

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 3 Civil Remedies for Terrorism

**SPONSOR(S):** Criminal Justice Subcommittee; Civil Justice Subcommittee; Hill

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 996

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Malcolm	Bond
2) Criminal Justice Subcommittee	9 Y, 0 N, As CS	Keegan	White
3) Judiciary Committee		Malcolm	Havlicak

### SUMMARY ANALYSIS

Current law provides a civil cause of action for a person who has been injured by specified criminal activities such as extortion, battery, elderly exploitation, and certain drug offenses. A plaintiff who prevails on such a claim is entitled to treble damages, specified minimum damages, and attorney fees and court costs.

The bill creates a separate civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff is entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action is not available to a person whose injuries are the result of his or her participation in the act that caused the injury.

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

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### *Terrorism-related Crimes in Florida*

Terrorism is defined in current law as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States, or that involves a violation of s. 815.06, F.S., related to computer crimes, and is intended to intimidate, injure, or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.<sup>1</sup> Terrorism is not an independent crime in Florida; rather, it is a predicate act for the crime of capital murder.<sup>2</sup>

Although terrorism is not an independent crime, if a person is convicted of committing a felony or misdemeanor that *facilitated or furthered* an act of terrorism, the court must reclassify the felony or misdemeanor to the next highest degree.<sup>3</sup> Additionally, if the underlying crime that facilitated or furthered an act of terrorism is a first-degree misdemeanor or greater, the offense severity ranking<sup>4</sup> is increased, thus further increasing the defendant's potential sentence.<sup>5</sup>

###### *Intentional Torts*

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."<sup>6</sup> A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.<sup>7</sup> In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.<sup>8</sup> Intentional torts recognized in Florida include assault,<sup>9</sup> battery,<sup>10</sup> and intentional infliction of emotional distress.<sup>11</sup>

Although there is no specific cause of action in Florida that expressly allows a victim of terrorism to recover damages caused by an individual terrorist, existing intentional torts, such as battery and intentional infliction of emotional distress, would likely apply. However, existing intentional torts may not

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<sup>1</sup> ss. 775.30, 782.04(5), and 775.31(3), F.S.

<sup>2</sup> s. 782.04(1)(a)2.r., (3)(r), and (4)(s), F.S.

<sup>3</sup> s. 775.31(1), F.S. For example, if a defendant is charged with a third-degree felony, the offense is reclassified as a second-degree felony.

<sup>4</sup> Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense. s. 921.0022, F.S. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. s. 921.0023, F.S.

<sup>5</sup> s. 775.31(2), F.S.

<sup>6</sup> *Boza v. Carter*, 993 So. 2d 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 438 (Fla. 2001)).

<sup>7</sup> 55 Fla. Jur 2d Torts § 6 (2015).

<sup>8</sup> s. 768.72, F.S.

<sup>9</sup> *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.").

<sup>10</sup> *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.")

<sup>11</sup> *Gallogly v. Rodriguez*, 970 So. 2d 470 (Fla. 2d DCA 2007); see *Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) (In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the wrongdoer acted recklessly or intentionally; 2) the conduct was extreme and outrageous; 3) the conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.).

allow a victim of terrorism to recover damages from individuals or organizations who provided material support to the terrorist.<sup>12</sup>

### *Civil Remedies for Criminal Practices*

Chapter 772, F.S., provides a civil cause of action for persons injured by certain criminal activities. Section 772.104, F.S., provides a civil cause of action for a person who has been injured by “any person who has received proceeds derived . . . from a pattern of criminal activity.”<sup>13</sup> The “criminal activity” for which a defendant may be liable encompasses a broad range of criminal conduct including public assistance fraud, use of explosives, homicide, extortion, and computer-related crimes.<sup>14</sup> Chapter 772, F.S., also provides specific causes of action for a person injured by financial crimes such as theft, fraud, and elderly exploitation, and by certain drug crimes.<sup>15</sup>

Although punitive damages are generally not recoverable for claims raised pursuant to ch. 772, F.S., a plaintiff may recover treble damages and is entitled to minimum damages of \$200, or \$1,000 in the case of drug crimes, and attorney fees and court costs.<sup>16</sup> However, a defendant may recover attorney fees and court costs if the court finds that the plaintiff’s claim was without substantial fact or legal support.<sup>17</sup>

The civil remedies in ch. 772, F.S., do not preclude any other remedy provided by law.<sup>18</sup> In cases where the defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that forms the basis of the plaintiff’s civil cause of action pursuant to ch. 772, F.S., the defendant is estopped from denying the essential elements of the criminal activity in the civil case.<sup>19</sup>

### **Effect of Proposed Changes**

The bill creates s. 772.13, F.S., to provide a specific civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff will be entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action created by the bill is not available to a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism.

If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney fees and court costs.

In awarding attorney fees and court costs pursuant to newly created s. 772.13, F.S., the court may not consider the ability of the opposing party to pay such fees and costs. Additionally, s. 772.13, F.S., does not limit any right to recover attorney fees or costs provided under other provisions of law.<sup>20</sup>

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

Section 1 creates s. 772.13, F.S., related to civil remedy for terrorism or facilitating or furthering terrorism.

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<sup>12</sup> See *Boza*, 993 So. 2d at 562 (“As a general principle, a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to another.”).

<sup>13</sup> ss. 772.103(1) and 772.104(1), F.S.

<sup>14</sup> s. 772.102(1), F.S. “Criminal activity” also includes an attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the enumerated acts. *Id.* This cause of action is only available if the defendant engages in two or more similar acts of criminal activity within a five-year period. *Id.* at (4).

<sup>15</sup> ss. 772.11 and 772.12, F.S.

<sup>16</sup> ss. 772.104(1), (3), 772.11(1), and 772.12(2), F.S.

<sup>17</sup> s. 772.104(3), F.S.

<sup>18</sup> s. 772.18, F.S.

<sup>19</sup> s. 772.14, F.S.; *J.P. Transp., Inc., v. Fidelity and Cas. Co. of New York*, 750 So. 2d 752, 753 (Fla. 5th DCA 2000); *Peterson v. Therma Building, Inc.*, 958 So. 2d 977, 979 (Fla. 2d DCA 2007).

<sup>20</sup> See ch. 57, F.S.; Fla. R. Civ. P. Taxation of Costs (2015).

## **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:**

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

### **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**

On December 2, 2015, the Civil Justice 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 the name of the act and creating a new section in ch. 772, F.S., to provide a separate civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism.

On January 25, 2016, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute clarified that the bill does not limit the right for a party to recover attorney fees and costs under other provisions of law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.