

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2236  
 SPONSOR: Senator Meek  
 SUBJECT: Civil Rights Violation/ Civil Action  
 DATE: March 1, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Forgas	Johnson	JU	Favorable
2.			CM	
3.			APJ	
4.			AP	
5.				
6.				

## I. Summary:

Current law allows the Florida Attorney General to bring a civil suit to enforce the state’s civil rights laws only in cases where a defendant has interfered, or attempted to interfere, by threats, intimidation, or coercion, with someone’s enjoyment of his or her rights. In such suits, the Attorney General may seek civil penalties of up to \$10,000 per violation, in addition to injunctive relief, court costs, and reasonable attorney’s fees.

This bill authorizes the Florida Attorney General to bring a broader variety of civil suits to enforce the state’s civil rights laws. Under this bill, the Attorney General may bring suit against a person or group engaged in a pattern or practice of discrimination. Additionally, the Attorney General may bring suit to enforce the state’s civil rights laws where there is no pattern or practice of discrimination, if the Attorney General finds that a person or group has been discriminated against and that discrimination raises an issue of general public importance. The Attorney General may seek civil penalties of up to \$10,000 per violation in suits brought under this bill, in addition to injunctive relief, court costs, and reasonable attorney’s fees.

The bill takes effect upon becoming a law.

This bill creates section 760.021 of the Florida Statutes.

## II. Present Situation:

Chapter 760 of the Florida Statutes, entitled “Civil Rights”, is composed of five separate parts, which collectively prohibit discriminatory conduct against certain individuals in various settings. More specifically, Part I of chapter 760 (ss. 760.01-760.11, F.S.), known as the Florida Civil Rights Act of 1992, prohibits employment discrimination. Part II of chapter 760 ( ss. 760.20-

760.37, F.S.), known as the Fair Housing Act, prohibits discriminatory housing practices. The remaining parts of chapter 760: contain miscellaneous provisions in Part III (ss. 760.40-760.60); provide for minority representation in certain bodies in Part IV (ss. 760.80, F.S.); and provide for environmental equity and justice in Part V. (s. 760.854, F.S.)

### **Florida Civil Rights Act of 1992**

Sections 760.01-760.11, F.S., and s. 509.092, F.S., comprise 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. Thus, the act is intended to: protect each individual's interests in personal dignity; make available to the state each individual's full productive capacities; secure the state against domestic strife and unrest; preserve the public safety, health, and general welfare; and promote the interests, rights, and privileges of individuals within the state. *See*, s. 760.01(2), F.S.

Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages set forth in s. 760.11(5), F.S., unless greater damages are expressly provided for. *See*, s. 760.07, F.S. The term "public accommodation" does not include lodge halls or other similar facilities of private organizations, which are only made available for occasional or periodical public use. Section 509.092, F.S., provides that public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin.

If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in s. 760.07, F.S., may be initiated only after the plaintiff's administrative remedy has been exhausted. In addition to an action by an individual plaintiff, s. 760.51(1), F.S., allows the Attorney General to bring a civil or administrative action for damages, injunctive relief, or any other appropriate relief "whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state..." The Attorney General must bring the action in the name of the state and may bring the action on behalf of the aggrieved individual. Section 760.51(2), F.S., allows the aggrieved individual or the Attorney General to collect a civil penalty of not more than \$10,000 for each violation. Section 16.57, F.S., provides the Attorney General with the authority to investigate "violations of constitutional rights under s. 760.51," by authorizing the Attorney General to administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.

Chapter 760 also provides causes of action pertaining to discrimination that specifically occurs in employment, housing, or clubs that have more than 400 members, or is based upon having AIDS. *See*, ss. 760.10-.11; 760.23-.29; 760.34-.37; 760.50; 760.60, F.S. Individuals who have been discriminated against in employment, housing, or by a club that has more than 400 members, must first file a complaint with the Florida Commission on Human Relations prior to instituting an action in court. The commission has a wide array of administrative, regulatory, and

investigative powers designed to further its function of promoting and encouraging fair treatment and equal opportunity for all persons. *See*, ss. 760.05-.06, F.S.

Federal law provides the Attorney General of the United States with the authority to institute a civil action to restrain a “pattern or practice” of violating the comparable federal civil rights statutes, without bringing such a suit on behalf of a specific injured party. However, he is not authorized to pursue civil monetary penalties for such violations.

### III. Effect of Proposed Changes:

This bill creates a new s. 760.021, F.S. This new section authorizes the Attorney General to bring a civil suit “for damages, injunctive relief, costs, attorney’s fees, civil penalties not to exceed \$10,000 per violation, and such other relief as may be appropriate under the circumstances.” To bring such a suit, the Attorney General must have reasonable cause to believe that either “[a]ny person or group of persons is engaged in a pattern or practice of discrimination; or . . . [a]ny person or group of persons has been discriminated against and such discrimination raises an issue of general public importance[.]”

The bill does not define the term “discrimination.” Likewise, that term is not defined anywhere in ch. 760, F.S. However, the term “discriminatory practice” is defined in s. 760.02(4), F.S., to mean any practice made unlawful by the Florida Civil Rights Act of 1992, which is limited to discrimination based on race, color, religion, gender, national origin, age, handicap, or marital status. Additionally, the Florida Civil Rights Act of 1992 only proscribes discrimination in employment practices, housing practices, acts of certain private clubs, certain acts of public lodging and food service establishments, and interference with constitutional or statutory rights by threat or intimidation.

It is unknown whether the bill’s provisions would apply to acts of discrimination other than those already prohibited by ch. 760, F.S.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

Article II, s. 3, Fla. Const., provides that “[n]o person belonging to one branch [of state government] shall exercise any powers appertaining to either of the other branches unless

expressly provided [in the state constitution].” This bill may raise concerns with respect to this provision.

The Supreme Court of Florida has ruled that this separation-of-powers provision prevents the Legislature from delegating legislative power.<sup>1</sup> The power to legislate is defined as “involv[ing] the exercise of discretion as to the content of the law, its policy, or what it shall be[.]”<sup>2</sup> “The crucial test in determining whether a statute amounts to an unlawful delegation of legislative power is whether the statute contains sufficient standards or guidelines to enable the [entity to which power is delegated] and the courts to determine whether the [entity] is carrying out the legislature's intent.”<sup>3</sup> Those standards or guidelines must appear in the text of a statute or be within the realm of reasonable inference from it. As the Court explained in *Conner v. Joe Hatton, Inc.*,

[w]hen [a] statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the [entity that authority has been delegated to] the power to say what the law shall be.<sup>4</sup>

In short, if a named authority is authorized to decide what should and should not be deemed an infringement of the law, a statute must be held unconstitutional as an attempt to make an improper delegation of legislative power.

It is possible a court could find that, because this bill authorizes the Attorney General to bring suit upon a finding that past discrimination “raises an issue of general public importance,” it contains a standard so vague as not to provide an adequate basis upon which to determine whether the Attorney General is acting in accord with the intent of the Legislature, and is thus an impermissible delegation of legislative power to the Attorney General. Should a court so find, it is possible that the remedy would be to strike down the entire statute.

However, in other contexts, the Supreme Court of Florida has treated quite broad language as sufficiently clear not to be an unconstitutional delegation of legislative power, especially where a statute seeks to conform to analogous provisions of federal law<sup>5</sup>.

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<sup>1</sup> See *Board of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979).

<sup>2</sup> See *B.H. v. State*, 645 So.2d 987 (Fla. 1994).

<sup>3</sup> See 10 *Fla. Jur. 2d* Constitutional Law s. 190 and authorities cited therein.

<sup>4</sup> 216 So.2d 209, 211 (Fla. 1968).

<sup>5</sup> See *Dept. of Legal Affairs v. Rogers*, 329 So.2d 257 (Fla. 1976) (holding that the phrases “unfair methods of competition” and “unfair or deceptive” in Florida’s “Little FTC Act,” ss. 501.204-501.205, F.S., are not so vague as to be unconstitutional delegations of legislative power.)

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

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill may make it easier for the Attorney General to pursue claims against those who commit discriminatory acts in private and public settings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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