

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1404

INTRODUCER: Criminal Justice Committee and Senator Stargel

SUBJECT: Florida Communications Fraud Act

DATE: April 19, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon | Cannon | CJ | Fav/CS |
| 2. | Brown | Cibula | JU | Favorable |
| 3. | Cantral | Hansen | AP | Favorable |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1404 amends s. 817.034, F.S., the Communications Fraud Act (CFA). The 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 Criminal Justice Impact Conference (CJIC) met on March 21, 2013 and determined the bill has an insignificant fiscal impact.

The bill has an effective date of October 1, 2013.

The CFA does not contain a provision specifying a statute of limitation for violations; therefore, the general statutes of limitation contained in s. 775.15, F.S., applies. This requires that violations be prosecuted as follows:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;

- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The bill extends the statute of limitation for violations of the Communications Fraud Act to 5 years after the cause of action accrues. The bill tolls the statute of limitation for up to an additional year if the defendant is outside the jurisdiction of the court.

The Criminal Punishment Code is amended to elevate violations of the CFA from Level 6 to Level 7. This amendment has the effect of increasing the total sentencing points, and therefore could result in more defendants being sentenced to prison for violations of the Act.

This bill substantially amends sections 817.034 and 921.0022, Florida Statutes.

II. Present Situation:

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

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

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;

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

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

- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 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 is to clearly prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity terminates.³

The statutes of limitation in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitation 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 5 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 1 year.⁵

Communications Fraud Act

When creating the Communications Fraud Act (CFA), the Legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology to further their schemes to defraud.⁶

The following criminal offenses are codified in s. 817.034(4), F.S. (the CFA):

- (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 degree,⁷ 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 Section 775.15(3), F.S.

⁴ Section 812.035(10), F.S.

⁵ *Id.*

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 and a \$10,000 fine.

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 specific statute of limitation for the above-described crimes. As such, the general statutes of limitation contained in s. 775.15, F.S., apply. Prosecutions for these organized fraud cases must be commenced within 4 years after the commission of a first degree felony, within 3 years after the commission of any other felony, and within 2 years of the commission of a first degree misdemeanor.

III. Effect of Proposed Changes:

The bill amends s. 817.034, F.S., to add a specific statute of limitation for scheme to defraud cases. The bill provides that any criminal or civil action under the CFA may commence any time within 5 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 1 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. A defendant will be much more likely to score a prison sentence at Level 7.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 11, 2013, the Department of Corrections provided the following information on community supervision and prison admissions for the crimes addressed in this bill:

| Felony Class | PRIMARY OFFENSE DESCRIPTION | SUPERVISION ADMISSION YEARS | | |
|-----------------|-----------------------------|-----------------------------|--------|--------|
| | | FY0910 | FY1011 | FY1112 |
| 1 st | ORG.FRAUD-\$50,000 AND OVER | 0 | 0 | 0 |
| 2 nd | ORG.FRAUD-\$20K BUT < \$50K | 58 | 52 | 62 |
| 3 rd | ORG.FRAUD - UNDER \$20,000 | 452 | 363 | 379 |

| Felony Class | PRIMARY OFFENSE DESCRIPTION | PRISON ADMISSION YEARS | | |
|-----------------|-----------------------------|------------------------|--------|--------|
| | | FY0910 | FY1011 | FY1112 |
| 1 st | ORG.FRAUD-\$50,000 AND OVER | 0 | 0 | 1 |
| 2 nd | ORG.FRAUD-\$20K BUT < \$50K | 31 | 29 | 24 |
| 3 rd | ORG.FRAUD - UNDER \$20,000 | 103 | 83 | 74 |

The Criminal Justice Impact Conference (CJIC) met on March 21, 2013, and considered the potential prison bed impact of the bill. The CJIC expects an insignificant impact if the bill passes and becomes law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2013:

Removes the provision requiring the statute of limitation to be suspended following the end of criminal or civil cases related to the CFS.

- B. **Amendments:**

None.