

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

| | | | |
|-----------------------------|---|----------------------------------|----------|
| BILL #: | CS/CS/CS/HB 439 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Judiciary Committee; Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Eisnaugle and others | 115 Y's | 0 N's |
| COMPANION BILLS: | CS/SB 1362 | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

CS/CS/CS/HB 439 passed the House on April 9, 2015. The bill was amended by the Senate on April 23, 2015, and subsequently passed the House on April 24, 2015. The bill includes portions of CS/CS/HB 1103 and CS/SB 1084.

The Department of Legal Affairs (Department), led by the Attorney General, 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. This bill makes several changes to a variety of statutes affecting the Department. For example, the bill:

- Expands the jurisdiction of the Office of Statewide Prosecution to include violations of ch. 787, F.S. (kidnapping, false imprisonment, and human trafficking), that were facilitated by or connected to the use of the Internet;
- Authorizes the Department to spend no more than \$20,000 annually to support costs associated with the agency's Law Enforcement Officer of the Year and Victims Services recognition and awards program.
- Allows funds currently awarded to persons who report Medicaid fraud to also be used to fund the Department's Medicaid Fraud Control Unit;
- Expands the definition of the term "crime" for purposes of victim assistance awards;
- Prohibits victim assistance awards for "catastrophic injury" from being reduced;
- Authorizes the Department to award a lifetime maximum of \$1,000 on all victim assistance claims relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life; and
- Creates s. 960.196, F.S., that addresses relocation assistance for victims of human trafficking.

The bill also creates the "Patent Troll Prevention Act" (Act) to prohibit and provide remedies for the bad faith assertion of patent infringement. The bill creates a private right of action for a person who has received a bad faith assertion of patent infringement. If successful, the court may award equitable relief; damages; costs and fees, including reasonable attorney fees; and punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

The bill was approved by the Governor on June 2, 2015, ch. 2015-92, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Legal Affairs (Department), led by the Attorney General, 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.¹

This bill makes several changes to a variety of statutes affecting the Department. A detailed description of these changes follows.

Office of Statewide Prosecution Jurisdiction

The Office of Statewide Prosecution (OSP), housed within the Department, works regularly with state and federal counterparts to investigate and prosecute complex, often large scale, organized criminal activity.² In order for the Statewide Prosecutor to have jurisdiction over a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses³ enumerated in s. 16.56(1)(a), F.S.⁴

In 2007, the Legislature recognized the multi-jurisdictional nature of the Internet and gave the OSP jurisdiction to investigate and prosecute any crime enumerated in s. 16.56 (1)(a), F.S., that was facilitated by or connected to the use of the Internet.⁵ Since this legislation was enacted, violations of ch. 787, F.S. (relating to kidnapping, false imprisonment, and human trafficking) were added to the list of offenses that the OSP had jurisdiction over.⁶ However, in what was likely an oversight, the OSP was not given jurisdiction over violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Effect of the Bill

The bill expands the jurisdiction of the OSP to include violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Spending Authority

Currently, the Department does not have specific statutory authority to spend funds on promotional materials or other similar items. Section 943.685, F.S., authorizes the Florida Department of Law Enforcement to expend no more than \$5,000 annually to purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this state and to provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the Federal Government, other states or nationalities, or other agencies are in attendance.

¹ Florida Office of the Attorney General, *The Role and Function of the Attorney General*, <http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F> (last visited April 30, 2015).

² Florida Office of the Attorney General, *Office of Statewide Prosecution*, <http://myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited April 30, 2015).

³ These offenses include bribery; burglary; usury; extortion; gambling; kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; narcotics violations; racketeering; anti-fencing violations; antitrust violations; crimes involving fraud and deceit; certain computer-related crimes; violations of the Florida Drug and Cosmetic Act; violations of the Florida Motor Fuel Tax Relief Act of 2004; Medicaid fraud; crimes involving voter registration, voting, or candidate or issue petition activities; violations of the Florida Money Laundering Act; violations of the Florida Securities and Investor Protection Act; human trafficking; and attempts, solicitations, or conspiracies to commit these offenses.

⁴ FLA. CONST. art. IV, s. 4.; s. 16.56, F.S.

⁵ Ch. 2007-143, Laws of Fla.; s. 16.56(1)(b), F.S.

⁶ Ch. 2012-97, Laws of Fla.

Effect of the Bill

The bill creates s. 16.62, F.S., to authorize the Department to spend no more than \$20,000 annually to support costs associated with the agency's Law Enforcement Officer of the Year and Victims Services recognition and awards program.

Medicaid Fraud Reporting Rewards

Medicaid Fraud Reporting Rewards

The Department's Medicaid Fraud Control Unit investigates and prosecutes fraud involving providers that intentionally defraud the state's Medicaid program.⁷ This involves investigating a wide range of misconduct originating primarily from fraudulent billing schemes, which usually involve doctors, dentists, clinics and other health care providers billing for services never performed; over billing for services provided; or billing for tests, services and products that are medically unnecessary.⁸

Section 409.9203, F.S., specifies that a person who furnishes original information relating to Medicaid fraud and reports a violation of the state's Medicaid fraud laws is eligible for a reward,⁹ subject to the availability of funds, if the information and report:

- Is made to the Department, the Agency for Health Care Administration, the Department of Health, or the Department of Law Enforcement;
- Relates to criminal fraud upon Medicaid funds or a criminal violation of Medicaid laws by another person; and
- Leads to a recovery of a fine, penalty, or forfeiture of property.¹⁰

The reward is paid from the Operating Trust Fund from moneys collected pursuant to the Florida False Claims Act (FFCA).

Florida False Claims Act

The FFCA authorizes private individuals to bring "qui tam" suits in the name of the state against persons or entities who have defrauded the state in contracting or other matters.¹¹ As an incentive to bring these suits, successful plaintiffs, sometimes called whistleblowers, are permitted to share in the damages recovered.¹² The FFCA also allows the state entity injured by the submission of a false or fraudulent claim to be awarded an amount not to exceed its compensatory damages.¹³

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently, 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S.¹⁴

Effect of the Bill

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the FFCA to be allocated as follows:

- 50% to fund rewards for reporting Medicaid fraud; and
- 50% to fund Medicaid Fraud Control Unit investigations of potential violations of the FFCA and any related civil actions.

⁷ Florida Office of the Attorney General, *Medicaid Fraud Control Unit*,

<http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited April 30, 2015).

⁸ *Id.* Also see, ss. 409.920 and 409.9201, F.S.

⁹ The reward may not exceed the lesser of 25 percent of the amount recovered or \$500,000 in a single case. s. 409.9203(2), F.S.

¹⁰ s. 409.9203(1), F.S.

¹¹ The Florida Bar Journal, *Florida Updates Qui Tam Whistleblower Statute*, Ryon M. McCabe and Robert C. Glass,

http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/22dfadebad8fecfc85257c6e00552de7!OpenDocument&Highlight=0.* (last visited April 30, 2015).

¹² *Id.*

¹³ s. 68.085(3), F.S.

¹⁴ *Id.*

This increases the funding available to the Department's Medicaid Fraud Control Unit, but decreases funding available to those who report Medicaid fraud.

Florida Deceptive and Unfair Trade Practices Act

Florida's Deceptive and Unfair Trade Practices Act (FDUTPA)¹⁵ gives consumers legal protection against commercial wrongdoing. Patterned after the Federal Trade Commission Act,¹⁶ FDUTPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹⁷ It enables consumers to recover actual damages, permits recovery of reasonable attorneys' fees and costs by the prevailing party, and also provides for declaratory judgments and injunctive relief. It also gives equitable remedies to state enforcement authorities,¹⁸ who may bring suit "on behalf of one or more consumers."¹⁹

In construing FDUTPA's provisions, due consideration and great weight are 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, 2013.²⁰

Effect of the Bill

The bill updates ss. 501.203 and 501.204, F.S., to refer to the Federal Trade Commission Act rules and regulations as of July 1, 2015.

Patent Law

A patent is the grant of a property right in an invention to its inventor, issued by the United States Patent and Trademark Office generally for a term of 20 years.²¹ A patent confers the right to exclude others from making, using, or selling the invention in the United States or importing the invention into the United States.²²

Article I, s. 8, cl 8, of the United States Constitution gives Congress the power to enact laws relating to patents.²³ Based on this grant of power, Congress enacted a number of patent statutes, most significantly, the Patent Act of 1952.²⁴ Congress, in turn, has vested the federal courts with exclusive jurisdiction to determine patent validity and infringement.²⁵

Enforcement of Patents

A patent holder may enforce its rights by filing infringement suits in federal court.²⁶ The patent holder bears the burden of establishing infringement by each alleged infringer.²⁷ Patent litigation is generally

¹⁵ ss. 501.201-213, F.S.

¹⁶ 15 U.S.C. §§ 41-58 (2013).

¹⁷ s. 501.204, F.S.

¹⁸ The Department is an enforcing authority of FDUTPA. As such, the Department is authorized to investigate and file civil actions against persons who engage in unfair methods of competition, unfair, unconscionable or deceptive trade practices, including, but not limited to, pyramid schemes, misleading franchise or business opportunities, travel scams, fraudulent telemarketing, and false or misleading advertising. Florida Office of the Attorney General, *Consumer Protection Division*, <http://myfloridalegal.com/pages.nsf/Main/7003247af328dc9e85256cc6006fba91> (last visited on April 30, 2015).

¹⁹ The Florida Bar Journal, *The Unexplored Territory of Unfairness in Florida's Deceptive and Unfair Trade Practices Act*, David J. Federbush, <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/F9BE91D3215162C685256ADB005D6262> (last visited on March 6, 2015).

²⁰ ss. 501.203(3) and 501.204, F.S.

²¹ United States Patent and Trademark Office, *General Information Concerning Patents* (Oct. 2014) <http://www.uspto.gov/patents-getting-started/general-information-concerning-patents> (last visited April 30, 2015).

²² 35 U.S.C. §154 (2012).

²³ "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, §8, cl. 8, U.S. Const.

²⁴ P.L. 82-593, 66 Stat. 792 (codified at 35 U.S.C.).

²⁵ 28 U.S.C. §1338(a) ("No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents . . .").

²⁶ *See id.*; 35 U.S.C. §271 (2012).

²⁷ 35 U.S.C. §101 (2012).

very expensive: the average suit in which \$1 million to \$25 million is at stake costs \$1.6 million through discovery and \$2.8 million through trial.²⁸

Although Congress has not expressly preempted state law in all areas of patent law, federal courts have generally held that most patent litigation is implicitly preempted by Congress.²⁹ Accordingly, the Federal Circuit, which has exclusive appellate jurisdiction over patent cases, has held that state law claims against abusive patent infringement practices are mostly preempted by the federal Patent Act.³⁰ To avoid preemption, an accused infringer must prove not only the elements of its state-law claim, it must also prove, (1) that the infringement allegations were "objectively baseless," meaning that no reasonable litigant could have expected to succeed, and (2) that the patent holder made its infringement allegations with knowledge of their inaccuracy or with reckless disregard for their accuracy.³¹

Patent Trolls

"Patent assertion entities," commonly referred to as "patent trolls," describes a business that focuses on purchasing and asserting patents against companies that already use the patented technology in their business operations (after infringement and lock-in have occurred), rather than developing and transferring technology to licensees.³² Patent trolls frequently operate by sending notices of alleged patent infringement to large numbers of businesses to threaten litigation if the business does not pay a licensing fee.³³ Often defendants, especially smaller companies and startups, will choose to settle to avoid expending time and resources on costly litigation. Patent trolls simply transfer a legal right not to be sued for the transfer of money.³⁴

State Attempts to Limit Bad Faith Patent Infringement Claims

Eighteen states have passed statutes outlawing certain acts of patent enforcement;³⁵ the majority of statutes are modeled after a Vermont statute, which prohibits "bad faith" assertions of patent infringement.³⁶ Other states have outlawed assertions that "contain false, misleading, or deceptive information"³⁷ or have defined specific acts as illegal, such as threatening litigation and not filing suit or making infringement assertions that "lack a reasonable basis in fact or law."³⁸ Most of the new statutes create a private right of action for the targets of unlawful infringement assertions, and all of the statutes provide for enforcement by state officials, such as the state attorney general.³⁹ However, whether such state law attempts to curb bad faith patent claims are preempted by federal law is unknown.⁴⁰

Effect of the Bill

The bill creates Part VII of ch. 501, F.S., consisting of ss. 501.991-501.997, F.S., the "Patent Troll Prevention Act," to prohibit bad faith patent infringement claims.

²⁸ Brian Yeh, *An Overview of the "Patent Trolls" Debate*, Congressional Research Service (April 16, 2013).

²⁹ See *Globetrotter Software, Inc. v. Elan Computer Grp., Inc.*, 362 F.3d 1367, 1374 (Fed. Cir. 2004).

³⁰ *Id.* at 1377.

³¹ *Id.*; *Dominant Semiconductors Sdn. Bhd. v. OSRAM GmbH*, 524 F.3d 1254 (Fed. Cir. 2008).

³² Thomas A. Hemphill, *The Paradox of Patent Assertion Entities*, American Enterprise Institute (Aug. 12, 2013)

<http://www.aei.org/publication/the-paradox-of-patent-assertion-entities/> (last visited April 30, 2015).

³³ See Paul R. Gugliuzza, *Patent Trolls and Preemption*, Boston University School of Law Public Law & Legal Theory Paper No. 15-03, 1-4 (Jan. 20, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539280 (last visited April 30, 2015).

³⁴ Hemphill, *supra* Note 32.

³⁵ Gugliuzza, *supra* Note 33 at 4-5; Patent Progress's Guide to State Patent Legislation (March 9, 2015)

<http://www.patentprogress.org/patent-progress-legislation-guides/patent-progress-guide-state-patent-legislation/> (last visited April 30, 2015).

³⁶ VT. STAT. ANN., tit. 9, § 4197(a) (2014).

³⁷ WIS. STAT. § 100.197(2)(b) (2014).

³⁸ *E.g.*, 815 ILL. COMP. STAT. 505/2RRR(b)(1), (3) (2014).

³⁹ *E.g.*, VT. STAT. ANN., tit. 9, § 4199(a); WIS. STAT. § 100.197(3)(b); TENN. CODE ANN. § 29-40-103 to -104; 815 ILL. COMP. STAT. 505/7, 505/10a.

⁴⁰ See Gugliuzza, *supra* Note 33.

Newly-created s. 501.991, F.S., provides a statement of legislative intent that acknowledges the state is preempted from passing laws that conflict with federal patent law. However, the Legislature recognizes the need to protect businesses and consumers from bad faith patent infringement claims that lead to expensive litigation, are a significant burden to companies, and hamper the state's economic development efforts.

Prohibition on Bad Faith Assertions of Patent Infringement

The bill creates s. 501.993, F.S., to prohibit a person from making a bad faith assertion of patent infringement.

In determining that a person has made a bad faith assertion of patent infringement, a court may consider a number of factors, including whether:

- The demand letter does not contain the patent number, the name and address of the patent owner, and the facts concerning the specific infringing conduct, and the person failed to provide such information after being requested to do so;
- The person failed to conduct an analysis to determine whether the target's conduct was covered by the claim of the patent;
- The demand letter requested payment of a license fee or a response within an unreasonable period of time or requested an license fee for an amount that is not based on a reasonable estimate of the value of the license;
- The assertion of patent infringement is unenforceable, and the person knew, or should have known, that the claim or assertion was unenforceable;
- The claim or assertion of patent infringement is deceptive; and
- The person has previously filed or threatened to file suit based on the same or a similar claim of patent infringement and the threats or lawsuits lacked the required identifying and contact information, or the person sued to enforce the claim and a court found the claim to be meritless.

Alternatively, a court may consider a number of factors as evidence that a person has not made a bad faith assertion of patent infringement, including whether:

- The demand letter contained the required identifying and contract information, or if not, whether it was provided upon request;
- The person engaged in a good faith effort to establish that the target has infringed the patent and negotiated an appropriate remedy;
- The person made a substantial investment in the use of the patent or in a product or sale of a product covered by the patent;
- The person is the inventor of the patented product or is the original assignee;
- The person has demonstrated good faith business practices in previous efforts to enforce, including successfully enforcing through litigation, the patent or substantially similar patent.

Bond Requirement

Section 501.994, F.S., created by the bill provides that the target of a lawsuit involving a bad faith assertion of patent infringement may move that the court issue a protective order. If the court finds that the target has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require that the plaintiff post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target's expense of litigation. The court must hold a hearing at either party's request. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

Private Right of Action for Bad Faith Assertions of Patent Infringement

Newly created s. 501.995, F.S., provides that a person who has received a bad faith assertion of patent infringement may bring a civil action. A court may award the following remedies to a prevailing plaintiff in such an action: equitable relief, damages, costs and fees, including attorney fees, and punitive

damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

Unfair or Deceptive Trade Practice

The bill creates s. 501.996, providing that a violation of the Patent Troll Prevention Act is an unfair or deceptive trade practice under ch. 501, F.S., FDUTPA.

Exemption for Certain Demand Letters Pursuant to Federal Pharmaceutical Laws

Section 501.997, F.S., created by the bill exempts from the Act an institution of higher learning, a technology transfer organization owned by or affiliated with an institution of higher education, and any demand letter or assertion of patent infringement that includes a claim for relief arising under federal law related to pharmaceutical and biologic licensing and patents.

Victim Assistance

The Department's Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.⁴¹ Currently, injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses, and other out-of-pocket expenses directly related to the injury.⁴² Payment is made from the Crime Compensation Trust Fund.⁴³ The Department may adopt rules establishing compensation award limits, however, compensation awards generally may not exceed:

- \$10,000 for treatment;
- \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when the Department makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.⁴⁴

Definitions

As noted above, a person must first be a victim of a crime to be eligible for victim assistance.⁴⁵ Section 960.03(3), F.S., defines the term "crime" for victim assistance purposes, in part, as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury,⁴⁶ as defined in s. 827.03, F.S., to a person younger than 18 years of age who was not physically injured by the criminal act; or⁴⁷
- A violation of s. 316.193, F.S., (DUI); s. 316.027(1), F.S. (leaving the scene of a crash involving death of bodily injury); s. 327.35(1), F.S. (BUI); s. 782.071(1)(b), F.S. (vehicular homicide); or s. 860.13(1)(a), F.S. (operating an aircraft under the influence); which results in physical injury or death; however, an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death does not constitute a crime unless the injury or death was intentionally inflicted through the use of the vehicle, boat, or aircraft.

Section 960.03, F.S., also defines the term "disabled adult" as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental limitations that restrict the person's ability to perform the normal activities of daily living.

⁴¹ Florida Office of the Attorney General, *Division of Victims Services*,

<http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on April 30, 2015).

⁴² *Id.*

⁴³ s. 960.21, F.S.

⁴⁴ s. 960.13, F.S.

⁴⁵ ss. 960.065 and 960.03(3) and (14), F.S.

⁴⁶ The mental injury to the minor must be verified by a psychologist licensed under ch. 490, F.S., by a physician licensed in this state under chs. 458 or 459, F.S., who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175, F.S.

⁴⁷ The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

Effect of the Bill

The bill expands the definition of the term “crime” to include:

- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;⁴⁸ and
- Violations of s. 316.1935, F.S. (fleeing or eluding a law enforcement officer), which results in physical injury or death.

The term is also amended to include an act involving the operation of a motor vehicle, boat, or aircraft which results in another person’s injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft.

The bill also amends the definition of the term “disabled adult” to include persons over 18 years of age:

- Who suffer from a condition of physical or mental incapacitation due to mental illness; and
- Who have one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

Awards

Currently, victim assistance awards, *except awards for loss of support*, are reduced by the amount of any payments or services received or to be received by the claimant as a result of the injury or death:

- From or on behalf of the person who committed the crime; provided, however, that a restitution award ordered by a court to be paid to the claimant by the person who committed the crime shall not reduce any award unless it appears to the department that the claimant will be unjustly enriched thereby;
- From any other public or private source or provider, including, but not limited to, an award of workers’ compensation pursuant to ch. 440, F.S.;
- From agencies mandated by other Florida statutes to provide or pay for services, except as provided in s. 960.28, F.S.; or
- From an emergency award under s. 960.12, F.S.⁴⁹

Effect of the Bill

Awards for Catastrophic Injury

The bill prohibits awards for loss of support *and awards for catastrophic injury* from being reduced pursuant to the above provisions. “Catastrophic injury” is defined as a permanent impairment constituted by:

- Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- Amputation of an arm, a hand, a foot, or a leg;
- Severe brain or closed-head injury as evidenced by:
 - Severe sensory or motor disturbances;
 - Severe communication disturbances;
 - Severe complex integrated disturbances of cerebral function;
 - Severe episodic neurological disorders; or
 - Other severe brain and closed-head injury conditions at least as severe in nature as any condition described above;
- Second-degree or third-degree burns on 25 percent or more of the total body surface or third-degree burns on 5 percent or more of the face and hands;
- Total or industrial blindness; or
- Any other injury that would otherwise qualify under ch. 960, F.S., and that is of a nature and severity that would qualify an employee to receive disability income benefits under Title II or

⁴⁸ This change conforms with the current definition of “victim,” which includes “a person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.” s. 960.03(14)(d), F.S.

⁴⁹ s. 960.13(6), F.S.

supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.⁵⁰

Awards to Elderly Persons or Disabled Adults

As noted above, s. 960.13, F.S., establishes criteria and limits for victim compensation awards. Section 960.195, F.S., creates separate criteria and limits for awards to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life. Under this section, the Department is authorized to award a maximum of \$500 to such elderly persons or disabled adults when:

- There is proof that a criminal or delinquent act was committed;
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours;
- The victim cooperates with law enforcement authorities in the investigation of the criminal or delinquent act;
- There is proof that the tangible personal property in question belonged to the claimant;
- The claimant did not contribute to the criminal or delinquent act;
- There is no other source of reimbursement or indemnification available to the claimant; and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.⁵¹

Effect of the Bill

The bill amends s. 960.195, F.S., specifying that the Department is authorized to award a maximum of \$500 *on any one claim, and a lifetime maximum of \$1,000 on all claims* relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life.

The bill requires the criminal or delinquent act be reported to law enforcement authorities within 72 hours, *unless the Department, for good cause shown, finds the delay to have been justified.*

The bill also removes the requirement that the victim cooperate with law enforcement authorities in the investigation of the criminal or delinquent act. However, the bill authorizes the Department to deny, reduce, or withdraw an award upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the Department.

Relocation Assistance

Prior to 2014, s. 960.199, F.S., provided relocation assistance to victims of sexual battery. In 2014, legislation was passed that expanded the statute to include victims of human trafficking.⁵² Under the relocation assistance program, a victim of sexual battery⁵³ or human trafficking⁵⁴ who needs relocation assistance and meets the statutory criteria may receive a one-time payment not exceeding \$1,500 on any one claim (a lifetime maximum of \$3,000).⁵⁵

In order for a relocation assistance award to be granted to a sexual battery or human trafficking victim:

- There must be proof that a sexual battery offense or human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g), was committed.
- The offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a certified domestic violence center in this state.

⁵⁰ s. 960.03(1), F.S.

⁵¹ s. 960.195, F.S.

⁵² Chapter 2014-160, Laws of Florida.

⁵³ As defined in s. 794.011, F.S.

⁵⁴ As described in s. 787.06(3)(b), (d), (f), or (g), F.S.

⁵⁵ s. 960.199(1), F.S.

- The center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense, the certified rape crisis or certified domestic violence center's certification must include, if applicable, approval of the state attorney or statewide prosecutor attesting that the victim is cooperating with law enforcement officials.
- The act of sexual battery or human trafficking must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.⁵⁶

Relocation payments for a sexual battery or human trafficking claim must be denied if the Department has previously approved or paid out a domestic violence relocation claim under s. 960.198, F.S., to the same victim regarding the same incident.⁵⁷

Effect of the Bill

The bill creates s. 960.196, F.S., to address relocation assistance for victims of human trafficking. The eligibility criteria (described above) largely remain the same, but there are some differences. For example, the new section requires:

- Victims of human trafficking to need urgent assistance to escape from an unsafe environment directly related to the human trafficking offense.
- The offense to be reported to the proper authorities and the claim filed within 1 year (or 2 years with good cause) after the date of the last human trafficking offense. In a case that exceeds the 2-year requirement due to an active and ongoing investigation, a state attorney, statewide prosecutor, or federal prosecutor may certify in writing a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense.

The bill also makes conforming changes to ss. 960.198 and 960.199, F.S., relating to relocation assistance for victims of domestic violence and sexual battery.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S. However, the awards granted for this have been minimal. Of the \$2.6 million collected by the state in the last two fiscal years, only \$22,652 in awards has been paid by the state.

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the Florida False Claims Act to be allocated as follows:

- 50% to fund rewards for reporting Medicaid Fraud; and
- 50% to fund Medicaid Fraud Control Unit investigations of potential violations of the FFCA and any related civil actions.

This increases the funding available to the Department's Medicaid Fraud Control Unit.

⁵⁶ s. 960.199(2), F.S.

⁵⁷ s. 960.199(3), F.S.

2. Expenditures:

The bill expands the definitions of “crime” and “elderly person or disabled adult” for purposes of victim assistance awards. The bill also prohibits the Department from reducing awards for catastrophic injury. This may have a negative fiscal impact on the Department.

The bill also requires victims of human trafficking to meet additional requirements before being eligible for relocation assistance, and limits victim assistance awards for elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life to a lifetime maximum of \$1,000. These provisions may have a positive fiscal impact on the Department.

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:

None.

D. FISCAL COMMENTS:

None.