcement officers on how to detect, investigate, and prevent fraud and provide recommendations for the role of law enforcement officers in assisting victims of fraud on how to recover from the damage fraud causes;
- Review and evaluate fraud prevention programs; and
- Establish fraud prevention programs with the use of partnership initiatives using volunteers and the support of private businesses.

Subsection (5) provides that any initiative or program funded under this section must demonstrate an ongoing effectiveness in assisting the Attorney General in the implementation of the mission of the FPU. The committee substitute does not provide criteria for determining what constitutes ongoing effectiveness.

¹⁴ Section 288.901(1)-(11), F.S.

Subsection (6) states that the Attorney General may employ personnel, to the extent funding is available, in order to assist the FPU. Volunteers may also be used to assist the FPU in accomplishing its mission. Although a volunteer may be protected from liability for acts or omissions under the Florida Volunteer Protection Act, the committee substitute does not state what duties a volunteer may undertake in the FPU. The committee substitute does not restrict a volunteer to administrative duties.

Subsection (7) directs the FPU to focus primarily on organized, multi-jurisdictional fraud, on violations of s. 775.0844, F.S. (the White Collar Crime Protection Act), or on other types of fraud that involve large numbers of real or potential victims. The FPU must coordinate its investigations with the Department of Law Enforcement and its efforts related to prosecutions of multi-jurisdictional fraud with the Office of Statewide Prosecution. Additionally, the FPU must coordinate its efforts related to assisting fraud victims with such programs presently established within, or coordinated by, the Office of the Attorney General, other state agencies, state attorneys' offices, and victim support entities within the federal government and private sector.

Subsection (8) provides that the FPU shall use and promote the services of the Federal Trade Commission, including the toll-free phone services and Internet access, when such services are relevant to addressing the perpetration of fraud. The unit is directed to avoid duplicating services that are provided by other entities.

Subsection (9) states that the FPU shall be developed and operated using funds and resources donated by businesses and others. The committee substitute designates a Fraud Prevention Unit Trust Fund to receive any donated funds. These funds may be expended upon authorization by the Legislature or the Legislative Budget Commission. State agencies, local agencies, and private businesses are permitted to temporarily assign employees to the FPU, but any such private sector employee remains at all times an employee of the private business. The Attorney General is also given the authority to use volunteers. Although the committee substitute references a trust fund to receive donated funds, the named trust fund does not exist and must be created by a separate bill. There is no bill currently before the Legislature that creates the Fraud Prevention Unit Trust Fund. However, the committee substitute also moves the effective date of the act to July 1, 2004, which may allow the Legislature time to create the trust fund prior to that date.

Subsection (10) provides that, upon the request of a fraud victim, the FPU may assist the victim in obtaining information necessary to correct inaccuracies or errors in the victim's credit report or other identifying information. However, the unit may not provide legal representation to the victim.

Section 2 of the committee substitute provides that the act shall take effect July 1, 2004.

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This committee substitute may offer additional resources to consumers and assist in the protection of victims and potential victims of fraudulent activities through increased consumer education, increased investigations, the establishment of a statewide complaint and referral center, and by providing greater support assistance to fraud victims.

C. Government Sector Impact:

The Attorney General's Office has already established a telephone hotline to take calls related to fraud.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Amendments:

None.