

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2592

SPONSOR: Committee on Judiciary and Senator Campbell

SUBJECT: Rules of Evidence

DATE: April 20, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This Committee Substitute amends Florida's Rape Shield Law, found in s. 794.022, F.S., to provide for its application to civil actions brought under the Florida Civil Rights Act.

This bill substantially amends section 794.022 of the Florida Statutes.

## II. Present Situation:

### Florida's Rape Shield Law

Section 794.022, F.S., known as the Rape Shield Law, is a codification of the evidentiary rule of relevancy that a sexual battery victim's prior sexual activity with a person other than the accused is generally irrelevant for determining the guilt of the person accused of sexual battery under s. 794.011, F.S. Such evidence may be admissible only if, in a hearing outside the presence of the jury, the evidence tends to show that it was not the accused who committed the act or if goes to the issue of the victim's consent. This provision is buttressed by subsection (3) of s. 794.022, F.S., which provides that the victim's reputation for prior sexual conduct is inadmissible. The underpinnings of this statute are based on the premise that a sexual battery victim should be able to come forward and testify against the alleged perpetrator without having the victim's prior sexual activities become the focal point of the trial, rather than the guilt or innocence of the accused. See *Marr v. State*, 494 So.2d 1139 (Fla. 1986).

### Florida Civil Rights Act

Sections 760.01-760.11 and 509.092, F.S., make up the Florida Civil Rights Act of 1992. The general purposes of the act are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public

safety, health, and general welfare, as well as to promote the interests, rights, and privileges of individuals within the state. Section 760.01(3), F.S. provides that the act shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

Section 760.10(1)(a), F.S., makes it an unlawful employment practice for an employer to discharge, or to fail or refuse to hire, any individual or to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such person's race color, religion, sex, national origin, age, handicap, or marital status. Section 760.11, F.S., provides administrative and civil remedies for persons aggrieved by violations of the Florida Civil Rights Act. The remedies available include an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, punitive damages not to exceed \$100,000, and attorney's fees and costs.

To prove a claim for hostile work environment sexual harassment, the employee must prove (1) the employee belonged to a protected group, (2) the employee was subjected to unwelcome sexual harassment, (3) the harassment complained of was based upon sex, (4) the harassment complained of affected terms, conditions or privileges of employment, and (5) the employer knew or should have known of the harassment and failed to take prompt remedial action. *See Fromm-Vane v. Lawnwood Medical Center, Inc.*, 995 F. Supp. 1471 (S.D. Fla. 1997).

### **III. Effect of Proposed Changes:**

The Committee Substitute amends the Rape Shield Law, s. 794.022, F.S., to add a new subsection (6). The bill provides that the rules of evidence provided in this section apply in any civil action brought under the Florida Civil Rights Act involving the perpetration or alleged perpetration of a violation of s. 794.011, F.S. Accordingly, evidence of the claimant's prior consensual sexual activity between the claimant and any person other than the offending employee will not be admissible in most situations.

The bill will not preclude the possible admission of sexual activity with other employees if such evidence tends to establish a pattern of conduct or behavior on the part of the claimant which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent. *See s. 794.022(2)*, F.S.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may make it easier for a claimant to prove his or her case as the claimant's prior sexual history will not be the focus of the trial. Rather, the focus will be whether the perpetrator violated the claimant's civil rights in the employment context. However, the exact impact is indeterminate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.