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# **Safety & Security Council**

**Wednesday, April 16, 2008  
10:00 a.m. – 10:30 a.m.  
102 House Office Building, Reed Hall**

**Marco Rubio  
Speaker**

**Dick Kravitz  
Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Safety & Security Council

**Start Date and Time:** Wednesday, April 16, 2008 10:00 am

**End Date and Time:** Wednesday, April 16, 2008 10:30 am

**Location:** Reed Hall (102 HOB)

**Duration:** 0.50 hrs

#### Consideration of the following bill(s):

HB 417 Failure to Redeliver Hired Vehicles by Culp

HB 555 Domestic Violence by Long

HB 581 Court Costs for Drug Court Programs by Kreegel

HB 931 Residential Tenancies by Williams

HB 941 Claims to Escheated Property by Frishe

NOTICE FINALIZED on 04/10/2008 08:38 by MCJ



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 417 Failure to Redeliver Hired Vehicles  
SPONSOR(S): Culp  
TIED BILLS: IDEN./SIM. BILLS: SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>11 Y, 0 N</u>	<u>Padgett</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>		<u>Padgett</u> <i>MP</i>	<u>Havlicak</u> <i>RI</i>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 817.52, F.S. provides that a person commits a third degree felony if a person rents a motor vehicle and, with intent to defraud, abandons or willfully refuses to return the rented motor vehicle. There are no provisions which specify when law enforcement must accept a report of an unreturned rental vehicle, what information is necessary to report an unreturned vehicle, nor any requirement that information about the vehicle be entered into a database.

HB 417 provides that a photo of the person who rented the vehicle is not required to file a report of an unreturned vehicle. Furthermore, the bill requires that law enforcement accept a report of unreturned rented motor vehicle without a photo of the person who rented the vehicle. The bill also requires law enforcement to enter the vehicle's information into the National Crime Information Center (NCIC) and Florida Crime Information Center (FCIC) databases.

The bill does not appear to have a fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill requires law enforcement to accept a report of an unreturned rental vehicle without a photo of the person who rented the vehicle. The bill also requires law enforcement to enter the stolen vehicle information in both the national and Florida criminal databases.

#### B. EFFECT OF PROPOSED CHANGES:

Currently, s. 817.52, F.S. provides that a person commits a third degree felony<sup>1</sup> if a person rents a motor vehicle and, with intent to defraud, abandons or willfully refuses to return the rented motor vehicle. There are no provisions which specify when law enforcement must accept a report of an unreturned rental vehicle, what information is necessary to report an unreturned vehicle, nor any requirement that information about the vehicle be entered into a database.

The Tampa Police Department Standard Operating Procedure 322.2 provides that the Tampa Police Department and the Hillsborough County State Attorney's Office have a joint policy that provides there will be no report, investigation, or prosecution of failure to return rental vehicles or other rental property with the intent to defraud unless the rental agency obtains certain information and assists in the investigation. According to these procedures, the Hillsborough County State Attorney's Office specifically requires rental agencies be able to positively identify the suspect who rented the vehicle and to provide documentation of the suspect's name, height, weight, date of birth, home address, telephone number, and a photocopy of the suspect's driver's license. If the rental agency is unable to provide this information, the case is deemed a civil matter.

HB 417 provides that a photo of the person who rented the vehicle is not required to file a report of an unreturned vehicle with law enforcement. Furthermore, the bill requires that law enforcement accept a report of unreturned rented motor vehicle without a photo of the person who rented the vehicle. The bill also requires law enforcement to enter the vehicle's information into the National Crime Information Center (NCIC) and Florida Crime Information Center (FCIC) databases.

#### C. SECTION DIRECTORY:

Section 1 Amending s. 817.52, F.S., relating to criminal penalties for failure to return hired vehicles.

Section 2 Provides effective date of July 1, 2008.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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<sup>1</sup> Sections 775.082, 775.083, 775.084, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

To the extent that this bill requires local law enforcement to accept a report of theft of a motor vehicle in cases which they would not currently accept such a report, there may be an additional workload.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

NCIC/FCIC will not accept entries for failure to redeliver hired vehicles. The vehicles must be listed as stolen. The bill requires law enforcement to enter a report of failure to redeliver a hired vehicle in NCIC/FCIC, which is technically not possible.

HB 417 inserts a comma at line 22 following the word, "abandon." The word "abandon" is paired with the words "or willfully" and does not appear to be intended as part of a list. It appears the comma should be removed to maintain the apparent meaning that a person must have the intent to defraud if the person either abandons or refuses to return a rented motor vehicle.

**D. STATEMENT OF THE SPONSOR**

The bill will allow rental car companies to submit a report of stolen vehicles without the requirement of a photo I.D.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 19, 2008, the Committee on Homeland Security & Public Safety adopted a strike-all amendment to the bill. The amendment makes the following changes:

- provides law enforcement agencies may not require any information not listed by this subsection to report the failure to redeliver a hired vehicle

- requires law enforcement agencies report the hired vehicle as stolen in NCIC/FCIC

HB 417

2008

1 A bill to be entitled  
 2 An act relating to failure to redeliver hired vehicles;  
 3 amending s. 817.52, F.S.; providing that a photo of the  
 4 person hiring a vehicle shall not be required in order to  
 5 report the failure to redeliver that hired vehicle in  
 6 violation of a specified provision; requiring the entry of  
 7 reports of such failures in specified reporting systems;  
 8 providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Subsection (3) of section 817.52, Florida  
 13 Statutes, is amended to read:

14 817.52 Obtaining vehicles with intent to defraud, failing  
 15 to return hired vehicle, or tampering with mileage device of  
 16 hired vehicle.--

17 (3) FAILURE TO REDELIVER HIRED VEHICLE.--Whoever, after  
 18 hiring a motor vehicle under an agreement to redeliver the same  
 19 to the person letting such motor vehicle or his or her agent, at  
 20 the termination of the period for which it was let, shall,  
 21 without the consent of such person or persons and with intent to  
 22 defraud, abandon, or willfully refuse to redeliver such vehicle  
 23 as agreed commits ~~shall, upon conviction, be guilty of~~ a felony  
 24 of the third degree, punishable as provided in s. 775.082, s.  
 25 775.083, or s. 775.084. A photo of the person hiring the vehicle  
 26 shall not be required in order to report the failure to  
 27 redeliver a hired vehicle under this subsection. A report under  
 28 this subsection shall be accepted by law enforcement without a



HB 417

2008

29 photo of the person hiring the vehicle and shall be entered into  
30 the National Crime Information Center and the Florida Crime  
31 Information Center systems.

32       Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 417

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
 ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
 ADOPTED W/O OBJECTION X (Y/N)  
 FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
 WITHDRAWN \_\_\_\_\_ (Y/N)  
 OTHER \_\_\_\_\_

*Traveling Amendment  
No Action Required*

1 Council/Committee hearing bill: Committee on Homeland Security  
2 & Public Safety

3 Representative Culp offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (3) of section 817.52, Florida  
8 Statutes, is amended to read:

9 817.52 Obtaining vehicles with the intent to defraud,  
10 failing to return hired vehicle, or tampering with mileage  
11 device of hired vehicle.--

12 (3) FAILURE TO REDELIVER HIRED VEHICLE.--Whoever,  
13 after hiring a motor vehicle under an agreement to redeliver the  
14 same to the person letting such motor vehicle or his or her  
15 agent, at the termination of the period for which it was let,  
16 shall, without the consent of such person or persons and with  
17 intent to defraud, abandon or willfully refuse to redeliver such  
18 vehicle as agreed commits ~~shall, upon conviction, be guilty of a~~  
19 ~~felony of the third degree, punishable as provided in s.~~

20 775.082, s. 775.083, or s. 775.084. No law enforcement agency  
21 shall require information not required by this subsection to be  
22 supplied in order to accept a report of a violation of this

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

23 subsection. A report accepted by a law enforcement agency under  
24 this subsection shall be entered into the National Crime  
25 Information Center and the Florida Crime Information Center  
26 listing the hired vehicle as a stolen vehicle.

27 Section 2. This act shall take effect July 1, 2008.  
28  
29

30 -----  
31 T I T L E A M E N D M E N T

32 Remove the entire title and insert:

33 An act relating to failure to redeliver hired vehicles;  
34 amending s. 817.52, F.S.; providing that information not  
35 required by this subsection shall not be required in order  
36 to report the failure to redeliver that hired vehicle in  
37 violation of the specified provision; requiring the entry  
38 of reports of such failures in specified reporting systems;  
39 providing an effective date.

**HB 555**

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 555

Domestic Violence

**SPONSOR(S):** Long

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>11 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u>Cunningham <i>SK</i></u>	<u>Havlicak <i>RH</i></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

**SUMMARY ANALYSIS**

Currently, a person commits a 1<sup>st</sup> degree misdemeanor if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.

HB 555 adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the *existing* list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

The bill would make the list of ways in which a person could violate an injunction for protection against *repeat violence, sexual violence, or dating violence* identical to the list of ways a person could violate an injunction for protection against *domestic violence*.

The bill increase the ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence, which is a 1<sup>st</sup> degree misdemeanor. Consequently, this bill could have a jail bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty** – This bill adds to the list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### *Definitions*

“Repeat violence” is defined as, “two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.”<sup>1</sup>

“Dating violence” is defined as, “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: a dating relationship must have existed within the past 6 months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.”<sup>2</sup>

“Sexual violence” is defined as, “any one incident of sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted; regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.”<sup>3</sup>

##### *Injunctions for Protection*

Section 784.046, F.S., relates to the issuance of injunctions for protection against repeat violence, dating violence, and sexual violence. The statute specifies the following:

- Petitions for injunctions for protection must allege the incidents of repeat violence, sexual violence, or dating violence and must include the specific facts and circumstances that form the basis upon which relief is sought.
- Upon the filing of the petition, the court must set a hearing to be held at the earliest possible time. The respondent must be personally served with a copy of the petition, notice of hearing, and temporary injunction, if any, prior to the hearing.
- When it appears to the court that an immediate and present danger of violence exists, the court may grant a temporary injunction which may be granted in an ex parte hearing, pending a full hearing, and may grant such relief as the court deems proper.
- The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection.

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<sup>1</sup> s. 784.046(1), F.S.

<sup>2</sup> *Id.*

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

- The petitioner or the respondent may move the court to modify or dissolve an injunction at any time.<sup>4</sup>

Section 784.047, F.S., provides penalties for violating an injunction for protection against repeat violence, sexual violence, or dating violence. The statute specifies that a person commits a 1<sup>st</sup> degree misdemeanor<sup>5</sup> if they willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence by:

- Refusing to vacate the dwelling that the parties share;
- Going to the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of repeat violence, sexual violence, or dating violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner; or
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party.<sup>6</sup>

### Effect of the Bill

HB 555 adds the following to the above list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The bill also adds the following to the *existing* list of ways in which a person could violate an injunction for protection against repeat violence, sexual violence, or dating violence:

- Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

It should be noted that s. 741.31, F.S., which provides penalties for violating an injunction for protection against *domestic violence*<sup>7</sup>, contains the same provisions as those added by the bill.

## C. SECTION DIRECTORY:

**Section 1.** Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violence.

**Section 2.** This bill takes effect July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

<sup>4</sup> s. 784.046, F.S.

<sup>5</sup> A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a \$1,000 fine. See ss. 775.082 and 775.083.

<sup>6</sup> s. 784.047, F.S.

<sup>7</sup> Section 741.28, F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill adds to the list of ways in which a person can violate an injunction for protection. Such violations will be a first degree misdemeanor. This could have an indeterminate jail bed impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The "relating to" clause of this bill is, "an act relating to *domestic violence*." However, the bill amends a section of statute that addresses injunctions for protection against *repeat violence, sexual violence, or dating violence*.

D. STATEMENT OF THE SPONSOR

I was pleased to sponsor this legislation after Jan Manning, a constituent, brought her experience to my attention. Ms. Manning was physically assaulted, stalked, harassed and had her property damaged by a man she dated briefly. Ms. Manning was successful in obtaining a restraining order against this individual, but because they never lived together, was unable to get immediate assistance from law



enforcement when it was repeatedly violated. Thankfully, Ms. Manning survived this ordeal and has been working for change on behalf of other victims.

For the purpose of issuing and enforcing restraining orders, Florida law recognizes four types of violence: domestic, dating, sexual and repeat violence.

In 2001, penalties for, and circumstances that violate restraining orders were added to Florida law, but only for circumstances of domestic violence, where the victim and the offending individual have shared a domicile. This left a situation where Jan Manning, and other victims of dating, sexual or repeat violence are left to file a civil complaint with the clerk of the circuit court when their restraining order is violated, rather than receiving immediate assistance from law enforcement.

This bill creates consistency in the law and provides important protections for victims of dating, sexual and repeat violence.

#### **E. IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 19, 2008, the Homeland Security & Public Safety Committee adopted a title amendment and reported the bill favorably as amended. The title amendment specifies that the bill relates to violations of injunctions for protection rather than domestic violence.

1                                   A bill to be entitled  
 2           An act relating to domestic violence; amending s. 784.047,  
 3           F.S.; adding circumstances that violate an injunction for  
 4           protection against repeat violence, sexual violence, or  
 5           dating violence; providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Section 784.047, Florida Statutes, is amended  
 10          to read:

11           784.047 Penalties for violating protective injunction  
 12          against violators.--A person who willfully violates an  
 13          injunction for protection against repeat violence, sexual  
 14          violence, or dating violence, issued pursuant to s. 784.046, or  
 15          a foreign protection order accorded full faith and credit  
 16          pursuant to s. 741.315 by:

17           (1) Refusing to vacate the dwelling that the parties  
 18          share;

19           (2) Going to, or being within 500 feet of, the  
 20          petitioner's residence, school, place of employment, or a  
 21          specified place frequented regularly by the petitioner and any  
 22          named family or household member;

23           (3) Committing an act of repeat violence, sexual violence,  
 24          or dating violence against the petitioner;

25           (4) Committing any other violation of the injunction  
 26          through an intentional unlawful threat, word, or act to do  
 27          violence to the petitioner; ~~or~~

28           (5) Telephoning, contacting, or otherwise communicating

29 with the petitioner directly or indirectly, unless the  
 30 injunction specifically allows indirect contact through a third  
 31 party;

32 (6) Knowingly and intentionally coming within 100 feet of  
 33 the petitioner's motor vehicle, whether or not that vehicle is  
 34 occupied;

35 (7) Defacing or destroying the petitioner's personal  
 36 property, including the petitioner's motor vehicle; or

37 (8) Refusing to surrender firearms or ammunition if  
 38 ordered to do so by the court,

39  
 40 commits a misdemeanor of the first degree, punishable as  
 41 provided in s. 775.082 or s. 775.083.

42 Section 2. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 555

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION y (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

*Traveling Amendment  
No Action Required*

1 Council/Committee hearing bill: Homeland Security & Public Safety  
2 Representative Long offered the following:

3  
4 T I T L E A M E N D M E N T

5 Remove line 2 and insert:

6 An act relating to violations of injunctions for protection;  
7 amending s. 784.047,

**HB 581**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 581 Court Costs for Drug Court Programs  
SPONSOR(S): Kreegel; Homan  
TIED BILLS: None IDEN./SIM. BILLS: SB 2440

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Courts	6 Y, 0 N	Webb	Bond
2) Safety & Security Council		Webb <i>mmw</i>	Havlicak <i>RH</i>
3) Policy & Budget Council			
4)			
5)			

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SUMMARY ANALYSIS

Current law allows each county to elect whether to create treatment based drug courts. Currently, at least 43 of the 67 counties have such courts. A county that elects to create a drug court must fund the drug court program.

This bill allows a county that has elected to create a drug court program to assess an additional \$6 court cost on every person who pleads guilty or no contest to a criminal or traffic drug offense.

This bill does not appear to have a fiscal impact on state government. This bill appears to have a positive fiscal impact on counties that have elected to create a drug court and that then elect to impose the cost; and will have a corresponding negative fiscal impact on individuals required to pay the additional court cost.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility -- This bill requires persons committing drug related offenses to pay some of the cost of the operation of a treatment based drug court program that the person may be referred to.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Treatment based drug courts are provided for in s. 397.334, F.S. Each county may elect whether or not to create a drug court. Section 397.334(7), F.S., related to funding of drug courts, provides:

(7) If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004.<sup>1</sup> However, this does not preclude counties from using treatment and other service dollars provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

The original drug court concept was developed in Dade County as a response to a federal mandate to reduce the inmate population or lose federal funding.<sup>2</sup> The Florida Supreme Court reported that a majority of the offenders being incarcerated due to drug-related crimes were "revolving back through the criminal justice system because of underlying problems of drug addiction."<sup>3</sup> The Court felt that the delivery of treatment services needed to be coupled with the criminal justice system, strong judicial leadership, and partnerships to bring treatment and the criminal justice system together.<sup>4</sup>

As of July 2004, 88 drug courts operated in 43 counties.<sup>5</sup> There are 1,183 drug courts nationwide, either operational or in the planning stages, and drug courts are operational in all fifty states.<sup>6</sup>

In Florida, in 2002, approximately 10,200 offenders were referred to drug court. Studies show that drug court graduates experience a significantly reduced rate of recidivism and that drug courts are a cost-effective alternative to incarceration of drug offenders.<sup>7</sup>

Drug courts operate on a reward and punishment system. The reward for successful completion of the program is not only a better life but also lowering of a criminal charge to a lesser offense or even dismissal of the criminal charge. Punishments for failing to comply with the program typically include work assignment, increased treatment modalities, increased court appearances, increased urinalysis testing, community service, house arrest, and incarceration. Failure to comply with the program can also result in the continuation of the criminal process and possible additional jail time upon conviction.

The chief judge of each judicial circuit may appoint an advisory committee for the treatment-based drug court program. The committee shall be composed of the chief judge, or his or her designee, who shall

<sup>1</sup> Section 29.004, F.S., sets for the minimum elements or programs that the state is required to fund in the court system.

<sup>2</sup> Publication by the Florida Supreme Court, *The Florida Drug Court System*, revised January 2004, p.1

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

<sup>4</sup> *Id.*

<sup>5</sup> *Report on Florida's Drug Courts*, by the Supreme Court Task Force on Treatment-Based Drug Courts, July 2004, p.5

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

serve as chair; the judge of the treatment-based drug court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the treatment-based drug court program coordinators; community representatives; treatment representatives; and any other persons the chair finds are appropriate.<sup>8</sup>

### Effect of Bill

This bill creates s. 938.20, F.S., to provide that in any county in which a drug court program has been established under s. 397.334 may require by ordinance an additional court cost of \$6. The additional cost may be imposed on any individual who:

- Pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of ch. 893, F.S.<sup>9</sup>
- Pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of a municipal ordinance or a county ordinance involving the use of alcohol or other substance use or abuse.
- Pays a fine or civil penalty for any violation of ch. 316, F.S.,<sup>10</sup> involving the use of alcohol or other substance use or abuse.

The clerk of the circuit court must collect the \$6 assessment and deposit the assessment monthly into a separate account for operating the drug court program. The clerk may retain 5 percent of all collections for administrative costs. The county must appropriate the remaining 95 percent for use by the drug court program, after consultation with the advisory committee.

### C. SECTION DIRECTORY:

Section 1 creates s. 938.20, F.S., creating funding for drug court programs.

Section 2 provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

A county that elects to enact this additional court cost will see increased income for use by such county's drug court.

<sup>8</sup> Section 397.334(8), F.S.

<sup>9</sup> Chapter 893, F.S., contains drug-related offenses.

<sup>10</sup> Chapter 316, F.S., contains in relevant part driving offenses, including DUI.



2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will increase the cost to individuals involved in drug offenses by \$6.

D. FISCAL COMMENTS:

It is unknown how many counties would elect to enact this additional court cost.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to court costs for drug court programs;  
 3           creating s. 938.20, F.S.; authorizing counties to provide  
 4           by ordinance for funding of drug court programs through  
 5           the assessment of an additional mandatory court cost;  
 6           providing for the assessment to be imposed against persons  
 7           who plead guilty or no contest to, or are convicted of,  
 8           certain drug-abuse prevention and control provisions or  
 9           certain local ordinances or uniform traffic control laws  
 10          involving alcohol or other substance use or abuse;  
 11          providing for collection and deposit of the assessment;  
 12          providing for administration of the funds; providing an  
 13          effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17          Section 1.   Section 938.20, Florida Statutes, is created to  
 18   read:

19          938.20 Court costs for drug court programs.--

20          (1) Each county in which a drug court program has been  
 21          established under s. 397.334 may require by ordinance the  
 22          assessment of a mandatory cost in the sum of \$6 which shall be  
 23          assessed by both the circuit court and the county court in the  
 24          county against each person who:

25                  (a) Pleads guilty or nolo contendere to, or is convicted  
 26          of, regardless of adjudication, a violation of chapter 893;

27                  (b) Pleads guilty or nolo contendere to, or is convicted  
 28          of, regardless of adjudication, a violation of a municipal

29 ordinance or a county ordinance involving the use of alcohol or  
 30 other substance use or abuse; or

31 (c) Pays a fine or civil penalty for any violation of  
 32 chapter 316 involving the use of alcohol or other substance use  
 33 or abuse.

34  
 35 The \$6 assessment shall be in addition to any fine, civil  
 36 penalty, or other court cost and may not be deducted from the  
 37 proceeds of that portion of any fine or civil penalty which is  
 38 received by a municipality in the county or by the county in  
 39 accordance with ss. 316.660 and 318.21. The \$6 assessment shall  
 40 specifically be added to any civil penalty paid for a violation  
 41 of a provision of chapter 316 involving the use of alcohol or  
 42 other substance use or abuse, whether such penalty is paid by  
 43 mail, paid in person without request for a hearing, or paid  
 44 after a hearing and determination by the court.

45 (2) The clerk of the circuit court shall collect the \$6  
 46 assessment established pursuant to subsection (1) and shall  
 47 deposit the assessment monthly into an account specifically  
 48 designated for operating and administering the drug court  
 49 program within the county, less 5 percent, which shall be  
 50 retained as fee income for the office of the clerk of the  
 51 circuit court, together with other moneys that become available  
 52 for establishing, operating, and administering drug court  
 53 programs under state law.

54 (3) Assessments deposited into an account specifically  
 55 designated for operating and administering the drug court  
 56 programs within the county shall be administered by the county

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2008

57 | under the direction of the advisory committee appointed by the  
58 | chief judge in each circuit pursuant to s. 397.334.

59 |       Section 2. This act shall take effect upon becoming a law.

**HB 931**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 931 Residential Tenancies

SPONSOR(S): Williams and others

TIED BILLS: IDEN./SIM. BILLS: SB 1408

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council		Davis <i>MD</i>	Havlicak <i>RH</i>
2)			
3)			
4)			
5)			

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SUMMARY ANALYSIS

The bill creates s. 83.683, F.S., and provides that a landlord may not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of the dwelling unit if the tenant, applicant, or household member is a victim of domestic violence, dating violence, repeat violence, or sexual violence.

The bill allows tenants to terminate their rental agreement early due to domestic violence, dating violence, repeat violence, or sexual violence. The bill provides for payment of specified rent, and prohibits tenant liability for other rent or fees. Additionally, it provides that the excluded tenant is still liable for rent and damages.

The bill states that a landlord may not include in a residential rental agreement a provision that authorizes a landlord to terminate or to impose a penalty upon a tenant for calls made by the tenant for assistance from a law enforcement agency in response to domestic violence, dating violence, repeat violence, or sexual violence.

The bill allows a victim of domestic violence, dating violence, repeat violence, or sexual violence to request that the landlord change all locks and gives the landlord 72 hours to comply.

Lastly, the bill provides that its provisions may not be waived or modified by agreement of the parties.

The bill becomes effective July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard individual liberty** -- This bill decreases the ability of landlords and tenants to enter into contract terms as they see fit.

**Empower families** -- This bill may serve or benefit families that are suffering from the effects of domestic violence.

#### B. EFFECT OF PROPOSED CHANGES:

##### Termination of Lease Agreements

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord tenant law.<sup>1</sup> A lease is an agreement to use real property for a certain length of time. According to s. 83.43, F.S., a tenant is any person entitled to occupy a dwelling unit under a rental agreement and a landlord is the owner or lessor of a dwelling unit. By definition, all residential tenancies must end. Most end at the conclusion of the agreed-upon lease term with the tenant having paid all rents due. Section 83.595, F.S., governs the financial obligation of the tenant where the tenant's occupation of the property ends prior to the agreed upon term of the lease.

Section 83.595, F.S., provides that a landlord who has retaken possession of a rental property before the end of the lease term may do any of the following: treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between the rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from renting to another tenant; or stand by and do nothing, holding the tenant liable for the rent as it comes due.

Florida law currently provides several circumstances under which a rental agreement may be terminated prematurely by a tenant with little or no penalty. These circumstances include the following: if the landlord materially fails to comply with certain obligations to maintain the premises; if the landlord fails to remedy certain provisions of the rental property after those provisions have been called to his or her attention in writing by the tenant;<sup>2</sup> if the premises are damaged or destroyed by an action that is not the tenant's fault and the tenant cannot substantially enjoy the premises;<sup>3</sup> or if the tenant is an active duty member of the armed forces, and is either transferred or discharged from service.<sup>4</sup>

A tenant may terminate a rental agreement when the landlord materially fails to comply with s. 83.51(1) F.S.,<sup>5</sup> or material provisions of the rental agreement within seven days of notice from the tenant specifying the noncompliance and indicating the tenant's intent to terminate the rental agreement. If the landlord's failure to comply is due to causes beyond the control of the landlord, and the landlord has made every reasonable effort to comply, and the landlord's failure to comply makes the dwelling unit

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<sup>1</sup> Part II of ch. 83, F.S.

<sup>2</sup> Section 83.56, F.S.

<sup>3</sup> Section 83.63, F.S.

<sup>4</sup> Section 83.682, F.S.

<sup>5</sup> Section 83.51(1), F.S., requires a landlord to comply with all applicable building, housing, and health codes, and maintain all structural components and plumbing in good repair.

untenantable, and the tenant then vacates the unit, the tenant will not be liable for rent during the time the dwelling unit remains uninhabitable.<sup>6</sup> The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.<sup>7</sup>

A provision in a rental agreement is void and unenforceable to the extent that it purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord.<sup>8</sup>

A tenant has an obligation at all times to maintain a dwelling. Specifically, a tenant must conduct him or herself and require other persons on the premises with his or her consent to conduct themselves in a manner that does not unreasonably disturb the tenant's neighbors or constitutes a breach of the peace.<sup>9</sup>

### **Injunctions against Domestic, Repeat, Dating, or Sexual Violence**

Section 741.30(1)(a), F.S., creates a cause of action for an injunction for protection against domestic violence, and provides that a person who is the victim of domestic violence, as defined in s. 741.28, F.S.,<sup>10</sup> or who has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence, has standing to seek an injunction against domestic violence. A domestic violence injunction may be sought by family or household members, and "no person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse."<sup>11</sup>

Courts have adopted a two-pronged test for determining whether a relationship is such that the court can properly issue a domestic violence injunction against one of the parties.<sup>12</sup> First, the petitioner must have a familial or domestic relationship with the respondent that falls within the range of relationships listed in the statute, and second, the parties must have resided together, either in the past or present, as a family or household in the same dwelling unit.<sup>13</sup> An action for an injunction does not affect the title to any real estate.<sup>14</sup>

Section 784.046, F.S., defines violence, repeat violence, sexual violence, and dating violence, and creates separate causes of action for repeat, sexual, and dating violence. Any person who is the victim

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<sup>6</sup> Section 83.56(1)(a), F.S.

<sup>7</sup> Section 83.51(4), F.S.

<sup>8</sup> Section 83.47, F.S.

<sup>9</sup> Section 83.52(7), F.S.

<sup>10</sup> Section 741.28(2), F.S., provides that 'domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>11</sup> Section 741.30(1)(e), F.S.

<sup>12</sup> *Kokoris v. Zipnick*, 738 So.2d 369, 370 (Fla. 4th DCA 1999).

<sup>13</sup> *Id.*

<sup>14</sup> Section 741.30(1)(h), F.S.



of repeat violence,<sup>15</sup> or the parent of a minor child who lives at home and is the victim of repeat violence, has standing to file a sworn petition for an injunction against repeat violence.<sup>16</sup>

"Dating violence" is defined as "violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature."<sup>17</sup> Any person who has reasonable cause to believe that he or she is in imminent danger of becoming the victim of an act of dating violence, or who is the victim of dating violence and has reasonable cause to fear imminent future dating violence, or who is the parent of a minor child living at home and is in need of protection from dating violence, may file a petition for an injunction to protect against dating violence.<sup>18</sup>

A person who is the victim of sexual violence,<sup>19</sup> or the parent of any minor child living at home who is the victim of sexual violence, has standing to file a petition for a protective injunction against sexual violence if:

- The person has reported the sexual violence to a law enforcement agency and is cooperating with any criminal proceeding against the respondent; or
- The person who committed the sexual violence was sentenced to a term of imprisonment for the sexual violence, and such sentence expires or shall expire within 90 days of the filing of the petition.<sup>20</sup>

The court is authorized to grant an injunction enjoining the respondent from committing any acts of violence and it is also given broad authority to order such other relief as is necessary to protect the victim.<sup>21</sup> When it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction ex parte which may include awarding a petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.<sup>22</sup> An order granting an injunction must be supported by competent, substantial evidence.<sup>23</sup>

## **The Bill**

### **Victim Protection/Nondiscrimination**

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<sup>15</sup> Section 784.046(1)(b), F.S., provides that "repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have occurred within six months of the filing of the petition, and which were directed against the petitioner or an immediate member of the petitioner's family.

<sup>16</sup> Section 784.046(2)(a), F.S.

<sup>17</sup> Section 784.046(1)(d), F.S. The dating relationship shall be determined based on the existence of the following factors: 1) a dating relationship must have existed within the past 6 months; 2) the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3) the frequency and type of interaction between the persons involved in the relationship must have included that all the persons have been involved over time and on a continuous basis during the course of the relationship.

<sup>18</sup> Section 784.046(2)(b), F.S.

<sup>19</sup> Section 784.046(1)(c), F.S., provides that "sexual violence" means one incident of sexual battery, a lewd or lascivious act committed upon or in the presence of a person younger than 16, luring or enticing a child, sexual performance by a child, or any forcible felony wherein a sexual act is committed or attempted, regardless of the presence or absence of criminal charges resulting from the incident.

<sup>20</sup> Section 784.046(2)(c), F.S.

<sup>21</sup> Section 784.046(6)(a), (7)(a)-(b), F.S.

<sup>22</sup> Sections 741.30(5)(a)2 and 741.30(6)(a)2.

<sup>23</sup> *Forrest v. Wilson*, 889 So.2d 124, 124-25 (Fla. 1st DCA 2004).

The bill creates s. 83.683, F.S., and states that a landlord may not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of the dwelling unit if the tenant, applicant, or household member<sup>24</sup> is a victim of domestic violence, dating violence, repeat violence, or sexual violence or if the tenant terminated a rental agreement due to domestic violence.

The bill states that a landlord may not include in a residential rental agreement a provision that authorizes a landlord to terminate or to impose a penalty upon a tenant for calls made by the tenant for assistance from a law enforcement agency or other emergency assistance in response to domestic violence, dating violence, repeat violence, or sexual violence.

### **Evidence**

The bill provides that the evidence provided to a landlord to prove the occurrence of domestic violence, dating violence, repeat violence, or sexual violence may include:

- Records, orders, or files of a court, law enforcement agency, or state or federal agency;
- Documentation from a domestic violence or sexual assault protection program; or
- Documentation from a medical professional.

### **Early Termination of Rental Agreement**

The bill provides that a tenant protected by newly created s. 83.683, F.S., may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice which must be at least 30 days after the landlord receives the written notice of termination.

The notice to the landlord must include:

- A copy of the injunction for protection against domestic violence issued by the court;
- A valid card issued under an address confidentiality program to the victim or a minor member of the tenant's household pursuant to s. 741.403, F.S.<sup>25</sup>; or
- An order of no contact entered by a court in a criminal case.

The bill further provides that after terminating a rental agreement the tenant who is released is liable to the landlord for the rent due under the rental agreement prorated to the effective date of the termination. The tenant is not liable for any other rent or fees due to the early termination of the tenancy. At the end of the termination of the lease for the victim of domestic violence, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. If a tenant terminates the rental agreement 14 days or more before he or she initially occupies the dwelling unit, the tenant is not liable for any damages or penalties. The respondent who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

### **Changing Locks**

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<sup>24</sup> Section 741.28 F.S., defines "family or household member" as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

<sup>25</sup> Pursuant to s. 741.403, F.S., an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated under chapter 744 may apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.

The bill provides that if the respondent of domestic violence, dating violence, repeat violence, or sexual violence **is not a tenant** in the same dwelling unit as the protected tenant, the protected tenant may give oral or written notice to the landlord that he or she is a victim of domestic violence and may request that the door and other locks be changed. A landlord that receives a request under these provisions must change the door locks or give permission to the tenant to change the locks within 72 hours.

If the respondent of domestic violence, dating violence, repeat violence, or sexual violence **is a tenant** in the same dwelling unit as the victim, the bill provides that the protected tenant may give oral or written notice to the landlord that he or she is a victim of domestic violence and may request that the door and other locks be changed. Before the landlord or tenant may change the door locks the tenant must provide the landlord with a copy of the court order excluding the respondent from the dwelling unit of the protected tenant. A landlord that receives a request under these provisions must change the door locks within 72 hours.

The bill requires that the protected tenant shall bear the cost of changing the locks and if the landlord does not act within the required time the tenant may change the locks without the landlord's permission, provided that the tenant give a key to the new locks to the landlord within 48 hours after the locks are changed.

The landlord, if provided with a court order excluding the respondent from the dwelling unit, may not grant the respondent access to the dwelling unit unless the respondent has a court order allowing access to retrieve personal belongings. If a landlord complies with this paragraph, the bill provides that the landlord is not liable for civil damages to a respondent excluded from the dwelling unit, or loss of use of that dwelling unit or loss of use or damage to the respondent's personal property.

#### **Non-Waiver of Rental Terms**

The bill provides that pursuant to s. 83.47, F.S., the provisions of the bill may not be waived or modified by agreement of the parties.

#### **C. SECTION DIRECTORY:**

**Section 1:** Creates s. 83.683 F.S., regarding prohibited discrimination against a victim of domestic violence, dating violence, repeat violence, or sexual violence.

**Section 2:** Provides for an effective date of July 1, 2008.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will have a indeterminate cost to landlords for the termination of rental agreements.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

**Impairment of Contracts**

Both Article I, section 10 of the United States Constitution and Article I, section 10 of the Florida Constitution forbid state impairment "of the obligation of contracts."<sup>26</sup> Florida courts have generally treated the requirements of the state and federal Contract Clauses as identical, although they have suggested that the provision in the state constitution is probably stronger.<sup>27</sup>

Applying the effects of this bill to contracts entered into before its effective date may implicate issues involving legislative impairment of contracts. Courts use a balancing test to determine whether particular legislation violates the Contract Clause, measuring the severity of contractual impairment against the importance of the interest advanced by the regulation, and also looking at whether the regulation is a reasonable and narrowly tailored means of promoting the state's interest.<sup>28</sup>

However, Florida common law does not allow government to adversely affect substantive rights once those rights have vested;<sup>29</sup> moreover, unless the Legislature states otherwise, a statute is presumed only to operate prospectively, especially when such operation would impair vested rights.<sup>30</sup>

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<sup>26</sup> See generally 16 AM. JUR. 2D CONSTITUTIONAL LAW §§ 708-744; 10 FLA. JUR. 2D CONSTITUTIONAL LAW §§ 348-373.

<sup>27</sup> See, e.g., *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980) (accepting as persuasive an interpretation of the federal Contract Clause by the Supreme Court of the United States in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978)).

<sup>28</sup> See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945); *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980); *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980); *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982).

<sup>29</sup> See *Bitterman v. Bitterman*, 714 So.2d 356 (Fla. 1998).

<sup>30</sup> See *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill potentially applies to pre-existing contracts. It is suggested that an applicability clause be added to provide that the provisions of the bill only apply to contracts entered into on or after the date the bill becomes effective.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

1 A bill to be entitled  
2 An act relating to residential tenancies; creating s.  
3 83.683, F.S.; defining terms; prohibiting a landlord from  
4 terminating, failing to renew, or refusing to enter into a  
5 residential rental agreement because the tenant,  
6 applicant, or family or household member is a victim of  
7 domestic violence, dating violence, repeat violence, or  
8 sexual violence; prohibiting a landlord from including in  
9 a residential rental agreement a provision that authorizes  
10 the landlord to terminate a rental agreement or impose a  
11 penalty on a tenant for calling for assistance from a law  
12 enforcement agency or other emergency assistance in  
13 response to domestic violence, dating violence, repeat  
14 violence, or sexual violence; providing for evidence of  
15 the domestic violence, dating violence, repeat violence,  
16 or sexual violence which may be provided to the landlord;  
17 allowing victims of domestic violence to terminate a  
18 residential rental agreement under certain circumstances;  
19 providing procedures to notify the landlord; providing for  
20 liability for payment of rent by the respondent who has  
21 been excluded from the dwelling unit; requiring a landlord  
22 to change door and other locks of the dwelling unit of a  
23 victim of domestic violence, dating violence, repeat  
24 violence, or sexual violence under certain circumstances  
25 within a specified period; requiring the protected tenant  
26 to pay the costs of changing the door and other locks of  
27 the dwelling unit; prohibiting waiver of the provisions of  
28 the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83.683, Florida Statutes, is created to read:

83.683 Discrimination against victims of domestic violence, dating violence, repeat violence, or sexual violence prohibited.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Dating violence" has the same meaning as provided in s. 784.046(1).

(b) "Domestic violence" has the same meaning as provided in s. 741.28.

(c) "Family or household member" has the same meaning as provided in s. 741.28.

(d) "Repeat violence" has the same meaning as provided in s. 784.046(1).

(e) "Sexual violence" has the same meaning as provided in s. 784.046(1).

(2) VICTIM PROTECTION; NONDISCRIMINATION.--

(a) A landlord may not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling unit because:

1. The tenant, applicant, or a household member is a victim of domestic violence, dating violence, repeat violence, or sexual violence; or

2. The tenant or applicant terminated a rental agreement due to domestic violence, dating violence, repeat violence, or

57 sexual violence as provided in subsection (4).

58 (b) A landlord may not include in a residential rental  
 59 agreement a provision that authorizes a landlord to terminate  
 60 the agreement or to impose a penalty upon a tenant for calls  
 61 made by the tenant for assistance from a law enforcement agency  
 62 or other emergency assistance in response to domestic violence,  
 63 dating violence, repeat violence, or sexual violence. A rental  
 64 agreement may not waive a tenant's right to call for assistance  
 65 from a law enforcement agency or other emergency assistance.

66 (3) EVIDENCE.--Evidence provided to a landlord to prove  
 67 the occurrence of domestic violence, dating violence, repeat  
 68 violence, or sexual violence may include any of the following:

69 (a) Records, orders, or files of a court, law enforcement  
 70 agency, or state or federal agency;

71 (b) Documentation from a domestic violence or sexual  
 72 assault protection program; or

73 (c) Documentation from a medical professional.

74 (4) EARLY TERMINATION OF A RENTAL AGREEMENT BY A VICTIM OF  
 75 DOMESTIC VIOLENCE, DATING VIOLENCE, REPEAT VIOLENCE, OR SEXUAL  
 76 VIOLENCE.--

77 (a) A tenant protected by this section may terminate his  
 78 or her rental agreement for a dwelling unit by providing the  
 79 landlord with a written notice of termination to be effective on  
 80 a date stated in the notice which must be at least 30 days after  
 81 the landlord receives the written notice of termination. The  
 82 notice to the landlord must be accompanied by:

83 1. A copy of an injunction for protection against domestic  
 84 violence issued by a court pursuant to s. 741.30 or a copy of an



85 injunction for protection against repeat violence, sexual  
 86 violence, or dating violence issued by a court pursuant to s.  
 87 784.046;

88 2. A valid card issued under an address confidentiality  
 89 program to the victim or a minor member of the tenant's  
 90 household pursuant to s. 741.403; or

91 3. An order of no contact entered by a court in a criminal  
 92 case.

93 (b) After terminating a rental agreement, the tenant who  
 94 is released from the rental agreement under paragraph (a) is  
 95 liable to the landlord for the rent due under the rental  
 96 agreement prorated to the effective date of the termination and  
 97 payable at the time that would have been required by the terms  
 98 of the rental agreement. The tenant is not liable for any other  
 99 rent or fees due to the early termination of the tenancy. If a  
 100 tenant terminates the rental agreement 14 days or more before he  
 101 or she initially occupies the dwelling unit, the tenant is not  
 102 liable for any damages or penalties.

103 (c) Notwithstanding paragraph (a) or the exclusion of a  
 104 respondent of domestic violence, dating violence, repeat  
 105 violence, or sexual violence by a court order, if there are any  
 106 remaining tenants residing in the dwelling unit, the tenancy  
 107 shall continue for those tenants. The respondent who has been  
 108 excluded from the dwelling unit under court order remains liable  
 109 under the lease with any other tenant of the dwelling unit for  
 110 rent or damages to the dwelling unit.

111 (5) VICTIM PROTECTION; CHANGING DOOR AND OTHER LOCKS.--

112 (a) If the respondent of domestic violence, dating

113 violence, repeat violence, or sexual violence is not a tenant in  
 114 the same dwelling unit as the protected tenant, the protected  
 115 tenant may give oral or written notice to the landlord that he  
 116 or she is a victim of domestic violence, dating violence, repeat  
 117 violence, or sexual violence and may request that the door and  
 118 other locks to the dwelling unit be changed. A protected tenant  
 119 is not required to provide documentation of the domestic  
 120 violence, dating violence, repeat violence, or sexual violence  
 121 to initiate the changing of the door and other locks. A landlord  
 122 who receives a request under this paragraph must change the door  
 123 and other locks to the protected tenant's dwelling unit or give  
 124 the protected tenant permission to change the door and other  
 125 locks within 72 hours.

126 (b) If the respondent of the domestic violence, dating  
 127 violence, repeat violence, or sexual violence is a tenant in the  
 128 same dwelling unit as the victim, any tenant or protected tenant  
 129 of the dwelling unit may give oral or written notice to the  
 130 landlord that a protected tenant is a victim of domestic  
 131 violence, dating violence, repeat violence, or sexual violence  
 132 and may request that the door and other locks to the dwelling  
 133 unit be changed. Before the landlord or tenant changes the door  
 134 and other locks under this paragraph, the tenant must provide  
 135 the landlord with a copy of a court order excluding the  
 136 respondent from the dwelling unit of the protected tenant. A  
 137 landlord who receives a request to change the door and other  
 138 locks to the protected tenant's dwelling unit under this  
 139 paragraph must change the door and other locks within 72 hours.

140 (c) The protected tenant shall bear the expense of

141 changing the door and other locks. If a landlord fails to act  
 142 within the required time, the protected tenant may change the  
 143 door and other locks without the landlord's permission. If the  
 144 protected tenant changes the locks, the protected tenant must  
 145 give a key to the new locks to the landlord within 48 hours  
 146 after the door and other locks are changed.

147 (d) If a landlord has been provided with a court order  
 148 excluding the respondent from the dwelling unit of the protected  
 149 tenant, the landlord may not grant the respondent access to the  
 150 dwelling unit, provide keys to the respondent, or provide the  
 151 respondent access to the respondent's personal property within  
 152 the dwelling unit. If the respondent has a court order allowing  
 153 the respondent to return to the dwelling unit to retrieve  
 154 personal belongings, the landlord may grant him or her access to  
 155 the dwelling unit. If a landlord complies with this paragraph,  
 156 the landlord is not liable for civil damages to a respondent  
 157 excluded from the dwelling unit, for loss of use of the dwelling  
 158 unit, or for loss of use or damage to the respondent's personal  
 159 property.

160 (6) NONWAIVER OF RENTAL TERMS.--Pursuant to s. 83.47, the  
 161 provisions of this section may not be waived or modified by  
 162 agreement of the parties.

163 Section 2. This act shall take effect July 1, 2008.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 941

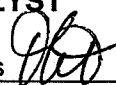

Claims to Escheated Property

SPONSOR(S): Frishe

TIED BILLS:

IDEN./SIM. BILLS: SB 2048

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council		Thomas 	Havlicak 
2) Policy & Budget Council			
3)			
4)			
5)			

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SUMMARY ANALYSIS

Florida's Probate Code provides, among many other provisions, for intestate succession, i.e., how property is distributed among heirs when a decedent dies without leaving a valid will. Current law provides an extensive list of potential heirs, reaching to the descendants of the decedent's grandparents. However, if a decedent dies without any apparent surviving heirs entitled to succeed under the intestacy statute, the decedent's estate escheats (reverts) to the state.

The bill provides that if there are none of the statutorily provided listed groups of potential heirs, then any lineal descendant of a decedent's great-grandparents that was a Holocaust victim is entitled to make a claim for any escheated property in which the lineal descendant may have a legitimate interest.

The bill appears to have an indeterminate fiscal impact on state government.

The bill takes effect on July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty** – the bill appears to increase the options of an individual regarding the conduct of their own affairs.

#### B. EFFECT OF PROPOSED CHANGES:

##### Escheat

When a person dies and leaves an estate without being survived by a person entitled to part or all of the estate, such property shall escheat (revert) to the state.<sup>1</sup> Property that escheats to the state is sold and the proceeds from the sale are paid to the Chief Financial Officer and deposited in the State School Fund.<sup>23</sup> A person claiming to be entitled to the proceeds from the sale of escheated property may reopen the administration to assert entitlement within 10 years after payment is made to the CFO.<sup>4</sup> After 10 years, however, the state's rights to the proceeds are absolute and the property has escheated to the state.<sup>5</sup>

Section 732.103, F.S., contains the intestate succession rules that are used to determine entitlement to property when a decedent dies intestate (without disposing of the property via a will). If there is no will, property descends as follows:

- Surviving spouse of the decedent as provided in s. 732.102, F.S.<sup>6</sup> If none then:
- Descendants of the decedent. If none then:
- Equally to the father and mother of the decedent, or the survivor of them. If none then:
- Brothers and sisters of the decedent and the descendants of deceased brothers and sisters.

If none of the above are entitled to the property then the estate is divided equally (half and half) between the decedent's paternal and maternal kindred as follows:

- To the grandfather and grandmother equally, or to the survivor of them. If none, then:
- Uncles and aunts and descendants of deceased uncles and aunts of the decedent. If none, then:

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<sup>1</sup> Section 732.107, F.S.

<sup>2</sup> Section 732.107(2), F.S.

<sup>3</sup> The State School Fund is also known as the State School Trust Fund, created pursuant to s. 1010.71, F.S.

<sup>4</sup> Section 732.107(3), F.S.

<sup>5</sup> Property held by a guardian that cannot make a distribution to a ward becomes the final property of the state 5 years after it is turned over to the CFO pursuant to s. 744.534, F.S.

<sup>6</sup> Section 732.102, F.S., provides The intestate share of the surviving spouse is:

(1) If there is no surviving descendant of the decedent, the entire intestate estate.

(2) If there are surviving descendants of the decedent, all of whom are also lineal descendants of the surviving spouse, the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate. Property allocated to the surviving spouse to satisfy the \$60,000 shall be valued at the fair market value on the date of distribution.

(3) If there are surviving descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate.

- To other kindred who survive, in the order stated above.
- If there is no kindred among the decedent's paternal and maternal line as described above, then the entire property goes to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate.

In 2004,<sup>7</sup> the Legislature created subsection (6) of s. 732.103, F.S., to temporarily expand the above intestacy succession if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), F.S.<sup>8</sup> In such a circumstance, a court was required to allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage.<sup>9</sup> Outside of this exception, the intestacy statute only looks to the grandparents of the decedent, not great-grandparents, to locate an heir. However, the expansion was only effective for proceedings filed on or before December 31, 2004.<sup>10</sup>

### Unclaimed Property

Generally, all property, real and personal, and every right to property of any nature are subject to escheat to the state.<sup>11</sup> Abandoned property is also subject to escheat to the state under appropriate statutes.<sup>12</sup> The escheat of abandoned property does not constitute a taking of property without due process of law in violation of the U.S. Constitution.<sup>13</sup>

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time.<sup>14</sup> Essentially, the unclaimed property laws cover financial accounts, but not real property or other personal property such as automobiles, furniture, jewelry (if not in a safe deposit box), and other items. Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are all potentially unclaimed property.<sup>15</sup> Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department of Financial Services (DFS).<sup>16</sup> There is no time limit for the owner to make a claim for unclaimed property.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the State School Trust Fund within the Department of Education (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.<sup>17</sup> Approximately \$1.5 billion has been transferred to the Florida Department of Education since the program's inception, including \$267,095,187 transferred to the State School Fund in Fiscal Year 2005-2006.

<sup>7</sup> Section 145, ch. 2004-390, L.O.F.

<sup>8</sup> "Holocaust victim" is defined as "any person who lost his or her life or property as a result of discriminatory laws, policies, or actions targeted against discrete groups of persons between 1920 and 1945, inclusive, in Nazi Germany, areas occupied by Nazi Germany, or countries allied with Nazi Germany."

<sup>9</sup> Section 732.103(6), F.S.

<sup>10</sup> *Ibid.*

<sup>11</sup> See ch. 716, F.S.

<sup>12</sup> Section 716.02, F.S.

<sup>13</sup> *Cockrill v. California*, 268 U.S. 258 (1925).

<sup>14</sup> Sections 717.102 and 717.1035, F.S.

<sup>15</sup> Sections 717.104 through 717.116, F.S.

<sup>16</sup> Section 717.119, F.S.

<sup>17</sup> Section 717.123(1), F.S., provides that "All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund."

Any person claiming an interest in unclaimed property may file a claim with the department for unclaimed property.<sup>18</sup> Within 90 days of the receipt of a properly submitted claim for unclaimed property (though potentially extendable for 60 additional days for good cause), the department determines the claim.<sup>19</sup> When a claim is determined in favor of the claimant, the department delivers the property or the amount the department received from the sale of the property plus any applicable interest.<sup>20</sup> An estate may claim unclaimed property only after the heir or legatee of the decedent entitled to the property has been located.<sup>21</sup> An estate that receives unclaimed property before the heir or legatee has been located is personally liable for the unclaimed property and must immediately return the full amount of the unclaimed property to the DFS.<sup>22</sup>

## Proposed Changes

The bill creates a new subsection (2) in s. 717.12405, F.S., granting specified Holocaust victims the ability to make a claim for escheated property. A Holocaust victim as defined in s. 626.9543(3)(a), F.S.,<sup>23</sup> may make a claim for escheated property if he or she is a lineal descendant of a decedent's great-grandparents and if he or she may have a legitimate interest in the property. The beneficiary, heir, or descendant of the Holocaust victim is also entitled to make such a claim. The Department of Financial Services is required to allow a qualifying claimant to meet a reasonable and not unduly restrictive standard of proof to substantiate his or her lineage and the validity of the claim for escheated property.

The bill provides that, regardless of any law or an agreement made by any parties to a claim, claims by a Holocaust victim or the beneficiary, heir, or descendant of such person may not be dismissed for failure to comply with any applicable statute of limitations or laches.<sup>24</sup> This will create a special exemption whereby property that has already escheated to the state because it was not claimed within the statutory time frames will be subject to claims under the provisions of the bill.

The bill takes effect on July 1, 2008.

### C. SECTION DIRECTORY:

**Section 1:** Amends s. 717.12405, F.S., relating to claims by estates.

**Section 2:** Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate. See D. Fiscal Comments below.

#### 2. Expenditures:

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<sup>18</sup> Section 717.124, F.S.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> 717.12405, F.S.

<sup>22</sup> *Ibid.*

<sup>23</sup> See footnote 8 above.

<sup>24</sup> "Laches" is defined as "The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought." Black's Law Dictionary (8th ed. 2004).



Indeterminate. See D. Fiscal Comments below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will allow certain descendants of Holocaust victims to claim property that has escheated to the state. Professional heir finders may benefit from this legislation if they are able to find heirs qualified under the bill for escheated estates.

**D. FISCAL COMMENTS:**

This bill appears to have an indeterminate fiscal impact on state government. Funds that escheat to the state are deposited into the State School Trust Fund within the Department of Education, except for a \$15 million balance that is retained in the Unclaimed Property Trust Fund that is maintained to pay claims and cover administrative costs.<sup>25</sup> Money in the State School Trust Fund is used to entirely fund public education. The Department of Financial services states that the amount of property that escheats to the state varies each year. There is no way to predict how many estates will avoid escheating to the state if this bill becomes law. DFS estimates that as of Fiscal Year 2008-2009, a total of \$29,308,732.76 is expected to have escheated to the state from estates where a lawful heir could not be found (this is the anticipated total of all estates to have ever escheated to the state). Under the proposed bill, all \$29.3M is potentially subject to claims by qualified parties, however, there is no way to know how many, if any, of these escheated estates will have a beneficiary that qualifies under the bill.

The bill does not provide the funding source for payment of claims of escheated property, but such funds would presumably be paid from the Unclaimed Property Trust Fund as currently provided by statute.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

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<sup>25</sup> Section 717.123(1), F.S., provides that "All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding \$15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund."

## 2. Other:

### Equal Protection

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that a state may not “deny to any person within its jurisdiction the equal protection of the laws.” Article I, section 2 of the Florida Constitution further provides that “[a]ll natural persons ... are equal before the law.” Both the federal and state Equal Protection Clauses are designed to prevent any person or class of persons from being singled out as a target for arbitrary and unjust discrimination.<sup>26</sup> They do not require that all persons be treated identically but rather that the law apply equally to all persons who are similarly situated.<sup>27</sup>

In most cases, a governmental classification must merely be rationally related to a legitimate state purpose, i.e., reasonable classifications other than those involving suspect classes of persons or fundamental rights are generally permissible, so long as the classifications are not arbitrary and are based on some difference in the classes having a substantial relation to the purpose of the legislation.<sup>28</sup> A litigant could argue that there is not a rational relationship with respect to the classification in this bill, particularly if that litigant sought to claim proceeds of an escheated estate through descent from a victim of genocide or crimes against humanity other than the Holocaust and that the bill distinguishes between persons (collateral heirs such as second cousins) whose claims for escheated property are allowed or prohibited, depending on whether they are descendants of Holocaust victims.

### Prohibited Special Law

This bill may raise concerns under a provision in Florida’s State Constitution that prohibits special laws that effectuate a change in the laws of descent.<sup>29</sup> A special law is one relating to, or designed to operate on, particular persons or things, or one that purports to operate on classified persons or things when classification is not permissible or the classification adopted is illegal.<sup>30</sup> If a court were to find that this bill was relating to, or designed to operate on, a particular person, it could find that it is a special law and therefore violates the State Constitution.

## B. RULE-MAKING AUTHORITY:

It appears that the Department of Financial Services has the necessary authority to adopt any rules that may be required to implement the provisions of this bill.<sup>31</sup>

## C. DRAFTING ISSUES OR OTHER COMMENTS:

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<sup>26</sup> See *Washington v. Davis*, 426 U.S. 229 (1976); *Haber v. State*, 396 So.2d 707 (Fla. 1981).

<sup>27</sup> See *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920) (“all persons similarly circumstanced shall be treated alike”); *Duncan v. Moore*, 754 So.2d 708 (Fla. 2000).

<sup>28</sup> See, e.g., *Vacco v. Quill*, 521 U.S. 793 (1997); *Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Williams v. Pryor*, 229 F.3d 1331 (11th Cir. 2000); *State v. Muller*, 693 So.2d 976 (Fla. 1997); *Libertarian Party of Florida v. Smith*, 687 So.2d 1292 (Fla. 1996); *Lite v. State*, 617 So.2d 1058 (Fla. 1993).

<sup>29</sup> FLA. CONST. art III, s. 11(a)(13), which prohibits a special law pertaining to “effectuation of invalid deeds, wills or other instruments, or change in the law of descent.”

<sup>30</sup> *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050, (Fla. 2003); *Bryan v. State*, 753 So.2d 1244, (Fla. 2000); *Department of Business Regulation v. Classic Mile, Inc.*, 541 So.2d 1155, (Fla. 1989).

<sup>31</sup> Section 717.138, F.S., provides that the “department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.”

This bill's evidentiary standard to substantiate a claim to intestate succession through a Holocaust victim may be unclear. The procedure the department is instructed to adopt, and a court may have to uphold, is required to be both "reasonable" and "not unduly restrictive," and a court could interpret these requirements to be distinct from each other.<sup>32</sup>

It appears that the provisions of the bill would be more appropriately suited in s. 732.103, F.S., rather than s. 717.12405, F.S. Chapter 717, F.S., deals with unclaimed property and not specifically escheated property. Unclaimed property and escheatable property are separate and distinct types of property governed by different provisions of Florida law. Section 732.103(6), F.S., deals with the escheatment of property to the state.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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<sup>32</sup> Courts assume that the Legislature adopts specific statutory language to achieve a particular purpose, i.e., that the addition, omission, or alteration of individual words is intentional and meaningful. *See Carlile v. Game & Fresh Water Fish Commission*, 354 So.2d 362 (Fla. 1977).

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1                                   A bill to be entitled  
 2           An act relating to claims to escheated property; amending  
 3           s. 717.12405, F.S.; entitling certain Holocaust victims or  
 4           related victims as lineal descendants of certain persons  
 5           to make claims to certain escheated property; requiring  
 6           the Department of Financial Services to allow such  
 7           descendants to meet certain standards of proof  
 8           substantiating lineage and valid claims for escheated  
 9           property; prohibiting dismissal of certain actions for  
 10          failure to comply with statutes of limitation or laches;  
 11          providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Section 717.12405, Florida Statutes, is amended  
 16          to read:

17           717.12405 Claims by estates.--

18           (1) An estate or any person representing an estate or  
 19          acting on behalf of an estate may claim unclaimed property only  
 20          after the heir or legatee of the decedent entitled to the  
 21          property has been located. Any estate, or any person  
 22          representing an estate or acting on behalf of an estate, that  
 23          receives unclaimed property before the heir or legatee of the  
 24          decedent entitled to the property has been located, is  
 25          personally liable for the unclaimed property and must  
 26          immediately return the full amount of the unclaimed property or  
 27          the value thereof to the department in accordance with s.  
 28          717.1341.

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29        (2) (a) For the purpose of escheated property, if any  
30        lineal descendant of a decedent's great-grandparents was a  
31        Holocaust victim as defined in s. 626.9543(3) (a), including such  
32        victims in countries cooperating with the discriminatory  
33        policies of Nazi Germany, such lineal descendant is entitled to  
34        make a claim for any escheated property in which the lineal  
35        descendant may have a legitimate interest. The department shall  
36        allow any such descendant to meet a reasonable and not unduly  
37        restrictive standard of proof to substantiate his or her lineage  
38        and a valid claim for the escheated property.

39        (b) Notwithstanding any law or agreement among any parties  
40        to a claim for escheated property, any action brought by a  
41        Holocaust victim, or by a beneficiary, heir, or descendant of a  
42        Holocaust victim, seeking any escheated property or the proceeds  
43        from escheated property may not be dismissed for failure to  
44        comply with any applicable statute of limitations or laches.

45        Section 2. This act shall take effect July 1, 2008.