

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 898

INTRODUCER: Senators Simmons and Artiles

SUBJECT: Civil Remedies for Terrorism

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 898 creates a civil cause of action for a person who is injured by either an act of terrorism or a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 in damages or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. The bill does not limit any other right to recover attorney fees or costs established in any other provision of law.

The cause of action authorized under the bill does not apply to a person who is injured while participating in an act of terrorism.

This bill has an indeterminate but likely insignificant fiscal impact on the state courts.

II. Present Situation:

Torts

A tort is an injury or civil wrong for which a harmed person may seek a remedy, generally in the form of damages. The basic purpose of tort law is to compensate the wronged person for his or her injury by the person responsible for the wrong. The loss is generally shifted from the injured person to the one who is at fault. While some acts may, at the same time, be both a crime and a

tort, a crime is committed against the public and redress is pursued by the state. A tort, however, is a private injury and redress is pursued by the injured party in a civil suit.¹

An intentional tort is committed by a person who acts with general or specific intent to harm someone² or engages in conduct that is substantially certain to bring about injury or death.³ Some general examples of intentional torts are assault, battery, false imprisonment, fraud, intentional infliction of emotional distress, and invasion of privacy. Beyond the usual economic and non-economic damages, a defendant may also be held liable for punitive damages if there is a finding that the defendant was personally guilty of intentional misconduct or gross negligence.⁴

While the statutes do not provide a specific cause of action for someone in Florida to recover for injuries sustained by terrorism, it is arguable that damages could be recovered through a cause of action for battery.

Civil Remedies for Criminal Practices in Chapter 772

Civil remedies are provided as redress for certain criminal practices enumerated in chapter 772, F.S. For example, a civil cause of action is provided for any person who proves by clear and convincing evidence that he or she has been injured by someone who has received proceeds derived from a pattern of criminal activity.⁵ The criminal activity referred to includes offenses relating to the manufacture, distribution, and use of explosives, homicide, assault and battery, kidnapping, weapons and firearms, arson, computer-related crimes, bribery, and the obstruction of justice.⁶

While punitive damages are not generally recoverable for claims arising under chapter 772, F.S., a prevailing plaintiff may recover threefold, or treble, the actual damages and a minimum of \$200 in damages, or \$1,000 under the Drug Dealer Liability Act, as well as attorney fees and court costs at trial and on appeal.⁷ A defendant, however, is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that was without substantial fact or legal support. The court is precluded from considering whether the opposing party is able to pay fees and costs.⁸

If a civil remedy is applied under chapter 772, it does not preclude the application of any other remedy, whether civil or criminal, under any other provision of law.⁹ Additionally, if a defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that is the basis of the plaintiff's civil cause of action under chapter 772, F.S., the defendant is estopped as if the plaintiff had been a party in the state's criminal action.¹⁰

¹ 55 FLA. JUR 2D TORTS s. 1 (2017).

² BLACK'S LAW DICTIONARY (14th ed. 2014).

³ 55 FLA. JUR 2D TORTS s. 6 (2017).

⁴ Section 768.72(2), F.S.

⁵ Sections 772.103(1) and 772.104, F.S.

⁶ Section 772.102(1), F.S. By definition, "criminal activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit the list of crimes in s. 772.102(1)(a).

⁷ Sections 772.104(1), 772.11(1), and 772.12, F.S.

⁸ Sections 772.104(3) and 772.11, F.S.

⁹ Section 772.18, F.S.

¹⁰ Section 772.14, F.S.

Terrorism

Terrorism is defined in the Florida Criminal Code as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of the state or of the United States or involves a violation of s. 815.06, F.S., relating to offenses against users of computers and electronic devices, and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.¹¹

Terrorism is not an independent crime in the statutes but is a qualifying offense for the crime of capital murder. For example, if a person unlawfully kills someone during the commission of a felony act of terrorism, the perpetrator can be prosecuted for first degree murder, a capital felony.¹²

If someone is convicted of committing a felony or misdemeanor that facilitated or furthered an act of terrorism, the court is required to reclassify the felony or misdemeanor to the next higher degree.¹³ Additionally, if the underlying crime is a first-degree misdemeanor or greater, the offense severity ranking is increased, thereby increasing the defendant's potential sentence.¹⁴

Federal Terrorism Statute

SB 898 is structured similarly to the federal Antiterrorism Act of 1990.¹⁵ The federal legislation also provides for the recovery of treble damages, cost of the suit, and attorney fees, but differs in that the injury sustained by the claimant must be for an act of international terrorism.¹⁶ The international provision requires that the act "occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished"¹⁷

Liability for Intentional Torts

Under the doctrine of joint and several liability, all of the defendants at fault for a plaintiff's damages are responsible for the total of each defendant's fault.¹⁸ With a few exceptions, s. 768.81, F.S., generally abolished the application of the doctrine. One of the exceptions allows the doctrine of joint and several liability to apply to "any action based upon an intentional tort."¹⁹

¹¹ Section 775.30, F.S.

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

¹³ Section 775.31(1), F.S.

¹⁴ Section 775.31(2), F.S.

¹⁵ 18 U.S.C. s. 2331 *et. seq.*

¹⁶ 18 U.S.C. s. 2333(a).

¹⁷ 18 U.S.C. s. 2331(1)(C).

¹⁸ *Louisville & N. R. Co. v. Allen*, 65 So. 8 (Fla. 1914).

¹⁹ Section 768.81(4), F.S.

Attorney Fees and Sanctions for Raising Unsupported Claims or Defenses

Section 57.105, F.S., generally authorizes a court to award reasonable attorney fees, including prejudgment interest to the prevailing party from the losing party and the losing party's attorney for unsupported claims and defenses presented to the court. The statute further provides that its remedies are supplemental to other sanctions available under law or court rules.²⁰

Similar Legislation in Other States

Private William "Andy" Long, U.S. Army, was killed in uniform outside of an Arkansas Army recruiting office on June 1, 2009. Another soldier was wounded in the shooting but survived. The defendant in the case claimed to be a terrorist and had traveled to Yemen. In 2011, he pleaded guilty to capital murder and attempted capital murder and received a life sentence with no possibility of parole.²¹ Because of this incident, legislation has been enacted in Louisiana, Arkansas, Kansas, Tennessee, and North Carolina that permits victims of terrorist acts to recover damages as proposed in this legislation.²²

III. Effect of Proposed Changes:

SB 898 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. The cause of action created by the bill does not apply to a person who is injured while participating in an act of terrorism.

A defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. This new remedy does not limit any other right to recover attorney fees or costs established in any other provisions of law.

Because terrorism is an intentional tort and because the doctrine of joint and several liability applies to actions based on an intentional tort, a defendant who was a minor participant in an act of terrorism may be liable for all of a plaintiff's damages.²³

The bill takes effect July 1, 2017.

²⁰ Section 57.105(6), F.S.

²¹ See *Recruitment Shooting Suspect Doesn't Think Killing was Murder*, ASSOCIATED PRESS, Jun. 9, 2009, <http://www.foxnews.com/story/2009/06/09/recruitment-shooting-suspect-doesnt-think-killing-was-murder.html>; *Family seeks recognition for soldier slain in Ark.*, ASSOCIATED PRESS, Jul. 26, 2011, <http://www.cbs8.com/story/15152640/family-seeks-recognition-for-soldier-slain-in-ark>.

²² Center for Security Policy, *Andy's Law Signed by Governor McCrory in North Carolina*, (Aug. 24, 2015) available at <https://www.centerforsecuritypolicy.org/2015/08/24/andys-law-signed-by-governor-mccrory-in-north-carolina/>.

²³ See s. 768.81(4), F.S.

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:

This bill may provide a remedy for damages caused by terrorism when an international component does not exist. An international component is required for lawsuits for damages for terrorism under federal law. Additionally, by authorizing treble damages for injuries caused by acts of terrorism, the bill authorizes more compensation than that available under existing causes of action.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 898. However, in an analysis of a similar bill from 2016, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.²⁴ It appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

It is not clear in subsection (1) whether there must first be a conviction for an act of terrorism before a plaintiff may bring civil charges under this act. Similar sections in chapter 772, F.S., Civil Remedies for Criminal Practices, provide that a person need only prove by clear and convincing evidence that he or she has been injured by the underlying crime before proceeding with a civil suit. Perhaps the Legislature might consider adding similar language to this subsection to clarify that there does not need to be a conviction for an act of terrorism before a plaintiff may bring a civil suit for damages.

²⁴ Office of the State Court Administrator, *2016 Judicial Impact Statement for SB 996* (Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 772.13, 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.
