

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 Criminal Justice

BILL: SB 498

INTRODUCER: Senator Sobel

SUBJECT: Repeal of a Prohibition on Cohabitation

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 498 repeals the provision in s. 798.02, F.S., which makes it a second degree misdemeanor for any unmarried man and woman, lewdly and lasciviously to associate and cohabit together. The bill takes effect upon becoming a law.

II. Present Situation:

Cohabitation Law in Florida

Florida law makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law, originally enacted in 1868, made the crime of cohabitation punishable by up to 2 years in prison, up to 1 year in the county jail, or up to a \$300 fine. Somewhat similarly, s. 800.02, F.S., makes it a second degree misdemeanor for a person to engage in any unnatural and lascivious act with another person.

Cohabitation Law in other States

According to the National Conference of State Legislatures only three states, Florida, Michigan, and Mississippi, make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.¹

¹ E-mail from staff of the National Conference of State Legislatures (November 6, 2015) (on file with the Senate Committee on Criminal Justice).

States with Cohabitation Laws other than Florida

State	Statute	Language
Michigan	MCLA § 750.335	Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

The following states have repealed laws which made cohabitation illegal: Arizona, Idaho, Maine, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

III. Effect of Proposed Changes:

The bill repeals the provision in s. 798.02, F.S., which makes it a second degree misdemeanor for any unmarried man and woman, lewdly and lasciviously to associate and cohabit together. The bill takes effect upon becoming a law.

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:

In 2006, the Superior Court of Pender County, North Carolina held that the State’s fornication law² which prohibited an unmarried man and a woman to cohabit, violated the plaintiff’s substantive due process right to liberty as explained in the U.S. Supreme

² Section 14-184 NCGSA provided in part that “(I)f any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, shall be guilty of a Class 2 misdemeanor.”

Court case in *Lawrence v. Texas*.³ Justice Kennedy quoting Justice Stevens' controlling opinion in *Bowers v. Hardwick*⁴ stated:

(I)ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of "liberty" protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 798.02 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.

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

³ 123 S. Ct. 2472 (2003).

⁴ 478 U.S. 186 (1986).