FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: CS/HB 641	**COMPANION BILL:** CS/SB 1642 (McClain)
TITLE: Gender Identity Employment Practices	**LINKED BILLS:** None
SPONSOR(S): Plakon and Nix	**RELATED BILLS:** None

Committee References

Government Operations	➤	Civil Justice & Claims	➤	State Affairs
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SUMMARY

Effect of the Bill:

The bill:

- Prohibits public employers and their employees or contractors from requiring the use of preferred pronouns that do not correspond to a person's sex.
- Restricts public employment forms to male and female sex designations.
- Prohibits adverse personnel actions by public employers—discharge, suspension, demotion, and similar actions—based on deeply held beliefs opposed to gender ideology, regardless of whether such views are expressed at or away from work.
- Prohibits state-funded employers from requiring training or instruction on sexual orientation, gender identity, or gender expression.

Violations are subject to existing administrative and civil remedies under the Florida Civil Rights Act.

Fiscal or Economic Impact:

The bill will likely have an indeterminate, negative fiscal impact on the state government and local governments, and an indeterminate, negative economic impact on the private sector. The bill may increase workload related to responding to complaints and potential litigation arising from newly created unlawful employment practices. The overall fiscal and economic impacts are indeterminate as the number of complaints and related litigation costs cannot be readily ascertained.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

The bill declares it to be the policy of the state that a person's sex[1] is an immutable biological trait and that pronouns that do not correspond to a person's sex are false. The bill generally applies in the context of employment by the state or any county, municipality, special district, or subdivision or agency thereof, and provides that:

- A public employee[2] or contractor[3] may not be required, as a condition of employment or to avoid adverse personnel action,[4] to refer to another person using preferred pronouns that do not correspond to that person's sex.

[1] The bill defines "sex" to mean the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.
[2] The bill defines "employee" to mean an individual employed by, or attempting to be employed by, an employer.
[3] The bill defines "contractor" to mean an individual or business entity that enters or attempts to enter into a service contract with an employer.
[4] The bill defines "adverse personnel action" to mean the discharge, suspension, transfer, demotion, or lack of promotion of an employee or contractor; the withholding of bonuses; the withholding of promotional opportunities; the reduction in salary or

- A public employee or contractor may not require an employer to use preferred pronouns that do not correspond to the employee's or contractor's sex.
- Public employment applications or related forms that inquire about sex may provide only male or female options and may not include nonbinary or other options. (Section 2)

An exception is provided for individuals born with a genetically or biochemically verifiable disorder of sex development. (Section 2)

The bill makes it an unlawful employment practice for a public employer to take adverse personnel action against an employee or contractor because of the individual's deeply held religious, moral, conscience-based, or biology-based beliefs regarding gender ideology,[5] regardless of whether such views are expressed at or away from the worksite. (Section 2)

The bill also makes it an unlawful employment practice for any employer that receives funding from the state to require, as a condition of employment, any training, instruction, or other activity on sexual orientation, gender identity,[6] or gender expression. (Section 3)

Aggrieved employees and contractors may avail themselves of the administrative and civil remedies provided under the Florida Civil Rights Act. The court must award reasonable attorney fees and costs to the prevailing party. (Section 2)

The bill provides that the act may be cited as the "Freedom of Conscience in the Workplace Act." (Section 1)

The effective date of the bill is July 1, 2026. (Section 5)

RULEMAKING:

The bill grants the Department of Management Services rulemaking authority to administer the bill's provisions.

Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill will likely have an indeterminate, negative fiscal impact on state government expenditures. The Florida Commission on Human Relations may experience an increase in complaints and enforcement activity. Additionally, state agencies may incur costs associated with reviewing and updating employment policies, forms, and trainings to ensure compliance with the bill. Agencies may also experience increased workload related to responding to complaints and potential litigation arising from newly created unlawful employment practices. The overall fiscal impact is indeterminate at this time as the number of complaints and related litigation costs cannot be readily ascertained; however, the fiscal impact may be significant.

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benefits; or any other adverse action taken against an employee or contractor within the terms and conditions of employment by an employer.

[5] The bill defines "gender ideology" as a false belief that replaces the biological category of sex with a self-assessed concept of gender identity, permits the false claim that males can identify as and become women and vice versa, and which requires all institutions of society to regard this false claim as true. The term includes the idea that gender exists on a spectrum disconnected from a person's sex, and the definition states that the concept is internally inconsistent.

[6] The bill defines "gender identity" as a fully internal and subjective sense of self, disconnected from biological reality and sex, and existing on an infinite continuum that does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex.

LOCAL GOVERNMENT:

The bill will likely have an indeterminate, negative fiscal impact on local government expenditures. Local governments may incur costs associated with reviewing and updating employment policies, forms, and trainings to ensure compliance with the bill. Additionally, local governments may experience increased workload related to responding to complaints and potential litigation arising from the newly created unlawful employment practices. The overall fiscal impact is indeterminate at this time as the number of complaints and related litigation costs cannot be readily ascertained; however, the fiscal impact may be significant.

PRIVATE SECTOR:

The bill will likely have an indeterminate, negative economic impact on the private sector. Private sector employers that receive state funding may incur costs associated with modifying training programs to ensure compliance with the bill. Additionally, such employers may experience increased workload related to responding to complaints and potential litigation arising from the newly created unlawful employment practice. The overall economic impact is indeterminate at this time as the number of complaints, and related litigation costs cannot be readily ascertained; however, the economic impact may be significant.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Florida Civil Rights Act

The Florida Civil Rights Act of 1992 (FCRA)[7] prohibits employment discrimination on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.[8] The FCRA, generally interpreted in line with standards under the federal Civil Rights Act and other related federal laws, applies to employers, employment agencies, labor organizations, and joint labor-management committees and is enforced by the Florida Commission on Human Relations (FCHR)[9] within the Department of Management Services.[10] The FCHR is a 12-member body appointed by the Governor, subject to Senate confirmation.[11] Commissioners must be broadly representative of the state's racial, religious, ethnic, social, economic, political, and professional communities, with at least one member being 60 years of age or older.[12]

The FCRA identifies unlawful employment practices, including discriminatory hiring, discharge, classification, compensation, referrals, membership decisions, training opportunities, advertising, and retaliation.[13] The FCRA also prohibits certain mandatory training or instruction that promotes specified discriminatory concepts.[14] Limited exceptions are recognized, however, such as bona fide occupational qualifications, seniority systems, and age-based programs authorized by law.[15]

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[7] *See* part I, ch. 760, F.S., and s. 509.092, F.S.

[8] *See* s. 760.10, F.S. In addition to employment discrimination, the FCRA also prohibits discrimination in places of public accommodation. Ss. 760.08 and 509.092, F.S.

[9] The FCHR is responsible for promoting fair treatment and equal opportunity and for working to eliminate discrimination and antagonism among individuals and groups based on protected characteristics. S. 760.05, F.S.

[10] *See* ss. 760.04 and 760.11, F.S. The Attorney General is also authorized to bring a civil action for damages, injunctive relief, and other appropriate relief when he has reasonable cause to believe that a person or group has engaged in a pattern or practice of discrimination or that a discriminatory act raises an issue of great public interest. S. 760.021, F.S.

[11] S. 760.03(1), F.S.

[12] S. 760.03(2), F.S. The FCHR appoints an executive director and hires staff, including attorneys and investigators, to carry out its duties under the FCRA. *See* s. 760.03(7), F.S.

[13] *See* s. 760.10(1)-(7), F.S. Under the FCRA, an unlawful employment practice based on harassment requires conduct directed at a protected characteristic that is sufficiently severe or pervasive to alter the terms or conditions of employment and for which the employer is legally responsible. *See Sutherland v. Boehringer–Ingelheim Pharmaceuticals, Inc.*, 2017 WL 2889469 (11th Cir. 2017).

[14] S. 760.10(8), F.S.

[15] S. 760.10(9), F.S.

Pursuant to the FCRA, an aggrieved person may file a complaint within a year of an alleged violation.[16] The FCHR investigates such complaints and determines whether reasonable cause exists—and if found—the aggrieved party may pursue an administrative hearing or file a civil action, seeking injunctive relief, damages, and attorney fees.[17] Final agency action is subject to judicial review, and a finding that a public employee violated the act constitutes just or substantial cause for discharge.[18]

Federal Civil Rights Act

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. The United States Supreme Court has long held that the term "sex," as used in Title VII, covered pregnancy; however, in 2020, in *Bostock v. Clayton County, Georgia*, the United States Supreme Court also held that the term covers both sexual orientation and gender identity.[19] Thus, held the *Bostock* Court, where an employer takes adverse personnel action against an employee for traits or actions that the employer would not have questioned in members of a different sex, the employer unlawfully discriminates against the employee under Title VII, as sex played a necessary and undisguisable role in the employer's decision, which is exactly what Title VII forbids.[20]

It is not just adverse personnel action, however, that could give rise to a claim of unlawful discrimination under Title VII. In interpreting Title VII's scope, courts have found that, while Title VII does not bar speech *per se*, Title VII does bar discriminatory conduct, which may include a bar on requiring people to work in a discriminatorily hostile or abusive environment created in part by speech.[21] In reaching this conclusion, the United States Supreme Court found that a claim of hostile or abusive work environment discrimination is actionable under Title VII if the alleged harassment is "severe or pervasive [enough] to alter the conditions of the victim's employment and create [a hostile or] abusive working environment"; where the allegation is specifically sex discrimination, the alleged harassment must also have been inflicted on the basis of sex.[22] The Court recognized, however, that not all workplace conduct that constitutes "harassment" alters the conditions of a victim's employment to a sufficient degree to violate Title VII; thus, held the Court, something like the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII."[23]

In recent years, questions have arisen as to whether, by allowing an employee to use pronouns in addressing another employee, which pronouns are not the pronouns preferred by such other employee, an employer creates or enables a hostile or abusive work environment constituting sex discrimination under Title VII. Notably, the *Bostock* Court did not address the question, as this question was not before the Court for consideration; indeed, the *Bostock* Court did not address the issue of harassment in any form.[24]

In 2024, the Eleventh Circuit Court of Appeals did touch on the question when it considered *Copeland v. Georgia Department of Corrections*, a case involving a transgender man employed as a correctional officer who alleged unlawful sex discrimination in the workplace based in part on his colleagues' persistent, public use of "she/her" pronouns and the term "ma'am" when referring to him.[25] In finding that the plaintiff raised genuine issues of material fact such that his claim should survive the defendant's motion for summary judgment, the Court noted that a reasonable person could find that pervasive harassment occurred in the plaintiff's workplace such that would give rise to an actionable Title VII claim.[26] However, the Court did not reach this conclusion by relying on the

[16] S. 760.11, F.S. The FHRC and the Attorney General may also file a complaint.
[17] S. 760.11(4)-(6), F.S.
[18] S. 760.11(13) & (15), F.S.
[19] 590 U.S. 644 (2020).
[20] *Id.*
[21] *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).
[22] *Id.*
[23] *Id.*
[24] *Bostock*, 590 U.S. at 644.
[25] 97 F. 4th 766 (11th Cir. 2024).
[26] *Id.*

use of pronouns alone; instead, the Court looked also to the persistent, public nature of the use, which occurred for over one year in front of inmates and over the prison-wide radio system (thereby undermining the plaintiff's authority and humiliating the plaintiff in front of colleagues) and the fact that the plaintiff also faced during this time physical threats, pushing, the intentional disregard of his commands, and invasive, inappropriate questions and comments about his genitals.[27]

First Amendment Guarantee: Freedom of Speech

The First Amendment to the United States Constitution provides that "Congress shall make no law … abridging the freedom of speech..."[28] In 1940, the United States Supreme Court held that the Fourteenth Amendment's concept of liberty embraced the liberties guaranteed by the First Amendment, providing, in pertinent part, that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."[29] Thus, courts apply the First Amendment to the states through the Fourteenth Amendment, therefore generally prohibiting the states from enacting laws which abridge the freedom of speech, which, freedom, noted the United States Supreme Court, "is the indispensable condition of nearly every other form of freedom."[30]

Public Employee Speech Rights

The courts recognize that the freedom of speech is not absolute at all times and under all circumstances.[31] For example, courts have found that, when public employees make statements pursuant to their official duties, the employees are not speaking as United States citizens for First Amendment purposes, and, thus, the Constitution does not necessarily insulate their communication from employer discipline.[32] For this reason, the Eleventh Circuit Court of Appeals held, in *Wood v. Florida Department of Education*, that application of a Florida law to a transgender female public school teacher, which law prohibited a public school employee from using the employee's preferred pronouns and title when speaking to students if such pronouns and title did not correspond to the employee's biological sex, did not violate the teacher's First Amendment rights, as such teacher spoke in her capacity as a government employee, and not as a private citizen.[33]

However, where public employees speak as citizens (that is, in their private capacities) about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.[34] This is because, noted the United States Supreme Court, the First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, whether incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens.[35] This is true even where an employee expresses his or her personal views inside his or her office, rather than in a public space, as, in some instances, such speech may receive First Amendment protection.[36]

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[27] *Id.*
[28] The First Amendment was ratified on December 15, 1791, as part of the Bill of Rights; that is, the first ten Amendments to the United States Constitution. Library of Congress, *The Bill of Rights*, https://www.loc.gov/item/today-in-history/december-15/#:~:text=On%20December%2015%2C%201791%2C%20the,of%20peaceful%20assembly%20and%20petition (last visited Feb. 9, 2026).
[29] *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
[30] *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967).
[31] *See, e.g.*, *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942).
[32] *Garcetti v. Ceballos*, 547 U.S. 410 (2006).
[33] 142 F. 4th 1286 (11th Cir. 2025).
[34] *Garcetti*, 547 U.S. at 410 (2006).
[35] *Id.*
[36] *Id.*

Content-Based Speech

The "captive audience doctrine" authorizes the government to prohibit objectionable private speech where a captive audience cannot otherwise avoid such speech; however, courts have historically applied this doctrine sparingly to protect unwilling listeners from protected speech.[37] This is because, generally speaking, laws that discriminate based on content are "antithetical to the First Amendment right to freedom of speech" and may be justified only if the government proves that such laws are narrowly tailored to serve a compelling state interest.[38]

At least one federal district court has noted that the First Amendment does not give the state license to censor speech simply because it finds such speech repugnant, no matter how captive the audience; instead, noted the court, "the remedy for repugnant speech is more speech, not enforced silence," and "the state may not burden the speech of others in order to tilt the public debate in a preferred direction."[39] Thus, the district court granted an injunction preliminarily enjoining a state law expanding the definition of "unlawful employment practice" to include an employer requiring its employees to attend training or any other required activity promoting the belief that any of eight concepts constituted discrimination on the basis of race, color, sex, or national origin.[40] The Eleventh Circuit Court of Appeals subsequently affirmed the federal district court's preliminary injunction, and the district court later converted the preliminary injunction to a permanent one.[41] Importantly, however, the courts addressed the state law's application to the speech of private employers – that is, private speech; such a law as applied only to public employers may not trigger the same First Amendment analysis, as the First Amendment protects only private speech, not government speech.[42] Under the First Amendment, a government entity has the right to speak for itself, and is entitled to say what it wishes and to select the views that it wants to express.[43]

Freedom of Religion

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..."; these two concepts are known as the Establishment Clause and the Free Exercise Clause, respectively. As previously mentioned, courts apply the First Amendment to the states through the Fourteenth Amendment, therefore generally prohibiting the states from enacting laws which establish a religion or prohibit the free exercise thereof.[44]

The purpose of the Free Exercise Clause is to secure religious liberty in the individual by prohibiting any invasion thereof by civil authority.[45] In conceptualizing the Free Exercise Clause, the United States Supreme Court held that this Clause is a clause requiring neutrality; just as the Clause prohibits the state to require religious exercise, even with the consent of the majority, so does it also prohibit the state from establishing "a religion of secularism" in the sense of affirmatively opposing or showing hostility to religion and thus preferring those who believe in no religion over those who do believe.[46]

Further, the United States Supreme Court has held that the religious beliefs in question need not be "acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[47] Generally speaking, however, laws implicate the Free Exercise Clause only where they discriminate against some or all religious beliefs or regulate or prohibit conduct because it is undertaken for religious reasons; in such instances, a law must undergo "the most rigorous of scrutiny," which scrutiny the government can survive only if the law

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[37] *Honeyfund, Inc. v. DeSantis*, 622 F. Supp. 3d. 1159 (N.D. Fla. 2022).
[38] *Id.; Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015).
[39] *Honeyfund,* 622 F. Supp. 3d at 1159.
[40] *Id.*
[41] As of the date of this bill analysis, the permanent injunction remains in effect. *Honeyfund, Inc. v. Governor*, 94 F. 4th 1272 (11 Cir. 2024); *Honeyfund, Inc. v. DeSantis*, No. 4:22cv227-MW/MAF (N.D. Fla. July 26, 2024).
[42] *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009).
[43] *Id.*
[44] *Cantwell*, 310 U.S. at 296.
[45] *School. Dist. of Abington, Tp., Pa. v. Schempp*, 374 U.S. 203 (1963).
[46] *Id.*
[47] *Fulton v. City of Philadelphia, Pa.*, 593 U.S. 522 (2021).

"advances interests of the highest order" and is narrowly tailored to achieve such interests.[48] The government is generally free to place incidental burdens on religious exercise, so long as it does so pursuant to a generally-applicable neutral policy.[49]

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Government Operations Subcommittee	11 Y, 4 N, As CS	2/5/2026	Toliver	Villa
THE CHANGES ADOPTED BY THE COMMITTEE:	Moved the provisions of the bill from ch. 110, F.S., to ch. 112, F.S., and made other technical changes.			
Civil Justice & Claims Subcommittee			Jones	Mawn
State Affairs Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

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[48] *Id.*; *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S., 520 (1993).
[49] *Mahmoud v. Taylor*, 606 U.S. 522 (2025).