

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1078

INTRODUCER: Senator Sobel

SUBJECT: Lewd and Lascivious Behavior

DATE: March 30, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1078 repeals s. 798.02, F.S., which makes it a second degree misdemeanor for:

- An unmarried man and a woman to lewdly and lasciviously associate and cohabit together, or
- Any man or woman, married or unmarried to engage in open and gross lewdness and lascivious behavior.

By repealing s. 798.02, F.S., the bill removes cross-references that would have potentially disqualified from visitation a parent, caretaker, or grandparent of a child under the jurisdiction of the Department of Children and Families or disqualified from employment an applicant or employee criminally charged with a violation of the statute.

**II. Present Situation:**

**Cohabitation Law in Florida**

Florida law makes it a second degree misdemeanor<sup>1</sup> 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.<sup>2</sup> This law, originally enacted in 1868, made the crime of cohabitation punishable by up to 2 years in prison, up to 1 year in the county jail, or up to a \$300 fine.<sup>3</sup> Somewhat similarly, s. 800.02, F.S., makes it a second degree misdemeanor for a person to engage in any unnatural and lascivious act with another person.

Section 798.02, F.S., is cross-referenced in three other statutes.

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<sup>1</sup> Second degree misdemeanors are punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>2</sup> Section 798.02, F.S.

<sup>3</sup> Chapter 71-136 s. 773, L.O.F.

Section 39.0139, F.S., addresses visitation with children who are under the jurisdiction of the Department of Children and Families. A rebuttable presumption of detriment applies to a parent or caregiver who has been found guilty or who has entered a plea to certain crimes including cohabitation.<sup>4</sup>

Section 39.509, F.S., provides visitation rights to grandparents who qualify. In determining whether grandparent visitation is in the best interest of the child, the court may consider if a grandparent has been found guilty or who has entered a plea to certain crimes including cohabitation.<sup>5</sup>

Screening of employees for criminal backgrounds is provided in ch, 435, F.S. Screenings for Level 2 background checks screen for certain crimes including cohabitation.<sup>6</sup>

**Cohabitation Law in other States**

According to the National Conference of State Legislatures only three states, Florida, Michigan, and Mississippi, make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.<sup>7</sup>

**States with Cohabitation Laws other than Florida**

State	Statute	Language
Michigan	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 \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
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.

The following states have repealed laws which made cohabitation illegal: Arizona, Idaho, Maine, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

<sup>4</sup> Section 39.0139(3)(a)2., F.S.

<sup>5</sup> Section 39.509(6)(a), F.S.

<sup>6</sup> Section 435.04(2)(w), F.S.

<sup>7</sup> E-mail from staff of the National Conference of State Legislatures (Mar. 11, 2015) (on file with the Senate Committee on Judiciary).

**III. Effect of Proposed Changes:**

The bill repeals the law that made 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, engage in open and gross lewdness and lascivious behavior.

The bill repeals a statute that prohibits:

- A man and a woman who are not married to each other from lewdly and lasciviously associating and cohabiting together; or
- A man and a woman, regardless of marital status, from engaging in open and gross lewdness and lascivious behavior.

Under existing law, a person who violates one of the prohibitions above is subject to the penalties for a second degree misdemeanor.

By repealing the prohibition on cohabitation and open lewd and lascivious behavior, the bill removes cross-references that would have potentially disqualified from visitation a parent, caretaker, or grandparent of a child under the jurisdiction of the Department of Children and Families or disqualified from employment an applicant or employee criminally charged with a violation of the cohabitation law.

The bill takes effect July 1, 2015.

**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:

None.

**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, 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.