

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		MacNamara	Bond

SUMMARY ANALYSIS

The Attorney General, a member of the Cabinet of the state's Executive Branch, is the chief legal officer of the state. The Attorney General is granted the authority to use all power necessary for the benefit of the public's interest, absent express legislative restriction. Current law provides various responsibilities of the Attorney General to include, filing actions on behalf of the state's citizens in certain actions, approving applicants for certification in various state programs, and is granted certain privileges as a member of the Executive Branch and a member of the Cabinet.

The Department of Legal Affairs is responsible for providing all legal services as required by the executive branch and the Attorney General, as head of the Department. Current law creates various councils, programs, and trust funds that are within the Department. Moreover, the Department of Legal Affairs is tasked with oversight duties for certain industries of the state as part of providing legal services on behalf of the state.

The bill makes the following changes with respect to the Attorney General and the Department of Legal Affairs:

- Authorizes the Statewide Council on Human Trafficking to apply for and accept funds, grants, gifts, and services from state and federal agencies to defray costs associated with the annual statewide summit;
- Grants the Attorney General the power to request one or more patrol officers for the Office of the Attorney General;
- Revises applicable dates for violations under Florida's Deceptive and Unfair Trade Practices Act;
- Revises definitions under the Florida Money Laundering Act to include virtual currency thereby expanding the of money laundering to include laundering of virtual currency;
- Provides that the Attorney General has standing and is responsible for receiving notices for charitable trust actions under Florida's Probate Code; and
- Pays up to \$50,000 to the surviving family members of an emergency responder who is killed in the line of duty as a result of a crime, payable from the Crimes Compensation Trust Fund.

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

The bill has an effective 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.¹ 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.²

The Attorney General is also the head of the Department of Legal Affairs. The Department of Legal Affairs (the "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 conflict of interest is present.

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 state has created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.³ The Council is within the Department.

The membership of the Council is provided for by statute, with each member serving 4-year terms. The duties of the Council include:

- Develop recommendations for comprehensive programs and services for victims of human trafficking to include recommendations for certification criteria for safe houses and safe foster homes.
- Make recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Annually hold a statewide policy summit in conjunction with an institution of higher learning in this state.
- Work with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, which can be used to determine how to maximize existing resources and address unmet needs and emerging trends.
- Develop policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in our state.

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² See e.g., s. 736.0110, F.S., relating to charitable trusts.

³ See s. 16.617, F.S.

Additionally, the Council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing the accomplishments of the council during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.

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

The Department of Highway Safety and Motor Vehicles is headed by the Governor and members of the Cabinet. Divisions include the Division of the Florida Highway Patrol and the Division of Motorist Services. Under s. 321.04(3), F.S., the Department is required to assign one patrol officer to the office of the Governor at the discretion of the Lieutenant Governor. The patrol officer is selected by the Governor and current law provides a minimum rank and salary requirements for the selected officer.⁴

Moreover, 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 member if the Department deems such assignment appropriate or in response to a threat, if requested in writing by such Cabinet member.⁵

The bill provides that upon the request of the Attorney General, the Department of Highway Safety and Motor Vehicles is required 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 Act⁶ broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. 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 is designed to protect consumers from deceptive acts that mislead consumers, and is intended to protect 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.

⁴ s. 321.04(3), F.S.

⁵ s. 321.04(4), F.S.

⁶ ss. 501.201-213, F.S.

The bill removes the year 2015 from the above provisions in the Act and replaces it with the year 2017.

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 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.⁷

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

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 the State of 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:

- s. 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.
- s. 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.

⁷ s. 896.101(2)(e), F.S.

⁸ s. 736.0405(1), F.S.

- s. 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.
- s. 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.
- s. 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. 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

⁹ s. 960.02, F.S.

¹⁰ *Id.*

¹¹ s. 960.21(1)-(2), F.S.

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.

The bill creates s. 960.194, F.S., for 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.

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.

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 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.

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).

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 does not appear to have any impact on state revenues.

2. Expenditures:

While the bill does not appear to have an overall impact on state government expenditures, the bill may lead to an increase in costs to the Attorney General's office and a corresponding decrease in work costs for the state attorney's offices for sections of the bill related to charitable trusts.

The bill will also have a negative impact on state government expenditures. However, because the number of emergency responders meeting the requirements for benefits under the bill is unknown, the extent of the impact is undetermined.

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:

The bill does not appear to have any direct economic impact on the private sector.

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 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

n/a