

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1464

INTRODUCER: Senator Lee

SUBJECT: Office of the Attorney General

DATE: March 15, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Favorable
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1464 makes changes to laws enforced by or governing the Office of the Attorney General, also known as the Department of Legal Affairs. These changes:

- Clarify how much money in the Legal Affairs Revolving Trust Fund that reverts to the General Revenue Fund at the end of a fiscal year by conforming the statute to changes in the Office of the Attorney General;
- Correct a discrepancy in statute and specify that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Operating Trust Fund;
- Incorporate current in federal consumer protection laws and regulations of the Federal Trade Commission into the Deceptive and Unfair Trade Practices Act, effectively specifying additional deceptive and unfair trade practices;
- Allow final written notification of the need to repair a vehicle that does not conform to the manufacturer's warranty to be made by any method providing a delivery confirmation.
- Require that, upon receipt from a manufacturer of a procedure for handling consumer complaints, the Department of Legal Affairs notify the manufacturer of any deficiencies in the procedure, certify the procedure for a period not to exceed 1 year, or deny the certification and state why.
- Allow a notice sent by the Department of Legal Affairs which rejects a motor vehicle dispute for arbitration be sent by any method by deleting a requirement that the notice be sent by registered mail.
- Allow the Attorney General discretion as to whether to file an action based on a complaint involving discriminatory housing practices.

This bill substantially amends the following sections of the Florida Statutes: 16.53, 409.9203, 501.203, 501.204, 681.102, 681.104, 681.108, 681.109, and 760.34.

II. Present Situation:

Legal Affairs Revolving Trust Fund

Section 16.53, F.S., creates the Legal Affairs Revolving Trust Fund from which the Legislature may appropriate funds for the purpose of enforcement by the Attorney General of the Racketeer Influenced and Corrupt Organization Act, the Florida Deceptive and Unfair Trade Practices Act, the Florida False Claims Act, or state or federal antitrust laws.¹ The fund acquires money from a portion of the money recovered by the Attorney General enforcing the state's antitrust and racketeering laws and the Florida False Claims Act.²

Currently, at the end of the fiscal year, any money remaining in the fund in excess of 3 times the budgets of the antitrust and racketeering sections of the Attorney General's office are transferred to the General Revenue fund.³

Medicaid Fraud

Currently s. 409.9203(3), F.S., requires that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Legal Affairs Revolving Trust Fund pursuant to s. 68.085, F.S. However s. 68.085(4), F.S., states that such rewards will be paid from the Operating Trust Fund instead, leading to confusion in the statutes as to what fund should be used to pay awards.

Nonconformity of Motor Vehicles

Under s. 681.104, F.S., a manufacturer of an automobile notified of a defect in the vehicle by the consumer within 24 months of the delivery of the vehicle to the consumer, must make repairs to the vehicle so that it conforms to the warranty on the vehicle. After three attempts to repair the nonconformity, the consumer must give written notice by certified or express mail to the manufacturer, allowing the manufacturer one final chance to repair the vehicle.⁴

If the manufacturer cannot repair the vehicle to conform to the warranty after this final attempt, the manufacturer, within 40 days, must either repurchase the vehicle and refund the full purchase price to the consumer, less a reasonable offset for use, or if the consumer pays a reasonable offset for use, replace the vehicle with a vehicle acceptable to the consumer.⁵

Reasonable offset for use is defined in s. 681.102(19), F.S., as "the number of miles attributable to a consumer up to the date of a settlement agreement or arbitration hearing, whichever occurs

¹ Section 16.53(1), F.S.

² Sections 16.53(2), 16.53(3), 16.53(4), and 16.53(5), F.S.

³ Section 16.53(7), F.S.

⁴ Section 681.104(1), F.S.

⁵ Section 681.104(2)(a), F.S.

first, multiplied by the purchase price of the vehicle and divided by 120,000, except in the case of a recreational vehicle, in which event it shall be divided by 60,000.”

However, under s. 601.108(1), F.S., if a manufacturer establishes a procedure that the Department of Legal Affairs (DLA) certifies as complying with the informal dispute settlement procedures in the Code of Federal Regulations,⁶ and informs the consumer how to file a claim, the consumer must follow that procedure before he or she can either receive a refund or a replacement vehicle.

In order to have such a procedure certified, the manufacturer must submit the procedure to the DLA which must either certify the procedure or notify the manufacturer of any deficiencies in the application or the procedure.⁷ The DLA is required to review each certified procedure annually.

If a manufacturer has a certified procedure, and the consumer and manufacturer cannot reach a decision on a dispute by use of the certified procedure, within 40 days after filing, the consumer may apply to the DLA to have the dispute removed to the Florida New Motor Vehicle Board for arbitration.⁸ If the DLA determines that it does not have sufficient evidence to resolve the dispute after providing the consumer with an opportunity to present additional evidence, the DLA may reject arbitration of the matter. If a dispute is rejected, the DLA must, by registered mail, notify the consumer and manufacturer and provide a brief explanation as to why.⁹

Discriminating Housing Practices

Section 760.34, F.S., requires that when a complaint of discriminatory housing practices has been filed and the Florida Commission on Human Relations finds there is reasonable cause to believe that discrimination has occurred, the Attorney general must bring an action to enforce the Florida Fair Housing Act¹⁰ and prevent the discrimination.

III. Effect of Proposed Changes:

Legal Affairs Revolving Trust Fund (Section 1)

The bill amends s. 16.53(7), F.S., to clarify how much money in the Legal Affairs Revolving Trust Fund reverts to the General Revenue Fund at the end of a fiscal year. Current law specifies the amount that will revert as the excess of 3 times the amount of the combined budgets of the antitrust and racketeering sections of the Attorney General’s office for the forthcoming fiscal year. Both of those sections of the office, however, are supported by the fund, and one of those sections was renamed. The change in the statute effectively takes the name change of one of the sections into account without affecting the amount of funds that will revert to the General Revenue Fund.

⁶ See 16 C.F.R. part 703.

⁷ Section 681.108(2), F.S.

⁸ Section 681.109(1), F.S.

⁹ Section 681.109(8), F.S.

¹⁰ Sections 760.20-760.37, F.S.

Medicaid Fraud (Section 2)

The bill amends s. 409.9203(3), F.S., to require that rewards for reporting Medicaid fraud to the Florida Department of Law Enforcement be paid from the Operating Trust Fund, removing the inconsistency between ss. 409.9203(3) and 68.085(4), F.S.

Incorporation of Current Federal Laws and Regulations (Sections 3 and 4)

The bill amends ss. 501.203 and 501.204, F.S., to incorporate current in federal consumer protection laws and regulations of the Federal Trade Commission into the Deceptive and Unfair Trade Practices Act, effectively specifying additional deceptive and unfair trade practices.

Nonconformity of Motor Vehicles (Sections 5, 6, 7, and 8)

The bill amends s. 681.104, F.S., to allow final written notification of the need to repair a vehicle not conforming to the manufacturer's warranty to be made by any method providing a delivery confirmation as opposed to only registered or express mail.

The bill amends s. 681.102(14), F.S., to redefine the term "reasonable offset for use" as:

the number of miles attributable to a consumer up to the date of a settlement agreement or arbitration hearing, whichever occurs first, multiplied by the base selling or sale purchase price of the 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 and divided by 120,000, except in the case of a recreational vehicle, in which event it shall be divided by 60,000.

The difference between the definition in existing law and in the bill is that the revised definition excludes government or dealer fees in calculating the reasonable offset for use. This will result in a slightly lower offset that manufacturers will be allowed to withhold when refunding the price of a vehicle that does not conform to its warranty.

The bill amends s. 681.108(2), F.S., to require that upon receipt from a manufacturer of a procedure for handling consumer complaints the DLA shall:

- Notify the manufacturer of any deficiencies in the procedure;
- Certify the procedure for a period not to exceed 1 year; or
- Deny the certification and state why.

The bill requires that a manufacturer seeking a procedure to be recertified must notify the DLA at least 60 days before the 1 year certification period elapses for the department to review and decide whether to recertify the procedure. This will allow the DLA to only review those procedures that manufacturers wish to have recertified.

The bill amends s. 681.109(6), F.S., which governs disputes overseen by the Florida New Motor Vehicle Board, to allow the DLA flexibility in providing notice to the consumer and manufacturer of a rejection of a dispute. The bill removes the requirement that notice may be sent by registered mail. The legislature may wish to consider a requirement that the notice be in writing and mailed to the consumer and manufacturer.

Discriminating Housing Practices (Section 9)

The bill amends s. 760.34(4), F.S., to allow the Attorney General discretion as to whether to file an action based on a complaint involving discriminatory housing practices.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill changes the way reasonable offset for use is calculated. This will result in a slightly lower offset that manufacturers will be allowed to withhold when refunding the price of a vehicle that does not conform to its warranty.

C. Government Sector Impact:

The bill's changes to how the Legal Affairs Revolving Trust Fund and the Operating Trust Fund are technical in nature and will not have a financial impact. The changes to the statutes concerning nonconforming motor vehicles may result in a small increase in caseload for the Department of Legal Affairs. The increase discretion for the Attorney General as to whether to file an action for a complaint involving discriminatory housing practices will potentially reduce the number of cases filed and result in a minor positive fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
