

**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 554

INTRODUCER: Senator Pizzo

SUBJECT: Offenses Against Brokers, Broker Associates, or Sales Associates

DATE: February 18, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 554 reclassifies the felony or misdemeanor degree of an assault, aggravated assault, battery, felony battery, aggravated battery, or sexual battery, 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. These terms are currently defined in ch. 475, F.S., which regulates real estate professionals.

This reclassification increases the maximum penalty for the offense as follows:

- A second degree misdemeanor (maximum penalty of 60 days in jail) is reclassified as a first degree misdemeanor (maximum penalty of one year in jail);
- A first degree misdemeanor 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 (generally a 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).

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective on October 1, 2019.

## 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:

- 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, F.S. (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>

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

<sup>2</sup> When 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)(j), 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.*

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

National workforce statistics provided by the U.S. Department of Labor indicate that in 2017 there were 17 fatal occupational injuries involving “activities relating to real estate” under the “industry” category. Seven of the 17 fatal injuries involved “violence and other injuries by persons or animals.”<sup>6</sup>

In a 2018 survey conducted by the National Association of REALTORS® of its members, one percent of the 3,049 members responding to the survey reported being the victim of an assault in 2018. Further, 53 percent of survey respondents reported feeling unsafe (in terms of personal safety) at least once a year, and 28 percent reported feeling unsafe every few months.<sup>7</sup>

### **Assault and Aggravated 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>8</sup> Assault is generally a second degree misdemeanor.<sup>9</sup> However, if a person commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the person commits aggravated assault, a third degree felony.<sup>10</sup>

### **Battery, Felony Battery, and Aggravated Battery**

Battery is actually and intentionally touching or striking another person against the will of that person or intentionally causing bodily harm to another person.<sup>11</sup> Battery is generally a first degree misdemeanor,<sup>12</sup> but is a third degree felony when the perpetrator has one or more prior convictions for battery, aggravated battery, or felony battery, and commits a subsequent battery.<sup>13</sup>

A person commits “felony battery,” a third degree felony, if the person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement to the victim.<sup>14</sup>

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<sup>6</sup> Table A-1. *Fatal occupational injuries by industry and event or exposure, all United States, 2017*, Bureau of Labor Statistics, U.S. Department of Labor, available at <https://www.bls.gov/iif/oshwc/foi/cftb0313.htm> (last visited on Feb. 11, 2019).

<sup>7</sup> *2018 Member Safety Report*, National Association of REALTORS®, available at <https://www.nar.realtor/sites/default/files/documents/2018-member-safety-report-09-12-2018.pdf> (last visited on Feb. 11, 2019).

<sup>8</sup> Section 784.011(1), F.S.

<sup>9</sup> Section 784.011(2), F.S.

<sup>10</sup> Section 784.021(1) and (2), F.S.

<sup>11</sup> Section 784.03(1)(a), F.S.

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

<sup>13</sup> Section 784.03(2), F.S.

<sup>14</sup> Section 784.041(1) and (3), F.S.

A person commits aggravated battery, a second degree felony, if the person, in committing battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; uses a deadly weapon; or the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.<sup>15</sup>

### **Sexual Battery**

Section 794.011, F.S., punishes a variety of offenses relating to sexual battery, which is the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose. The act is non-consensual and non-consent is either implied by the age of the of the victim<sup>16</sup> or a specified circumstances (e.g., the victim is physically incapacitated),<sup>17</sup> or is an element of the offense.<sup>18</sup> Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, sexual battery may be punished as a second degree felony, a first degree felony, or a life 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>19</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>20</sup> or sports officials.<sup>21</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>22</sup> The

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<sup>15</sup> Section 784.045(1) and (2), F.S.

<sup>16</sup> See e.g., s. 794.011(2), F.S. (sexual battery on a person less than 12 years of age).

<sup>17</sup> Section 794.011(2)(e), F.S.

<sup>18</sup> Section 794.011(5), F.S.

<sup>19</sup> See e.g., ss. 784.07, 784.074, 784.081, and 784.083, F.S.

<sup>20</sup> Section 784.07, F.S.

<sup>21</sup> Section 784.081, F.S.

<sup>22</sup> Section 775.082, F.S.

maximum penalty for a second degree felony is 15 years in state prison.<sup>23</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, aggravated assault, battery, felony battery, aggravated battery, or sexual battery, 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. These terms have the same meaning as provided in s. 475.01, F.S.<sup>24</sup>

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

- A second degree misdemeanor<sup>25</sup> is reclassified as a first degree misdemeanor;<sup>26</sup>
- A first degree misdemeanor is reclassified as a third degree felony;<sup>27</sup>
- A third degree felony is reclassified as a second degree felony;<sup>28</sup>
- A second degree felony is reclassified as a first degree felony;<sup>29</sup> and
- A first degree felony is reclassified as a life felony.<sup>30</sup>

The bill also amends s. 922.022, F.S., which is the offense severity ranking chart of the Criminal Punishment Code (Code). The bill provides that, for purposes of sentencing under ch. 921, F.S., which is where the Code is located, 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. Noncapital felonies are ranked under s. 921.0022, F.S., or s. 921.023, F.S., of the 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 bill is effective October 1, 2019.

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<sup>23</sup> *Id.*

<sup>24</sup> See “Present Situation” section of this analysis for more details.

<sup>25</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>26</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>27</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>28</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>29</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>30</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.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**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 prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>31</sup> Estimate from Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

**VIII. Statutes Affected:**

This bill substantially amends section 921.0022 of the Florida Statutes.

This bill creates section 775.0864 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.

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

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