

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Department of Legal Affairs
SPONSOR(S): Civil Justice & Claims Subcommittee; Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 1 N, As CS	MacNamara	Bond
2) Appropriations Committee	25 Y, 0 N	Welty	Leznoff
3) Judiciary Committee	18 Y, 0 N	MacNamara	Camechis

SUMMARY ANALYSIS

The bill amends current law with respect to the duties and responsibilities of the Attorney General and the Department of Legal Affairs. The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit;
- Provides that the Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services;
- Amends dates to keep Florida's Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of "virtual currency" and amends the term "monetary instruments" to include "virtual currency" in the Florida Money Laundering Act;
- Amends the Florida Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and
- Provide compensation awards to surviving family members of an emergency responder who, as a result of a crime, is killed answering a call for service in the line of duty.

To the extent the Statewide Council on Human Trafficking is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

The bill has an indeterminate, but likely insignificant, fiscal impact on the Department of Legal Affairs and the Department of Highway Safety and Motor Vehicles, which will be absorbed by the agencies.

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Attorney General is charged with all powers and duties pertaining to the office except insofar as they have been expressly restricted or modified by statute or the state constitution. The Attorney General is recognized as the chief law officer of the State and, absent express legislative restriction, may exercise such power and authority as the public interest may require. The Attorney General is a member of the Executive Branch's Cabinet. As chief legal officer of the State, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf citizens of the state as provided for by law.¹

The Attorney General is also the head of the Department of Legal Affairs. The Department of Legal Affairs (department) is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Attorney General, however, may authorize other counsel where emergency circumstances exist and must authorize other counsel when professional a conflict of interest exists.

Current law provides for the creation of various councils, groups, and trust funds that are under the control of the department. Moreover, the department is tasked with oversight duties for certain industries of the state as part of their duty to provide legal services on behalf of the state.

Current Law and Effect of Bill

Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking enhances the development and coordination of state and local law enforcement and social services responses to address commercial sexual exploitation as a form of human trafficking and to support victims.² The department provides the council with staff to perform its duties.

The membership of the Council is provided for by statute, with each member serving 4-year terms. The duties of the Council include holding an annual statewide policy summit on topics relating to human trafficking.

The bill authorizes the Council to apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual statewide policy summit.

Assigning Highway Patrol Officers to the Office of the Attorney General

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV) to assign one Florida Highway Patrol officer to the office of the Governor at the discretion of the Lieutenant Governor. The Governor selects the officer and current law provides the minimum rank and salary requirements for the officer.³

For the 2015-16 and 2016-17 fiscal years, the Department of Highway Safety and Motor Vehicles is allowed to assign a patrol officer to the Lieutenant Governor, at his or her discretion, and to a Cabinet

¹ See e.g., s. 736.0110, F.S., relating to charitable trusts.

² See s. 16.617, F.S.

³ s. 321.04(3), F.S.

member if the Department deems such assignment appropriate or in response to a threat, if requested in writing by such Cabinet member.⁴

The bill requires, upon the request of the Attorney General, the Department of Highway Safety and Motor Vehicles to assign one or more patrol officers to the Office of the Attorney General for security services.

Florida Deceptive and Unfair Trade Practices

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce.⁵ The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

The Act applies to any act or practice occurring in the conduct of any trade or commerce, even as between purely commercial interests. It applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction, or a single contract. Section 501.203(3), F.S. provides:

“Violation of this part” means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2015.

Similarly, with respect to unlawful acts and practices under s. 501.204(2), F.S., the Act provides that:

It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015.

The bill removes the year 2015 from the above provisions in the Act and replaces it with the year 2017 to keep the FDUTPA current with applicable federal law and rules.

Florida Money Laundering Act

Section 896.101, F.S., provides for the requirements and enforcement of the Florida Money Laundering Act. Florida law defines money laundering as a financial transaction or series of transactions used to conceal, disguise, hide, or process money and other proceeds generated through criminal activity. The proceeds may be gained through any felony prohibited by state or federal laws.

Many types of financial transactions can qualify as money laundering under Florida money laundering laws. Activities such as purchases, sales, monetary gifts, loans, bank deposits, wire transfers, currency exchanges, and investments might all qualify as financial transactions for the purpose of money laundering. Transfers of title to real property, cars, and other types of vehicles can also qualify as money laundering if used to hide the proceeds from unlawful activities.

Under the Act, "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in

⁴ s. 321.04(4), F.S.

⁵ ss. 501.201-213, F.S.

bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.⁶

On July 22, 2016, a judge in Miami dismissed a money laundering case where the defendant sold \$1,500 of Bitcoins to undercover detectives who told him they wanted to use the money to buy stolen credit-card numbers.⁷ For the purpose of the money laundering charge, the judge concluded Bitcoin was not money and therefore, could not fall within the definition of money laundering.

The bill adds to the definition of monetary instruments to include virtual currency. The bill further provides a definition of virtual currency as "a medium of exchange in electronic or digital format that is not a coin or currency of the United States or other country." The effect of these changes is that money laundering using virtual currency is illegal.

Notice for Charitable Trusts

Chapter 736, F.S., is the Florida Trust Code (code). Under s. 736.0110(3), F.S., the Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. Section 736.0103(16), F.S., defines a "qualified beneficiary" as a living beneficiary who, on the date of the beneficiary's qualification is determined:

- (a) Is a distributee or permissible distributee of trust income or principal;
- (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) terminated on that date without causing the trust to terminate; or
- (c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated in accordance with its terms on that date.

A "charitable trust" for purposes of s. 736.0110, F.S., means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1), F.S. Charitable purposes include, but are not limited to, "the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes."⁸ Part XII of ch. 736, F.S., governs all charitable trusts. Specifically, and in relevant part:

- Section 736.1205, F.S., requires that the trustee of a charitable trust notify the state attorney for the judicial circuit of the principal place of administration of the trust if the power to make distributions are more restrictive than s. 736.1204(2), F.S., or if the trustee's powers are inconsistent with s. 736.1204(3), F.S.
- Section 736.1206(2), F.S., provides that the trustee of a charitable trust may amend the governing instrument with consent of the state attorney to comply with the requirements of a private foundation trust as provided in s. 736.1204(2), F.S.
- Section 736.1207, F.S., specifies that Part XII of the code does not affect the power of a court to relieve a trustee from restrictions on that trustee's powers and duties for cause shown and upon complaint of the state attorney, among others.
- Section 736.1208(4)(b), F.S., requires that a trustee who has released a power to select charitable donees accomplished by reducing the class of permissible charitable organizations must deliver a copy of the release to the state attorney.

⁶ s. 896.101(2)(e), F.S.

⁷ Bitcoin not money, Miami judge rules in dismissing laundering charges. Miami Herald. <http://www.miamiherald.com/news/local/crime/article91682102.html> (last accessed April 18, 2017).

⁸ s. 736.0405(1), F.S.

- Section 736.1209, F.S., allows the trustee to file an election with the state attorney to bring the trust under s. 736.1208(5), F.S., relating to public charitable organization(s) as the exclusive beneficiary of a trust.

As such, there is some disconnect between s. 736.0110(3), F.S., and Part XII of the code; they can be read to require that notice be given to the Attorney General for certain charitable trusts and to the state attorney of the proper judicial circuit for the same or other trusts.

The bill grants these powers and responsibilities solely to the Attorney General. The bill also amends s. 736.0110(3), F.S., to provide the Attorney General with standing to assert the rights of a qualified beneficiary in any judicial proceeding and amends the provisions in Part XII of the code concerning the state attorney's office.

The changes provide that the Attorney General, rather than the state attorney, would receive notifications, releases, and elections for charitable trusts under ss. 736.1205, 736.1207, 736.1208, and 736.1209, F.S., and the Attorney General, rather than the state attorney, would consent to a charitable trust amendment effectuated under s. 736.1206, F.S.

Lastly, the bill defines how the Attorney General is to be given notifications, releases, and elections in s. 736.1201(2), F.S., and removes the state attorney from the definitions section of Part XII of the code.

Emergency Responder Death Benefits

Sections 960.01-960.28, F.S., relate to the Florida Crimes Compensation Act (Act). The Act was created recognizing that many innocent people suffer personal injury or death as a direct result of adult and juvenile criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit adult and juvenile crimes. As a result, their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance.⁹

Consequently, it is the intent of the Act that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of adult and juvenile crime. The Act further provides that all state departments and agencies should cooperate with the department in carrying out the provisions of the Act.¹⁰

A Crimes Compensation Trust Fund was established under the Act pursuant to s. 960.21, F.S. The fund was established for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the department and the payment of claims. The department is tasked with administering the Crimes Compensation Trust Fund. The moneys placed in the fund consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under the Act, and of moneys recovered on behalf of the department by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.¹¹

The Act provides a definition of "crime" for purposes of enforcement of claims under the Act, under s. 960.03(3), F.S., as well as a definition of victim under s. 960.03(14), F.S. Section 960.16, F.S., further provides that awards paid pursuant to the Act subrogate¹² to the state for causes of action that claim compensation under an insurance policy when the claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

⁹ s. 960.02, F.S.

¹⁰ *Id.*

¹¹ s. 960.21(1)-(2), F.S.

¹² Subrogation rights place a party in the legal position of one who has been paid money because of the acts of a third party. See *Allstate Ins. Co. v. Metropolitan Dade County*, 436 So.2d 976 (Fla. 3d DCA 1983).

The bill creates s. 960.194, F.S., to provide death benefits for surviving family members of emergency responders. The bill defines "emergency responder" as a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic.

In addition to providing definitions for purposes of the section, the bill provides that the department may award up to a maximum of \$50,000 to the surviving family members of an emergency responder who, as a result of a crime, is killed answering a call for service in the line of duty. The \$50,000 award is for each instance and must be apportioned between multiple claimants at the discretion of the department.

The benefits provided for in the bill may be reduced to the extent the emergency responder contributed to his or her death, and may be reduced to the extent the claimant has already received an award under the Act for the same incident.

The bill also adds to the definitions of "crime and "victim." A crime under the bill includes a felony or misdemeanor that results in the death of an emergency responder while answering the call for service in the line of duty. A victim includes an emergency responder who is killed answering a call for service in the line of duty. Moreover, unlike other claims against the Crimes Compensation Trust Fund, an award to an emergency responder does not require a showing of need.

Lastly, the bill limits the application of the provision providing for subrogation to the state, to not include awards under the newly created s. 960.194, F.S. As such, claimants seeking emergency responder death benefits will not have their awards subrogated to the state in the event they received compensation pursuant to an insurance policy for the same incident.

The department is authorized to adopt rules to implement these provisions.

B. SECTION DIRECTORY:

Section 1 amends s. 16.617, F.S., relating to the Statewide Council on Human Trafficking.

Section 2 amends s. 321.04, F.S., relating to personnel of the highway patrol.

Section 3 amends s. 501.203, F.S., relating to unfair trade practices definitions.

Section 4 amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 5 amends s. 736.0110, F.S., relating to others treated as qualified beneficiaries.

Section 6 amends s. 736.1201, F.S., relating to definitions.

Section 7 amends s. 736.1205, F.S., relating to notice that this part does not apply.

Section 8 amends s. 736.1206, F.S., relating to power to amend trust instruments.

Section 9 amends s. 736.1207, F.S., relating to power of courts to permit deviation.

Section 10 amends s. 736.1208, F.S., relating to release.

Section 11 amends s. 736.1209, F.S., relating to elections under this part.

Section 12 amends s. 896.101, F.S., relating to the Florida Money Laundering Act.

Section 13 amends s. 960.03, F.S., relating to definitions.

Section 14 amends s. 960.16, F.S., relating to subrogation.

Section 15 creates s. 960.194, F.S., relating to emergency responder death benefits.

Section 16 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit. To the extent the council is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

2. Expenditures:

The provisions of the bill relating to charitable trusts may increase expenditures in the Attorney General's office. This workload is indeterminate, but likely insignificant, and absorbable within existing resources.

The Department of Highway Safety and Motor Vehicles (DHSMV) has been providing a security detail to the Attorney General as authorized under Section 109 of HB 5003 (the implementing bill for the Fiscal Year 2016-2017 General Appropriations Act). The bill makes this authorization permanent and absorbed within existing resources of the DHSMV.

The provisions of the bill relating to death benefits for emergency responders have an indeterminate fiscal impact. The number of emergency responders meeting the requirements for benefits under the bill is unknown. The Attorney General's Office reports that any impact can be absorbed within existing resources in the Crimes Compensation Trust Fund.

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 does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Legal Affairs (DLA) is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Removing a section revising the definition of "monetary currency" under the state's money services businesses law;
- Removing a section that would have expanded the public records exemption related to address confidentiality in domestic violence actions; and
- Amending the portion related to money laundering to add virtual currency to the money laundering offense.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.