

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 Criminal Justice

BILL: SB 434

INTRODUCER: Senator Ring

SUBJECT: Lewd and Lascivious Behavior

DATE: February 12, 2014 REVISED: 02/17/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 434 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for an unmarried man and a woman to lewdly and lasciviously cohabit together, or any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

II. Present Situation:

Section 798.02, F.S., makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law was originally enacted in 1868 and made the crime of cohabitation punishable by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by a fine not exceeding three hundred dollars.¹

According to the National Conference of State Legislatures there are only three states, Florida, Michigan, and Mississippi that make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.²

States with Cohabitation Laws

Florida	798.02	If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
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¹ Laws 1971, c. 71-136 s. 773

² E-mail from NCSL February 16, 2014.

		NOTE: FSA 798.03, 04 & 05 dealing with cohabitation and adultery were repealed.
Michigan		<p>MCLA § 750.335 Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$500.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p> <p>Amendment to § 750.335 effective March 31, 2003: Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.</p>
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

States that have repealed laws making cohabitation illegal

Arizona		NOTE: ARS 13-1409 Open and notorious cohabitation or adultery. Repealed.
Idaho		NOTE: IC 18-6604 Sex Crimes. Lewd Cohabitation. Repealed.
Maine		NOTE: MRS 17-75 § 2151 Lascivious cohabitation and lewdness. Repealed.
New Mexico		NOTE: NMRS § 30-10-2 Unlawful Cohabitation. Repealed.
North Carolina	14-184	<p>If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a Class 2 misdemeanor: Provided, that the admissions or confessions of one shall not be received in evidence against the other.</p> <p>NOTE: held Unconstitutional by Hobbs v. Smith, Superior Court of North Carolina, Pender County.</p>
North Dakota	12.1-20-10	<p>A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.</p> <p>NOTE: Repealed by S.L. 2007, ch. 131, § 4, eff. Aug. 1, 2007</p>
Virginia	18.2-345	<p>If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be guilty of a Class 3 misdemeanor; and upon a repetition of the offense, and conviction thereof, each of them shall be guilty of a Class 1 misdemeanor.</p> <p>NOTE: Repealed by Acts 2013, c. 621</p>
West Virginia	61-8-4	If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of

		<p>open or gross lewdness and lasciviousness, they shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars, and may, in the discretion of the court, be imprisoned not exceeding six months, and, upon a repetition of the offense, they shall, upon conviction, be confined in jail not less than six nor more than twelve months. In prosecutions for adultery and fornication, and for lewdly and lasciviously cohabiting together, the persons named in the indictment shall be presumed to be unmarried persons in the absence of proof to the contrary.</p> <p>NOTE: Repealed by Acts 2010, c. 34, eff. June 11, 2010</p>
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III. Effect of Proposed Changes:

The bill repeals the statutory section making it a second degree misdemeanor for an unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior.

The bill makes conforming changes and has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

According to the Office of the State Courts Administrator (OSCA), the fiscal impact on expenditures cannot be accurately determined due to the fact that cohabitation is not prosecuted and most lewd and lascivious behaviors are prosecuted under ch. 800, F.S. However, OSCA reports that the impact is expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.0139, 39.509 and 435.04. This bill repeals section 798.02 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.