

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 214

INTRODUCER: Senator Detert

SUBJECT: Offenses Committed on Real Estate Agents

DATE: February 5, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			RC	

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**I. Summary:**

SB 214 reclassifies the felony or misdemeanor degree of an assault, battery, or sexual battery if the offense is knowingly committed on a “broker,” “broker associate,” or “sales associate.” These terms are currently defined in ch. 475, F.S., which regulates real estate professionals.

This reclassification would increase the maximum penalty for the offense. Specifically, the bill provides:

- A first degree misdemeanor (maximum penalty of one year in jail) is reclassified as a third degree felony (maximum penalty of 5 years in state prison);
- A third degree felony is reclassified as a second degree felony (maximum penalty of 15 years in state prison);
- A second degree felony is reclassified as a first degree felony (maximum penalty of 30 years in state prison); and
- A first degree felony is reclassified as a life felony (maximum penalty of life imprisonment or a term of years not exceeding life imprisonment).

**II. Present Situation:**

**Real Estate Professionals: Brokers, Broker Associates, and Sales Associates**

Chapter 475, F.S., regulates real estate professionals, including brokers, broker associates, and sales associates.

A “broker”<sup>1</sup> is:

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<sup>1</sup> A broker renders a professional service and is a professional within the meaning of s. 95.11(4)(a), F.S. Section 475.01(1)(a), F.S. Section 95.11(4)(a), F.S., addresses the limitations period for an action for professional malpractice.

- A person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises,<sup>2</sup> auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases;
- A person who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights;
- A person who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights;
- A person who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor;
- All persons who advertise rental property information or lists;
- A general partner, officer, or director of a partnership or corporation which acts as a broker; and
- Any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in s. 475.011 (exemptions from part I of ch. 475, F.S.), and s. 721.20, F.S. (licensing requirements and prohibited acts relating to timeshares).<sup>3</sup>

A “broker associate” is a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another.<sup>4</sup>

A “sales associate” is a person who performs any act specified in the definition of “broker,” but who performs such act under the direction, control, or management of another person.<sup>5</sup>

### **Violent Acts Committed Upon Real Estate Professionals**

National workforce (preliminary) statistics provided by the U.S. Department of Labor indicate that in 2014 there were 19 fatal occupational injuries involving property, real estate, and community association managers. Twelve of the 19 fatal injuries involved “violence and other

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<sup>2</sup> Where the term “appraise” or “appraising” appears in the definition of the term “broker,” it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II of ch. 475, F.S. Section 475.01(1)(a), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 475.01(1)(b), F.S.

<sup>5</sup> Section 475.01(1)(b), F.S. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(4)(a), F.S. *Id.*

injuries by persons or animals” and event or exposure that includes “violence by persons, self-inflicted injury, and attacks by animals.”<sup>6</sup>

In a 2015 survey conducted by the National Association of REALTORS® of its members (2,804 members responded to the survey),<sup>7</sup> 40 percent of members responding to the survey reported that they “experienced a situation that made them fear for their personal safety or safety of their personal information.” The survey notes that “common situations that caused fear” included “open houses, vacant homes/model homes, properties that were unlocked or unsecured, [and] properties in remote areas.” Two percent of members responding to the survey indicated that they were a victim of a robbery while working as a real estate professional. One percent of members responding to the survey indicated that they were a victim of an assault while working as a real estate professional.

In 2015, at least three incidents were reported in the news media of real estate professionals in Florida being attacked or robbed while showing houses. One or more of these incidents involved armed robbery, kidnapping, kidnapping with a deadly weapon, or attempted sexual battery.<sup>8</sup>

### **Assault**

Assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.<sup>9</sup> Assault is typically a second degree misdemeanor. However, if a perpetrator commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the crime constitutes aggravated assault<sup>10</sup> and is punishable as a third degree felony.

### **Battery**

Battery is to actually and intentionally touch or strike another person against the will of that person or intentionally causing bodily harm to another person.<sup>11</sup> Battery is typically a first degree misdemeanor.<sup>12</sup> However, battery can be enhanced to felony battery when a perpetrator commits a battery and causes great bodily harm, permanent disability, or permanent disfigurement to the victim,<sup>13</sup> or when the perpetrator has one or more prior convictions for battery, aggravated

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<sup>6</sup> “Table A-2. Fatal occupational injuries resulting from transportation incidents and homicides, all United States, 2014” (preliminary data), U.S. Department of Labor, available at <http://www.bls.gov/iif/oshwc/cfoi/cftb0287.pdf> (last visited on February 2, 2016).

<sup>7</sup> *2015 Member Safety Report*, National Association of REALTORS®, available at <http://www.realtor.org/sites/default/files/reports/2015/2015-member-safety-report-2015-03-02-updated.pdf> (last visited on February 2, 2016).

<sup>8</sup> “Man arrested in attempted rape of real estate agent in Manatee” (August 11, 2015), *Tampa Tribune*, available at <http://www.tbo.com/news/crime/deputies-manatee-real-estate-agent-thwarts-sex-attack-while-showing-house-20150811/> (last visited on February 2, 2016); McNeill, Claire, “Police arrest suspect in robbery and kidnapping of St. Petersburg real estate agents” (June 8, 2015), *Tampa Bay Times*, available at <http://www.tampabay.com/news/publicsafety/crime/police-to-arrest-suspect-in-robbery-and-kidnapping-of-st-petersburg-real/2232843> (last visited on February 2, 2016).

<sup>9</sup> Section 784.011, F.S.

<sup>10</sup> Section 784.021, F.S.

<sup>11</sup> Section 784.03, F.S.

<sup>12</sup> Section 784.03(1)(b), F.S.

<sup>13</sup> Section 784.041(1), F.S.

battery, or felony battery, and commits a subsequent battery.<sup>14</sup> Both forms of felony battery are third degree felonies.

### **Sexual Battery**

Section 794.011, F.S., contains a variety of offenses relating to sexual battery. Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, these offenses can be punishable as a third degree felony, a second degree felony, a first degree felony, a life felony, or a capital felony.

### **Reclassification of Felonies or Misdemeanors**

The typical reclassification statute reclassifies the felony or misdemeanor degree of offenses (or specific offenses) to the next higher degree (e.g., a first degree misdemeanor is reclassified to a third degree felony or a third degree felony is reclassified to a second degree felony). For example, s. 775.085, F.S., Florida's "hate crimes" statute, reclassifies the degree of any felony or misdemeanor in which the commission of the offense "evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age of the victim." Another example, is s. 784.07, F.S., which reclassifies the felony or misdemeanor degree of an assault or battery if that offense was committed upon a law enforcement officer (or other specified official or person) engaged in the lawful performance of his or her duties.

Several statutes reclassify the degree of certain felonies and misdemeanors when committed against specified professionals or officials engaged in the performance of their duties.<sup>15</sup> For the most part, the victim is a public servant. However, there is precedent for reclassifying the degree of certain felonies and misdemeanors when committed against specified professionals who are not public servants and who are engaged in the performance of their duties, e.g., licensed security officers<sup>16</sup> or sports officials.<sup>17</sup>

A felony or misdemeanor reclassification increases the maximum penalty for the offense. For example, the maximum penalty for a third degree felony is 5 years in state prison.<sup>18</sup> The maximum penalty for a second degree felony is 15 years in state prison.<sup>19</sup> If a third degree felony is reclassified to a second degree felony, the maximum penalty increases from 5 years in state prison to 15 years in state prison.

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

The bill creates s. 775.0863, F.S., which reclassifies the felony or misdemeanor degree of an assault, battery, or sexual battery if the offense is knowingly committed on a "broker," "broker

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<sup>14</sup> Section 784.03(2), F.S.

<sup>15</sup> See e.g., ss. 784.07, 784.074, 784.081, and 784.083, F.S.

<sup>16</sup> Section 784.07, F.S.

<sup>17</sup> Section 784.081, F.S.

<sup>18</sup> Section 775.082, F.S.

<sup>19</sup> *Id.*

associate,” or “sales associate.” These terms have the same meaning as provided in s. 475.01, F.S.

The bill provides that the felony or misdemeanor degree of such offenses is reclassified in the following manner:

- A second degree misdemeanor<sup>20</sup> is reclassified as a first degree misdemeanor;<sup>21</sup>
- A first degree misdemeanor is reclassified as a third degree felony;<sup>22</sup>
- A third degree felony is reclassified as a second degree felony;<sup>23</sup>
- A second degree felony is reclassified as a first degree felony;<sup>24</sup> and
- A first degree felony is reclassified as a life felony.<sup>25</sup>

For purposes of sentencing under ch. 921, F.S., and determining incentive gain-time eligibility under ch. 944, F.S., a reclassified felony offense is ranked one level above the ranking specified under s. 921.0022, F.S., or s. 921.0023, F.S., for the offense. However, a first degree misdemeanor that has been reclassified to a third degree felony is ranked in Level 2 of the offense severity ranking chart in s. 921.0022, F.S. Noncapital felonies are ranked under s. 921.0022, F.S., or s. 921.023 of the Criminal Punishment Code (“Code”). The higher the ranking, the greater the number of sentence points, which are used to calculate the lowest permissible sentence under the Code.

The effective date of the bill is October 1, 2016.

#### IV. Constitutional Issues:

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

None.

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

None.

##### C. Trust Funds Restrictions:

None.

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<sup>20</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>21</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>22</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>23</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>24</sup> A first degree felony is *generally* punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>25</sup> A life felony is *generally* punishable by life imprisonment or a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation, estimates that the bill will have an insignificant prison bed impact (an increase of 10 or fewer prison beds).

**VI. Technical Deficiencies:**

As the bill is presently written, reclassification is triggered by commission of certain crimes against a victim who is a specified real estate professional, rather than triggered by commission of certain crimes against a specified real estate professional while he or she is engaged in certain activities relevant to his or her profession. If it is the intent of the sponsor to reclassify based on the latter factor, staff recommends the bill be amended to adopt the following language from CS/HB 47 (the House companion to SB 214): "... if the offense is committed against a broker, broker associate, or sales associate while he or she is engaged in the act of showing real property or holding an open house of real property...."

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.0863 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.