

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 1362

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Simmons

SUBJECT: Department of Legal Affairs

DATE: April 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1362 makes changes to laws enforced by or governing the Department of Legal Affairs, also known as the Office of the Attorney General, including the Office of Statewide Prosecution.

The bill:

- Revises the list of offenses that are considered to be multi-circuit crimes that may be investigated and prosecuted by the Office of Statewide Prosecution to include kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling if commission of the offense was facilitated by or connected to use of the Internet.
- Provides authority to purchase promotional materials and basic refreshments for public training and information sessions.
- Allows the Medicaid Fraud unit to use a percentage of the recovered funds to fund investigations and enforcement actions.
- Updates references of federal consumer protection laws that are incorporated into the statutes.
- Revises Victim Assistance awards criteria to:
 - Provide for maximum lifetime amounts;
 - Expand definitions to broaden coverage for elderly persons or disabled adults who suffer a property loss; and
 - Provide for relocation assistance for human trafficking victims.

- Makes necessary conforming and technical changes.

The bill also creates the “Patent Troll Prevention Act” to prohibit and provide remedies for bad faith assertion of patent infringement. It allows a defendant in a patent infringement proceeding to move that the proceeding involves a bad faith assertion of patent infringement and request that the court issue a protective order. If, based on factors set out in the bill, the court finds that the defendant has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target’s expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

A person against whom a bad faith assertion of patent infringement is made also may bring an action in a court of competent jurisdiction for relief. If successful, the court may award a plaintiff equitable relief; damages; costs and fees, including reasonable attorney fees; and punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

The bill provides that a violation of the prohibition against making a bad faith assertion of patent infringement also constitutes an unfair or deceptive trade practice. As such, the state attorney with jurisdiction and the Department of Legal Affairs (department) are enforcing authorities that may bring an enforcement action for an injunction and to recover actual damages.

The Department of Legal Affairs indicates that the bill does not have a fiscal impact on general revenue funds or trust fund revenues. Within existing funds, the bill apportions some revenues that are currently deposited in the department’s Operating Trust Fund for use by the Medicaid Fraud Control Unit and removes a requirement for reduction of awards for catastrophic loss under some circumstances. Any costs incurred by the Department of Legal Affairs or a state attorney with jurisdiction for enforcing violations of the Patent Troll Prevention Act would be offset by recovery of costs and attorney’s fees if the action is successful. In addition, a violator may be assessed a civil penalty of up to \$10,000 per violation that would be deposited into the General Revenue Fund.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

For discussion of the provisions of ss. 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199, F.S., that are amended and ss. 16.62 and 960.196, F.S., that are created by the bill, see the “Effect of Proposed Changes” section of this analysis.

III. Effect of Proposed Changes:

Attorney General

Section 1: Section 16.56, F.S., creates the Office of Statewide Prosecution as a separate budget entity within the Department of Legal Affairs and provides for its authority and duties to investigate and prosecute specified offenses. In general, the Office of Statewide Prosecution has jurisdiction only when one of the specified offenses occurs in two or more judicial circuits as part of a related transaction or when the offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. However, all of the offenses except offenses in ch. 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, custody offenses, human trafficking, and human smuggling) are considered to be committed in every judicial circuit when they are facilitated by or connected to the use of the Internet.

The bill amends s. 16.56, F.S., to provide that offenses in ch. 787, F.S., are considered to be committed in every judicial circuit when the offense is facilitated by or connected to the use of the Internet.

Section 2 creates s. 16.62, F.S., to authorize the department to expend not more than \$20,000 annually to support costs for the Law Enforcement Officer of the Year Recognition and Awards Program and the Victims Services Recognition and Awards Program. This authorization is in addition to any expenditures separately authorized by law.

Section 3 amends s. 409.9203, F.S., which relates to the department's Medicaid Fraud Control Unit. The Medicaid Fraud Control Unit investigates violations s. 409.920, F.S., which prohibits Medicaid provider fraud. As part of the Medicaid fraud control program, s. 409.9203, F.S., provides for rewards to persons who report a violation of the state's Medicaid fraud laws.

The Florida False Claims Act¹ provides for civil actions to address false claims against the state. These actions may be brought by the state or by a private person on behalf of the state. Section 68.085, F.S., provides for the distribution of funds for actions brought under the False Claim Act. It also provides for the disposition of any funds that remain after required distributions are made: 90 percent of the remaining funds is deposited in the General Revenue Fund, and 10 percent is deposited into the department's Operating Trust Fund to reward persons who report and provide information relating to Medicaid fraud.

The bill amends s. 409.9203, F.S., to direct that half of the proceeds deposited into the Operating Trust Fund pursuant to s. 68.085, F.S., must be used by the Medicaid Fraud Control Unit to fund investigations of potential violations of the False Claims Acts. The other half is still allocated for payment of rewards to persons who report Medicaid fraud.

¹ Sections 68.081-68.092, F.S.

Consumer Protection

The Florida Deceptive and Unfair Trade Practices Act² provides for the protection of Florida's consumers. Section 501.203 provides that enforcement extends not only to violations of the act and related rules, but also to the following as they exist on July 1, 2013:

- Rules of the Federal Trade Commission (FTC);
- Standards of unfairness and deception set forth and interpreted by the FTC or the federal courts; and
- Any law, statute, rule regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

In addition, s. 501.204(1), F.S., provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. Section 501.204(2), F.S., specifically directs that the interpretations of the FTC and federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act³ as of July 1, 2013, are to be given due consideration and great weight in construing the state law.

Sections 4 and 5 amend ss. 501.203 and 501.204, F.S., to update the date of federal law that may be used to protect Florida consumers from July 1, 2013, to July 1, 2015.

Sections 6 through 13 create Part VII of ch. 501, F.S., consisting of ss. 501.991-501.997, F.S., and entitle it the "Patent Troll Prevention Act." The bill sets forth legislative intent for the Patent Troll Prevention Act and establishes the following definitions:

- "Demand letter" means a letter, e-mail, or other communication asserting or claiming that a person has engaged in patent infringement.
- "Institution of higher education" means an educational institution as defined in 20 U.S.C. s. 1001(a).
- "Target" means a person, including the person's customers, distributors, or agents, residing in, incorporated in, or organized under the laws of this state which:
 - Has received a demand letter or against whom an assertion or allegation of patent infringement has been made;
 - Has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or
 - Whose customers have received a demand letter asserting that the person's product, service, or technology has infringed upon a patent.

The bill prohibits and provides remedies for bad faith assertion of patent infringement. If a patent infringement proceeding is instituted, the target may move that the proceeding involves a bad faith assertion of patent infringement and request that the court issue a protective order. The bill sets out two lists of factors the court may consider as evidence, one for evidence that that a person has made a bad faith assertion of patent infringement and one for evidence that a person has *not* made a bad faith assertion of patent infringement.

² Sections 501.201 – 501.213, F.S.

³ This provision is codified as 15 U.S.C. s. 45(a)(1).

If the court finds that the target has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target's expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

A person aggrieved by a violation of the prohibition making a bad faith assertion of patent infringement may bring an action in a court of competent jurisdiction, and the court may award a prevailing plaintiff the following remedies:

- Equitable relief;
- Damages;
- Costs and fees, including reasonable attorney fees; and
- Punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

A violation also constitutes an unfair or deceptive trade practice under Part II of ch. 501, F.S. As such, the department or a state attorney, as applicable,⁴ may bring:

- An action to obtain a declaratory judgment that an act or practice constitutes a violation;
- An action to enjoin any person who has violated, is violating, or is otherwise likely to violate, the Act; or
- An action on behalf of one or more consumers or governmental entities for the actual damages caused by a violative act or practice.

The Patent Troll Prevention Act does not apply to institutions of higher education, to a technology transfer organization owned by or affiliated with an institution of higher education, or to a demand letter or an assertion of patent infringement that includes a claim for relief arising under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262, which relate to protections for pharmaceuticals and biological products.

Victim Assistance

The provisions of ss. 960.01 - 960.28, F.S., are known as the "Florida Crimes Compensation Act." Section 960.03, F.S., provides for definitions, including the terms "crime" and "disabled adult." Victims who suffer personal physical injury or death as a direct result of a crime are eligible for awards.

Section 14 amends s. 960.03(3), F.S., to make the following changes to the definition of "crime" for purposes of the Florida Crimes Compensation Act:

⁴ The bill refers to an action brought by an "enforcing authority" as is defined in s. 501.203, F.S. That section defines the term to mean the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office's jurisdiction, or the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

- Adds “a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;”
- Adds s. 316.027(2), F.S. (willful failure of a vehicle driver involved in a crash that results in injury to a person other than serious bodily injury to immediately stop at the scene and remain to give information and render aid);
- Adds s. 316.1935, F.S. (fleeing or attempting to elude a law enforcement officer);
- Clarifies that an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death is included in the definition only when another person’s injury or death is intentionally inflicted through the use of the vehicle, boat, or aircraft.

In addition, the definition of “disabled adult” is expanded to include adults who suffer from mental illness or from one or more physical limitations that restrict the person’s ability to perform the normal activities of daily living. The amendment also clarifies that the definition includes persons who have only one mental limitation that restricts their ability to perform the normal activities of daily living.

Section 15 amends s. 960.13, F.S., which provides for awards of compensation to victims of crime. The department is authorized to make an award only if it finds that:

- A crime was committed;
- The crime directly resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor; and
- The crime was promptly reported to the proper authorities.

Any award, except an award for loss of support, must be reduced by the amount of any payments or services received or to be received from certain sources as a result of the injury or death. The amendment to s. 960.13(6), F.S., adds an exception for awards for catastrophic injury.

Section 16 amends s. 960.195, F.S., which provides for awards to elderly persons or disabled adults for property loss that causes a substantial diminution of their quality of life. The statute currently provides that department may award a maximum of \$500 when:

- There is proof that a criminal or delinquent act was committed,
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours,
- The victim cooperates with law enforcement authorities in the investigation,
- There is proof that the tangible personal property in question belonged to the claimant,
- The claimant did not contribute to the criminal or delinquent act,
- There is no other source of reimbursement or indemnification available to the claimant, and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

This statute is amended to remove cooperation with law enforcement as an act that supports an award of compensation. Rather, the department is given authority to deny, reduce, or withdraw any award if it finds that a claimant or award recipient has not cooperated with the state attorney, all law enforcement agencies, and the department. The statute is also amended to limit the amount of the award for any claim to \$500, with a lifetime cap of \$1,000 in awards for all claims. In addition, the department is given flexibility to waive the requirement that the crime have been reported within 72 hours if it finds that the delay was justified by good cause.

Section 17 creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking. This new section authorizes the department to award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense. For the victim to be awarded the compensation:

- There must be proof that a human trafficking offense⁵ was committed.
- The crime must be reported to the proper authorities and the claim must be filed within one year, or two years with good cause, after the date of the last human trafficking offense.⁶
 - A certified domestic violence or rape crisis center in the state must certify the victim's need to escape from an unsafe environment. The center must assert in its certification that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.
 - A state attorney, statewide prosecutor, or federal prosecutor may certify in writing that a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense in a case that exceeds the two-year requirement.

The department must deny relocation payments for a human trafficking claim if it has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198, F.S., or s. 960.199, F.S.

Section 18 amends s. 960.198, F.S., which provides authority for the department to award payments for relocation assistance to victims of domestic violence who need immediate assistance to escape from a domestic violence environment. The statute provides that relocation payments for domestic violence must be denied if the same victim already received a relocation award for the same incident as a sexual battery victim pursuant to s. 960.199, F.S. The amendment adds the same prohibition relating to prior relocation assistance awards for victims of human trafficking.

Section 19 amends s. 960.199, F.S., to remove references to relocation assistance for victims of human trafficking. The statute currently applies to relocation assistance for victims of sexual battery and human trafficking, but the bill creates s. 960.196, F.S., to specifically address human trafficking.

Section 20 provides that the act takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵ See s. 787.06(3)(b), (d), (f), or (g), F.S.

⁶ *Id.*

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:

Under CS/SB 1362, if awards for victim assistance benefits are capped, citizens are limited in the amount of lifetime awards that they may receive. Also, creation of the Patent Troll Prevention Act may shield some companies from costs associated with bad faith assertions of patent infringement.

C. Government Sector Impact:

The Department of Legal Affairs indicates that the bill will not affect general revenue funds or trust fund revenues. The exclusion of awards for “catastrophic loss” from types of awards that must be reduced by the amount of services received from certain sources will have “very limited impact” on the victim’s compensation fund. Also, the bill directs that half of the revenues currently deposited in the department’s Operating Trust Fund for making awards be used to fund investigations and prosecutions by the Medicaid Fraud Control Unit. Amounts awarded from the Operating Trust Fund have historically been significantly less than half of the amount that is deposited for this purpose.

There may be some costs for the Department of Legal Affairs and for state attorneys with jurisdiction to enforce violations of the Patent Troll Prevention Act. However, those agencies would be able to recover costs and attorney’s fees for successful actions. In addition, the violator may be assessed a civil penalty of up to \$10,000 per violation. Any civil penalties that are collected would be deposited into the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill incorporates the provisions of CS/SB 1084.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 409.9203, 501.203, 501.204, 960.03, 960.13, 960.195, 960.198, and 960.199.

The bill creates the following sections of the Florida Statutes: 16.62, 501.991 through 501.997, and 960.196.

IX. Additional Information:

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

CS by Appropriations on April 16, 2015:

The committee substitute:

- Specifies that up to \$20,000 annually may be expended by the Department of Legal Affairs for specified recognition and awards programs.
- Amends Section 3 of the bill to correct a technical error and clearly express the percentage of funds that are allocated for use by the Medicaid Fraud Unit and for payment of rewards.
- The bill incorporates the provisions of CS/SB 1084 to create the “Patent Troll Prevention Act.” The new act prohibits and provides remedies for bad faith assertion of patent infringement. These remedies include both private causes of action and enforcement action by the Department of Legal Affairs or the state attorney with jurisdiction.

- B. **Amendments:**

None.