

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Civil Remedies for Terrorism

SPONSOR(S): Fischer and White and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N	Stranburg	Bond
2) Judiciary Committee	18 Y, 0 N	Stranburg	Camechis

SUMMARY ANALYSIS

There is no cause of action in common law or current statutory law that is specific to terrorism. There are, however, causes of action for related acts. Common law allows a victim to sue, for example, for battery or intentional infliction of emotional distress; and statutory law allows an action for wrongful death. In most tort actions, an injured person may recover damages, but not attorney's fees. Current statutory law provides civil causes of action for a person who has been injured by specified criminal activities, but many acts of terrorism would not fall within any of those statutory causes of action.

The bill creates a statutory civil cause of action for a person injured by an act of terrorism. The definition of terrorism is adopted from the criminal law. An injured person is entitled to recover treble damages, minimum damages of \$1,000, plus attorney's fees and court costs. The cause of action is not available to a person whose injuries are the result of his or her participation in the act that caused the injury.

The statute of limitations for a common law tort action is 4 years, and the limitation on wrongful death is 2 years. The limitations period for the cause of action created by this bill is 5 years which, in some cases, may be extended an additional 2 years.

The bill does not appear to have fiscal impact on state or local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Tort Actions Related to a Terrorist Act

There is no statutory or common law cause of action entitled terrorism. There are, however, statutory and common law causes of action whereby an injured person may sue for damages resulting from acts of terrorism. Statutory law creates a civil cause of action for wrongful death.¹ Common law creates causes of action such as assault,² battery,³ and intentional infliction of emotional distress.⁴ In each of these actions, the injured party may recover economic and non-economic damages, but not attorney's fees.

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."⁵ A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.⁶ In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.⁷

Existing tort actions may not allow a victim of terrorism to recover damages from individuals or organizations who provided material support to the terrorist.⁸

Florida Civil Remedies for Criminal Practices

Chapter 772, F.S., creates statutory causes of action for persons injured by certain criminal activities. The criminal activity for which a defendant may be civilly liable encompasses a broad range of criminal conduct, some of which is conduct usually associated with terrorism (such as the use of explosives, homicide, extortion, and computer-related crimes).⁹ An injured party suing under ch. 772, F.S., may recover treble damages and attorney's fees. The term "treble damages" means damages equal to three times the total of the economic and non-economic damages.

The causes of action currently in ch. 772, F.S., however, do not appear to apply to many acts of terrorism. The civil causes of action at ss. 772.104(1) and 772.11, F.S., generally require that the criminal offense be committed for pecuniary gain. Section 772.104(2) creates a cause of action for sex trafficking, and s. 772.12, F.S., creates a cause of action related to drug dealing.

¹ The Florida Wrongful Death Act is at ss. 768.16-.26, F.S.

² *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.").

³ *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.")

⁴ *Gallogly v. Rodriguez*, 970 So. 2d 470 (Fla. 2d DCA 2007); see *Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) (In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the wrongdoer acted recklessly or intentionally; 2) the conduct was extreme and outrageous; 3) the conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.).

⁵ *Boza v. Carter*, 993 So. 2d 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 438 (Fla. 2001)).

⁶ 55 Fla. Jur 2d Torts § 6 (2015).

⁷ s. 768.72, F.S.

⁸ See *Boza*, 993 So. 2d at 562 ("As a general principle, a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to another.").

⁹ s. 772.102(1), F.S. "Criminal activity" also includes an attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the enumerated acts. *Id.* This cause of action is only available if the defendant engages in two or more similar acts of criminal activity within a five-year period. *Id.* at (4).

Federal Tort Action for Terrorism

Federal law creates a cause of action related to terrorism.¹⁰ The federal cause of action allows any national of the United States injured in his or her person, property, or business by reason of an act of *international* terrorism, or his or her estate, survivors, or heirs, to sue in United States district court and recover treble the damages he or she sustains and the cost of the suit, including attorney's fees.

Terrorism in Florida Criminal Law

Florida criminal law defines terrorism at s. 775.30, F.S., as:

775.30 Terrorism; defined.—As used in the Florida Criminal Code, the term “terrorism” means an activity that:

- (1)
 - (a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
 - (b) Involves a violation of s. 815.06;¹¹ and
- (2) Is intended to:
 - (a) Intimidate, injure, or coerce a civilian population;
 - (b) Influence the policy of a government by intimidation or coercion; or
 - (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Terrorism itself is not a crime under Florida, but committing a criminal act with the intent of it being an act of terrorism is a factor in criminal sentencing. As to murder, a finding that the murder was committed for the purpose of terrorism is an aggravating factor that may justify the death sentence.¹² For lesser crimes, if the court finds that the offense was committed for the purpose of terrorism, or for the purpose of facilitating or furthering an act of terrorism, the court must reclassify the felony or misdemeanor to the next highest degree¹³ and the offense severity ranking¹⁴ is increased, thus further enhancing the offender's sentence.¹⁵

Statutes of Limitation

A statute of limitations bars a cause of action after a specified time has elapsed, usually beginning at the time that the injury occurred. The statute of limitations for general tort actions is 4 years.¹⁶ The statute of limitations for a wrongful death action is 2 years.¹⁷ The statute of limitations for an action under ch 772, F.S., is 5 years, which may be extended for up to 2 additional years during the pendency of a prosecution of the underlying crime.¹⁸

Effect of Proposed Changes

At s. 772.13, F.S., the bill creates a specific civil cause of action for a person injured by an act of terrorism or injured by any act that facilitated or furthered an act of terrorism. The injured person is entitled to recover treble damages, minimum damages of \$1,000, attorney's fees and court costs. The

¹⁰ 18 U.S.C. § 2333.

¹¹ s. 815.06, F.S., provides that various computer-related offenses are a felony.

¹² ss. 782.04(1)(a)2.r., (3)(r), and (4)(s), F.S.

¹³ s. 775.31(1), F.S. For example, if a defendant is charged with a third-degree felony, the offense is reclassified as a second-degree felony.

¹⁴ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense. s. 921.0022, F.S. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. s. 921.0023, F.S.

¹⁵ s. 775.31(2), F.S.

¹⁶ s. 95.11(3)(a), F.S.

¹⁷ s. 95.11(4)(d), F.S.

¹⁸ s. 772.17, F.S.

bill references the definitions of terrorism and of facilitating or furthering an act of terrorism that are found in current criminal law.

The cause of action created by the bill is not available to a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism. If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney's fees and court costs.

In awarding attorney's fees and court costs, the court may not consider the ability of the opposing party to pay such fees and costs. Additionally, s. 772.13, F.S., does not limit any right to recover attorney's fees or costs provided under other provisions of law.¹⁹

The statute of limitations for the cause of action created by this bill is 5 years, which may be tolled for up to an additional 2 years during the pendency of a criminal proceeding against the perpetrator.²⁰

B. SECTION DIRECTORY:

Section 1 creates s. 772.13, F.S., related to a civil remedy for terrorism or facilitating or furthering terrorism.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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:

The bill may have a positive economic impact on persons in the private sector harmed by an act of terrorism.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁹ See ch. 57, F.S.; Fla. R. Civ. P. Taxation of Costs (2015).

²⁰ s. 772.17, F.S.

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.