

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1147 Office of the Attorney General

**SPONSOR(S):** Judiciary Committee; Justice Appropriations Subcommittee; Fitzenhagen

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Williams	Bond
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee	18 Y, 0 N, As CS	Williams	Havlicak

### SUMMARY ANALYSIS

The Office of the Attorney General, known as the Department of Legal Affairs (department), provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida in criminal appeals in state and federal courts. In addition, the Attorney General's Office conducts various programs to assist victims of crime.

The bill revises current law to more accurately reflect current practices of the department and the Attorney General and amends several statutory provisions under the scope of the department, to:

- Limit trust fund accumulations.
- Change which trust fund pays Medicaid Fraud rewards.
- Update references to federal law.
- Update procedures related to enforcement of the Motor Vehicle Warranty Enforcement Act.
- Give the Attorney General discretion regarding whether to pursue a Fair Housing complaint.

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

The bill provides an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Office of the Attorney General, also known as the Department of Legal Affairs (department), serves as the people's law firm. Led by the Attorney General, the department provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.<sup>1</sup> The Attorney General's Office also conducts various programs to assist victims of crime.<sup>2</sup>

#### **Effect of the Bill**

This bill makes several changes to the following statutory provisions under the scope of the department and Attorney General:

#### Legal Affairs Revolving Trust Fund

Prior to 2003, s. 501.2101, F.S., provided that all funds received by the department for attorney's fees and costs of investigation or litigation in proceedings brought enforcing certain consumer protection provisions of ch. 501, F.S., were deposited into the Consumer Fraud Trust Fund or the Legal Affairs Revolving Trust Fund. In 2003 that section was amended to provide that such funds would be deposited into the Legal Affairs Revolving Trust Fund; however, the Legal Affairs Revolving Trust Fund statute (s. 16.53, F.S.) was never amended to reflect the changes in s. 501.2101, F.S., that the consumer fraud unit was depositing funds and being funded through the Legal Affairs Revolving Trust Fund. Therefore, the department has been operating under the requirements of s. 501.2101, F.S., without the proper authority under the Legal Affairs Revolving Trust Fund statute.

Section 16.53(7), F.S., provides that any moneys remaining in the Legal Affairs Revolving Trust Fund at the end of a fiscal year in excess of three times the amount of the combined budgets for the antitrust and racketeering sections of the department for the forthcoming fiscal year must be transferred to the General Revenue Fund unallocated.

The bill requires all monies in excess of three times the amount of the combined budgets for antitrust, *consumer protection* and racketeering sections of the department which are support by the fund for the forthcoming fiscal year be transferred to the General Revenue Fund unallocated.

#### Reporting Medicaid Fraud

Current law requires the Department of Law Enforcement or director of the Medicaid Fraud Control Unit to pay a reward to a person who furnishes original information and reports of Medicaid fraud.<sup>3</sup> Section 409.9203(3), F.S., requires the reward to be paid from the Legal Affairs Revolving Trust Fund. However, according to the Attorney General's office, funds to pay these rewards are currently deposited into the Operating Trust Fund.<sup>4</sup>

The bill requires the reward to be paid from the Operating Trust Fund.

#### Florida Deceptive and Unfair Trade Practices Act / Federal Trade Commission Act

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<sup>1</sup> Florida Office of the Attorney General, *The Role and Function of the Attorney General*. (<http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F>)(last visited March 12, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> Section 409.9203(1), F.S.

<sup>4</sup> Office of the Attorney General summary of HB 1147. (On file with the House Civil Justice Subcommittee).

The Florida Deceptive and Unfair Trade Practices Act declares that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.<sup>5</sup> In construing this provision, due consideration and great weight are to be given to the interpretations of the Federal Trade Commission and the federal courts relating to the analogous provision of the Federal Trade Commission Act, as of July 1, 2006.<sup>6</sup> The department enforces portions of this law.

The bill updates ss. 501.203 and 501.204, F.S., to make references of the Federal Trade Commission Act rules and regulations as of July 1, 2013.

#### Motor Vehicle Warranty Enforcement Act

Chapter 681, F.S., creates the Motor Vehicle Warranty Enforcement Act (act) to provide procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided by the act.<sup>7</sup> The act provides procedures for consumer notification of nonconformity motor vehicles and procedures and guidelines for dispute settlements. The department enforces portions of this law.

The bill makes the following changing to provisions of the act:

#### *Definitions*

The bill amends the definition of “reasonable offset for use” in s. 681.102(19), F.S., to provide that the base selling or sale price of a vehicle as reflected on the purchase invoice, exclusive of taxes, government fees, and dealer fees, or in the case of a lease, the agreed upon value as reflected in the lease agreement, be used to calculate the offset when new vehicles are purchased or leased.

#### *Dispute-settlement procedures*

Section 681.108(2), F.S., provides that once the department has received and evaluated a manufacturer’s application for certification of its procedure the department must certify the procedure or notify the manufacture of any deficiencies in the application or the procedure.

The bill requires the department, upon receipt and evaluation of a manufacturer’s application for certification, to:

- Notify the manufacturer of any deficiencies in the application or the procedure;
- Certify the procedure as substantially complying with the provisions of federal rules and law, and with the provisions and rule of the act, for a period not exceeding one year; or
- Deny certification, stating the reasons for the denial.

The bill requires the department to review each certified procedure annually to determine certification renewal and requires manufacturers seeking renewal to notify the department in writing at least 60 days before the end of the one-year certification period. The bill provides that if a manufacturer ceases operation of a certified procedure, the manufacturer must notify the department immediately in writing, and upon receipt of such notice, the department must revoke certification for that procedure.

#### *Florida New Motor Vehicle Arbitration Board*

Section 681.109, F.S., provides that if a consumer files a claim pursuant to a certified procedure within six months after expiration of the rights period and either a decision is not timely rendered, or the consumer is not satisfied with the decision or manufacturer’s compliance, the consumer may apply to the department to have the dispute removed to the New Motor Vehicle Arbitration Board (board). However, the department may reject the dispute if it is determined to be fraudulent or outside of the scope of the board’s authority.<sup>8</sup>

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<sup>5</sup> Section 501.204(1), F.S.

<sup>6</sup> Section 501.204(2), F.S.

<sup>7</sup> Section 681.101, F.S.

<sup>8</sup> Section 681.109(6), F.S.

The bill removes the requirement that the department notify the consumer of the rejected dispute by registered mail.

#### Fair Housing Act

Section 760.34, F.S., authorizes any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur to file a complaint with the Florida Commission on Human Relations (commission). After a complaint is received, the commission must investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it.<sup>9</sup> If the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General must bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of the Fair Housing Act.<sup>10</sup>

The bill allows the Office of the Attorney General to use discretion when determining whether or not to initiate a civil action in the name of the State for a claim under the Fair Housing Act.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 16.53, F.S., relating to Legal Affairs Revolving Trust Fund.

Section 2. Amends s. 409.9203, F.S., relating to rewards for reporting Medicaid fraud.

Section 3. Amends s. 501.203, F.S., relating to definitions.

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

Section 5. Amends s. 681.102, F.S., relating to definitions.

Section 6. Amends s. 681.108, F.S., relating to dispute-settlement procedures.

Section 7. Amends s. 681.109, F.S., relating to Florida New Motor Vehicle Arbitration Board.

Section 8. Amends s. 760.34, F.S., relating to enforcement.

Section 9. Provides an effective date of July 1, 2013.

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

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

##### 1. Revenues:

The bill does not appear to have an 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:

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<sup>9</sup> Section 760.34(1), F.S.

<sup>10</sup> Section 760.34(4), F.S.

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DATE: 4/17/2013

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 March 28, 2013, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that all monies in excess of three times the amount of the combined budgets for antitrust, consumer protection and racketeering sections of the department which are support by the Legal Affairs Revolving Trust Fund for the forthcoming fiscal year must be transferred to the General Revenue Fund.

On April 16, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the change to the definition of a “motor vehicle” from the bill.
- Removes the change in s. 681.104, F.S., from requiring a consumer give written notification by registered or express mail to any method of notification that provides a delivery confirmation for putting the manufacturer on notice of the need to repair a nonconformity of the vehicle.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.