

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1173 Florida Communications Fraud Act

SPONSOR(S): Criminal Justice Subcommittee; Spano and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee	18 Y, 0 N	Jones	Havlicak

SUMMARY ANALYSIS

Section 775.15, F.S., establishes the following statutes of limitations for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within four years after it is committed;
- Prosecution for any other felony must be commenced within three years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within one year after it is committed.

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime.

Section 817.034, F.S., the Communication Fraud Act (CFA), makes it a crime for a person to engage in a scheme to defraud and obtain property; or engage in a scheme to defraud and, in furtherance of that scheme, communicate with any person with intent to obtain property from that person. The statute does not contain a provision specifying a specific statute of limitations for violations. As such, the general statutes of limitations contained in s. 775.15, F.S., apply.

The bill amends s. 817.034, F.S., to add a statute of limitations to the CFA. The bill provides that any criminal or civil action under the CFA may commence any time within five years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by one year.

The bill also moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 to Level 7 in the offense severity ranking chart. This has the effect of increasing the lowest permissible sentence for such offense.

The Criminal Justice Impact Conference met on March 21, 2013, and determined this bill may have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact on local governments. See fiscal section.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statutes of Limitation

Statutes of limitation are a statutory creation. In *State v. Hickman*, the court found that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.¹

In *State v. Garofalo*, the court found that “The sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable.”²

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- Prosecution for any other felony must be commenced within three years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within one year after it is committed.

The statute provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant’s complicity therein is terminated.³

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime. For example, s. 812.035(10), F.S., allows for any criminal or civil action under ss. 812.012-812.037 or 812.081, F.S. (all relating to theft), to be commenced at any time within five years after the cause of action accrues. The statute further specifies that in criminal proceedings, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state.⁴ However, this provision can only extend the limitation period by one year.⁵

Communication Fraud Act

When creating the Communication Fraud Act (CFA), the legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology

¹ *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

² 453 So.2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

³ Section 775.15(3), F.S.

⁴ Section 812.035(10), F.S.

⁵ *Id.*

to further their schemes to defraud.⁶ Codified in s. 817.034, F.S., subsection (4) and (5) of the CFA create the following criminal offenses:

- (a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:
 1. If the amount of property obtained has an aggregate value of \$50,000 or more, the violator is guilty of a felony of the first degree⁷, ranked in Level 6 of the Criminal Punishment Code offense severity ranking chart;⁸
 2. If the amount of property obtained has an aggregate value of \$20,000 or more, but less than \$50,000, the violator is guilty of a felony of the second degree;⁹ or
 3. If the amount of property obtained has an aggregate value of less than \$20,000, the violator is guilty of a felony of the third degree.¹⁰

- (b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:
 1. If the value of property obtained or endeavored to be obtained by the communication is valued at \$300 or more, the violator is guilty of a third degree felony; or
 2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than \$300, the violator is guilty of a misdemeanor of the first degree.¹¹

The CFA does not currently contain a statute of limitations for the above-described crimes. As such, the general statutes of limitations contained in s. 775.15, F.S., apply (prosecutions must be commenced within four years of the commission of a first degree felony, within three years of the commission of any other felony, and within two years of the commission of a first degree misdemeanor).

Effect of the Bill

The bill amends s. 817.034, F.S., to add a statute of limitations. The bill provides that any criminal or civil action under the CFA may commence any time within five years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by one year.

The bill amends s. 921.0022, F.S., to move s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking chart (36 points) to Level 7 (56 points). This has the effect of increasing the lowest permissible sentence for such offense.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.034, F.S., relating to Florida Communications Fraud Act.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

⁶ Section 817.034(1), F.S.

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

Section 3. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013, and determined this bill may have an insignificant impact on state prison beds. While the bill may have a negative prison bed impact on the Department of Corrections because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes felony offenses), and moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking chart to Level 7, they are low volume offenses and will likely have an insignificant impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill may have a negative jail bed impact on local governments because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes a first degree misdemeanor offense).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment removes a provision requiring the statute of limitation to be suspended in certain instances.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.