

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1417 Pub. Rec./Identifying Information of Human Trafficking Victims

**SPONSOR(S):** Civil Justice & Claims Subcommittee, Spano and others

**TIED BILLS:** CS/HB 1165 **IDEN./SIM. BILLS:** SB 1788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Grosso	Harrington
3) Judiciary Committee			

### SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Victims of human trafficking are able to bring a cause of action against the human trafficker; however, given the nature of human trafficking, victims may be cautious of bringing such actions so as to keep their victimization private.

The bill, which is linked to the passage of CS/HB 1165, creates a public record exemption for court documents related to human trafficking victim identification. Upon the request of a victim, hearings conducted during civil actions brought pursuant to CS/HB 1165 may be closed and any information identifying victims of human trafficking must be redacted or sealed in the court file and online docket. The bill provides that the redacted or sealed information is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the victim requests.

The bill provides a statement of public necessity as required by the State Constitution.

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

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background and Current Law**

###### Public Records

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet the public purpose.<sup>2</sup>

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in chapter 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>3</sup> does not apply to exemptions regarding the State Courts System.<sup>4</sup> However, the act is informative as to the general legislative intent regarding public records. The act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption." The Act also provides general framework for public records exemptions and requires the necessity of the exemption to meet one of the following purposes:<sup>5</sup>

- Allows the state or political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.

###### Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."<sup>6</sup> Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.<sup>7</sup>

Victims of human trafficking often face difficulties hiding their identities from their former captors and often fear retaliation or the risk of being enslaved again. Moreover, victims of human trafficking often wish to keep the nature of their victimization private given the social stigmas associated with such

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> s. 119.15, F.S.

<sup>4</sup> s. 119.15(2)(b), F.S.

<sup>5</sup> s. 119.15(6)(b), F.S.

<sup>6</sup> s. 787.06(2)(d), F.S.

<sup>7</sup> s. 787.06(1)(a), F.S.

victimization in society. This generally comes in the form of defamation or damage to their name after being associated with human trafficking, despite their status as a victim.<sup>8</sup>

The state has created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement and social services. The Council seeks to fight commercial sexual exploitation as a form of human trafficking and to support victims.<sup>9</sup> Current law allows victims of human trafficking to file a civil action against the captor under s. 772.104, F.S. In such actions, victims may be awarded damages in an amount threefold of the amount gained from the sex trafficking, and are entitled to minimum damages in the amount of \$200 and reasonable attorney fees and court costs.

Moreover, s. 119.071(2), F.S., provides public record exemptions for various types of criminal investigative or intelligence information that reveals identifying information of specified parties involved in the investigation of a crime. This exemption applies to a victim of a human trafficking or child abuse offense under the age of 18.<sup>10</sup>

CS/HB 1165, a companion bill, creates a civil cause of action for a victim of human trafficking and creates a civil forfeiture action related to civil trafficking.

### **Effect of the Bill**

The bill creates a public record exemption to provide for closed hearings for civil actions brought pursuant to the statute created in CS/HB 1165. The exemption provides that any information identifying such victims of human trafficking in a civil action brought pursuant to CS/HB 1165 is confidential and exempt at the victim's request. The information must be redacted or sealed in the court file and online docket for such action.

The bill also provides a statement of public necessity as required by the Florida Constitution.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 787.061, F.S., relating to human trafficking civil actions.

Section 2 provides a public necessity statement.

Section 3 provides an effective date to be the same as that of CS/HB 1165, if such legislation is passed during the same session and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state government revenues.

##### **2. Expenditures:**

The bill does not appear to have any impact on state government expenditures.

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<sup>8</sup> See United Nations Office on Drug and Crime Report, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008), available online at: [http://www.unodc.org/documents/human-trafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf) (accessed on March 17, 2017).

<sup>9</sup> See s. 16.617, F.S.

<sup>10</sup> s. 119.071(2)(h)1.a., F.S.

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:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public record exemption for the personal identifying information of human trafficking victims in court proceedings at the victim's request. This does not appear to be in conflict with the constitutional requirement that the exemption be no broad than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added to the statement of public necessity and removed the future repeal of the section. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.