

## CHAPTER 2015-92

### Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 439

An act relating to the Department of Legal Affairs; amending s. 16.56, F.S.; revising the list of offenses that may be investigated and prosecuted by the Office of Statewide Prosecution; creating s. 16.62, F.S.; authorizing the Department of Legal Affairs to expend a specified amount annually for certain recognition and awards programs; amending s. 409.9203, F.S.; specifying the distribution of certain funds recovered in Medicaid fraud actions; amending ss. 501.203 and 501.204, F.S.; updating references for purposes of the Florida Deceptive and Unfair Trade Practices Act; providing a directive to the Division of Law Revision and Information; creating s. 501.991, F.S.; providing legislative intent; creating s. 501.992, F.S.; defining terms; creating s. 501.993, F.S.; prohibiting bad faith assertions of patent infringement from being made; providing factors that a court may consider when determining whether an allegation was or was not made in bad faith; creating s. 501.994, F.S.; authorizing a court to require a patent infringement plaintiff to post a bond under certain circumstances; limiting the bond amount; authorizing the court to waive the bond requirement in certain circumstances; creating s. 501.995, F.S.; authorizing private rights of action for violations of this part; authorizing the court to award certain relief to prevailing plaintiffs; creating s. 501.996, F.S.; providing that a violation of part VII of ch. 501, F.S., is an unfair or deceptive trade practice; creating s. 501.997, F.S.; providing exemptions; amending s. 960.03, F.S.; revising the definition of the term “crime” for purposes of obtaining crime victim compensation from the department to include certain forcible felonies; revising provisions concerning acts involving the operation of a motor vehicle, boat, or aircraft; revising the definition of the term “disabled adult”; correcting a cross-reference; amending s. 960.13, F.S.; exempting crime victim compensation awards for catastrophic injury from certain deductions; amending s. 960.195, F.S.; revising the maximum victim compensation amounts that the department may award to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life in certain circumstances; revising the conditions under which elderly persons or disabled adults who suffer a property loss are eligible for an award; authorizing the department to deny, reduce, or withdraw a specified award upon finding that any claimant or award recipient has not duly cooperated with certain persons and entities; creating s. 960.196, F.S.; providing for relocation assistance for human trafficking victims; amending s. 960.198, F.S.; prohibiting relocation assistance for a domestic violence claim if the victim has received previous relocation assistance for a human trafficking claim; amending s. 960.199, F.S.; deleting provisions relating to relocation assistance for human trafficking victims; providing that the provisions of this act are severable; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) of section 16.56, Florida Statutes, are amended to read:

16.56 Office of Statewide Prosecution.—

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate “budget entity” as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, and home-invasion robbery;

2. Any crime involving narcotic or other dangerous drugs;

3. Any violation of ~~the provisions of~~ the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(1)(a), providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the prosecution of which listed offense may continue independently if the prosecution of the violation of s. 895.03 is terminated for any reason;

4. Any violation of ~~the provisions of~~ the Florida Anti-Fencing Act;

5. Any violation of ~~the provisions of~~ the Florida Antitrust Act of 1980, as amended;

6. Any crime involving, or resulting in, fraud or deceit upon any person;

7. Any violation of s. 847.0135, relating to computer pornography and child exploitation prevention, or any offense related to a violation of s. 847.0135 or any violation of chapter 827 where the crime is facilitated by or connected to the use of the Internet or any device capable of electronic data storage or transmission;

8. Any violation of ~~the provisions of~~ chapter 815;

9. Any criminal violation of part I of chapter 499;

10. Any violation of ~~the provisions of~~ the Florida Motor Fuel Tax Relief Act of 2004;

11. Any criminal violation of s. 409.920 or s. 409.9201;

12. Any crime involving voter registration, voting, or candidate or issue petition activities;

13. Any criminal violation of the Florida Money Laundering Act;

14. Any criminal violation of the Florida Securities and Investor Protection Act; or

15. Any violation of the provisions of chapter 787, as well as any and all offenses related to a violation of the provisions of chapter 787;

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

(b) Investigate and prosecute any crime enumerated in paragraph (a) ~~subparagraphs (a)1-14.~~ facilitated by or connected to the use of the Internet. Any such crime is a crime occurring in every judicial circuit within the state.

Section 2. Section 16.62, Florida Statutes, is created to read:

16.62 Recognition and awards.—In addition to expenditures separately authorized by law, the Department of Legal Affairs may expend no more than \$20,000 annually to support costs associated with the Law Enforcement Officer of the Year Recognition and Awards Program and the Victims Services Recognition and Awards Program.

Section 3. Subsection (5) is added to section 409.9203, Florida Statutes, to read:

409.9203 Rewards for reporting Medicaid fraud.—

(5) Notwithstanding s. 68.085(3), the 10 percent of any remaining proceeds deposited into the Operating Trust Fund from an action based on a claim of funds from the state Medicaid program shall be allocated in the following manner:

(a) Fifty percent of such moneys shall be used to fund rewards for reporting Medicaid fraud pursuant to this section.

(b) The remaining 50 percent of such moneys shall be used by the Medicaid Fraud Control Unit to fund its investigations of potential violations of s. 68.082 and any related civil actions.

Section 4. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(3) “Violation of this part” means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2015 ~~2013~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

Section 5. Section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015 ~~2013~~.

Section 6. The Division of Law Revision and Information is directed to create part VII of chapter 501, Florida Statutes, consisting of ss. 501.991-501.997, Florida Statutes, to be entitled the “Patent Troll Prevention Act.”

Section 7. Section 501.991, Florida Statutes, is created to read:

501.991 Legislative intent.—

(1) The Legislature recognizes that it is preempted from passing any law that conflicts with federal patent law. However, the Legislature recognizes that the state is dedicated to building an entrepreneurial and business-friendly economy where businesses and consumers alike are protected from abuse and fraud. This includes protection from abusive and bad faith demands and litigation.

(2) Patents encourage research, development, and innovation. Patent holders have a legitimate right to enforce their patents. The Legislature does not wish to interfere with good faith patent litigation or the good faith enforcement of patents. However, the Legislature recognizes a growing issue:

the frivolous filing of bad faith patent claims that have led to technical, complex, and especially expensive litigation.

(3) The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies and small businesses. Not only do bad faith patent infringement claims impose undue burdens on individual businesses, they undermine the state's effort to attract and nurture technological innovations. Funds spent to help avoid the threat of bad faith litigation are no longer available for serving communities through investing in producing new products, helping businesses expand, or hiring new workers. The Legislature wishes to help businesses avoid these costs by encouraging good faith assertions of patent infringement and the expeditious and efficient resolution of patent claims.

Section 8. Section 501.992, Florida Statutes, is created to read:

501.992 Definitions.—As used in this part, the term:

(1) “Demand letter” means a letter, e-mail, or other written communication asserting or claiming that a person has engaged in patent infringement.

(2) “Institution of higher education” means an educational institution as defined in 20 U.S.C. s. 1001(a).

(3) “Target” means a person residing in, incorporated in, or organized under the laws of this state who purchases, rents, leases, or otherwise obtains a product or service in the commercial market which is not for resale in the commercial market and who:

(a) Has received a demand letter or against whom a written assertion or allegation of patent infringement has been made; or

(b) Has been threatened in writing with litigation or against whom a lawsuit has been filed alleging patent infringement.

Section 9. Section 501.993, Florida Statutes, is created to read:

501.993 Bad faith assertions of patent infringement.—A person may not make a bad faith assertion of patent infringement.

(1) A court may consider the following factors as evidence that a person has made a bad faith assertion of patent infringement:

(a) The demand letter does not contain the following information:

1. The patent number;

2. The name and address of the patent owner and assignee, if any; and

3. Factual allegations concerning the specific areas in which the target's products, services, or technology infringe or are covered by the claims in the patent.

(b) Before sending the demand letter, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services, or technology, or the analysis did not identify specific areas in which the target's products, services, and technology were covered by the claims of the patent.

(c) The demand letter lacked the information listed under paragraph (a), the target requested the information, and the person failed to provide the information within a reasonable period.

(d) The demand letter requested payment of a license fee or response within an unreasonable period.

(e) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license.

(f) The claim or assertion of patent infringement is unenforceable, and the person knew, or should have known, that the claim or assertion was unenforceable.

(g) The claim or assertion of patent infringement is deceptive.

(h) The person, including its subsidiaries or affiliates, has previously filed or threatened to file one or more lawsuits based on the same or a similar claim of patent infringement and:

1. The threats or lawsuits lacked the information listed under paragraph (a); or

2. The person sued to enforce the claim of patent infringement and a court found the claim to be meritless.

(i) Any other factor the court finds relevant.

(2) A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(a) The demand letter contained the information listed under paragraph (1)(a).

(b) The demand letter did not contain the information listed under paragraph (1)(a), the target requested the information, and the person provided the information within a reasonable period.

(c) The person engaged in a good faith effort to establish that the target has infringed the patent and negotiated an appropriate remedy.

(d) The person made a substantial investment in the use of the patented invention or discovery or in a product or sale of a product or item covered by the patent.

(e) The person is the inventor or joint inventor of the patented invention or discovery, or in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventors, is the original assignee.

(f) The person has:

1. Demonstrated good faith business practices in previous efforts to enforce the patent, or a substantially similar patent; or

2. Successfully enforced the patent, or a substantially similar patent, through litigation.

(g) Any other factor the court finds relevant.

Section 10. Section 501.994, Florida Statutes, is created to read:

501.994 Bond.—If a person initiates a proceeding against a target in a court of competent jurisdiction, the target may move that the proceeding involves a bad faith assertion of patent infringement in violation of this part and request that the court issue a protective order. After the motion, and if the court finds that the target has established a reasonable likelihood that the plaintiff has made a bad faith assertion of patent infringement, the court must require the plaintiff to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target’s expense of litigation, including an estimate of reasonable attorney fees, conditioned on payment of any amount finally determined to be due to the target. The court shall hold a hearing at either party’s request. A court may waive the bond requirement for good cause shown or if it finds the plaintiff has available assets equal to the amount of the proposed bond.

Section 11. Section 501.995, Florida Statutes, is created to read:

501.995 Private right of action.—A person aggrieved by a violation of this part may bring an action in a court of competent jurisdiction. A court may award the following remedies to a prevailing plaintiff in an action brought pursuant to this section:

(1) Equitable relief;

(2) Damages;

(3) Costs and fees, including reasonable attorney fees; and

(4) Punitive damages in an amount equal to \$50,000 or three times the total damages, costs, and fees, whichever is greater.

Section 12. Section 501.996, Florida Statutes, is created to read:

501.996 Enforcement.—A violation of this part is an unfair or deceptive trade practice under part II of this chapter.

Section 13. Section 501.997, Florida Statutes, is created to read:

501.997 Exemptions.—This part does not apply to an institution of higher education, to a technology transfer organization owned by or affiliated with an institution of higher education, or to a demand letter or an assertion of patent infringement that includes a claim for relief arising under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

Section 14. Subsections (3) and (6) of section 960.03, Florida Statutes, are amended to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) “Crime” means:

(a) A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, a forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury, as defined in s. 827.03, to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

(b) A violation of s. 316.027(2), s. 316.193, s. 316.1935 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results in physical injury or death.

~~(c) However,~~ An act involving the operation of a motor vehicle, boat, or aircraft which results in another person’s injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft; however, no other act involving the operation of a motor vehicle, boat, or aircraft constitutes a crime for purposes of this chapter ~~does not constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of the vehicle, boat, or aircraft.~~

~~(d)(e)~~ A criminal act committed outside this state against a resident of this state which would have been compensable if it had occurred in this state and which occurred in a jurisdiction that does not have an eligible crime victim compensation program as the term is defined in the federal Victims of Crime Act of 1984.

~~(e)(d)~~ A violation of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, related to online sexual exploitation and child pornography.

(6) “Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental



disability, or organic brain damage, or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

Section 15. Subsection (6) of section 960.13, Florida Statutes, is amended to read:

960.13 Awards.—

(6) Any award made pursuant to this chapter, except an award for loss of support or catastrophic injury, shall be reduced by the amount of any payments or services received or to be received by the claimant as a result of the injury or death:

(a) From or on behalf of the person who committed the crime; provided, however, that a restitution award ordered by a court to be paid to the claimant by the person who committed the crime shall not reduce any award made pursuant to this chapter unless it appears to the department that the claimant will be unjustly enriched thereby.

(b) From any other public or private source or provider, including, but not limited to, an award of workers' compensation pursuant to chapter 440.

(c) From agencies mandated by other Florida statutes to provide or pay for services, except as provided in s. 960.28.

(d) From an emergency award under s. 960.12.

Section 16. Section 960.195, Florida Statutes, is amended to read:

960.195 Awards to elderly persons or disabled adults for property loss.

(1) Notwithstanding the criteria in s. 960.13, for crime victim compensation awards, the department may award a maximum of \$500 on any one claim and a lifetime maximum of \$1,000 on all claims to elderly persons or disabled adults who suffer a property loss that causes a substantial diminution in their quality of life when:

~~(a)(1)~~ There is proof that a criminal or delinquent act was committed;

~~(b)(2)~~ The criminal or delinquent act is reported to law enforcement authorities within 72 hours, unless the department, for good cause shown, finds the delay to have been justified;

~~(3) The victim cooperates with law enforcement authorities in the investigation of the criminal or delinquent act;~~

~~(c)(4)~~ There is proof that the tangible personal property in question belonged to the claimant;

~~(d)(5)~~ The claimant did not contribute to the criminal or delinquent act;

(e)(6) There is no other source of reimbursement or indemnification available to the claimant; and

(f)(7) The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.

(2) The department may deny, reduce, or withdraw any award under subsection (1) upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the department.

Section 17. Section 960.196, Florida Statutes, is created to read:

960.196 Relocation assistance for victims of human trafficking.—

(1) Notwithstanding the criteria specified in ss. 960.07(2) and 960.13 for crime victim compensation awards, the department may award a one-time payment of up to \$1,500 for any one claim and a lifetime maximum of \$3,000 to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g), was committed.

(b) The crime must be reported to the proper authorities and the claim must be filed within 1 year, or 2 years with good cause, after the date of the last human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g). In a case that exceeds the 2-year requirement due to an active and ongoing investigation, a state attorney, statewide prosecutor, or federal prosecutor may certify in writing a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense.

(c) The victim's need must be certified by a certified domestic violence or rape crisis center in this state, except as provided in paragraph (b). The center's certification must assert that the victim is cooperating with the proper authorities and must include documentation that the victim has developed a safety plan.

(3) Relocation payments for a human trafficking claim shall be denied if the department has previously approved or paid out a domestic violence or sexual battery relocation claim under s. 960.198 or s. 960.199 to the same victim regarding the same incident.

Section 18. Subsection (3) of section 960.198, Florida Statutes, is amended to read:

960.198 Relocation assistance for victims of domestic violence.—

(3) Relocation payments for a domestic violence claim shall be denied if the department has previously approved or paid out a human trafficking or sexual battery relocation claim under s. 960.196 or s. 960.199 to the same victim regarding the same incident.

Section 19. Section 960.199, Florida Statutes, is amended to read:

960.199 Relocation assistance for victims of sexual battery ~~or human trafficking.~~—

(1) The department may award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of sexual battery, as defined in s. 794.011, ~~or a victim of human trafficking, as described in s. 787.06(3)(b), (d), (f), or (g),~~ who needs relocation assistance.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a sexual battery offense ~~or human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g),~~ was committed.

(b) The sexual battery offense ~~or human trafficking offense, as defined in s. 787.06(3)(b), (d), (f), or (g),~~ must be reported to the proper authorities.

(c) The victim's need for assistance must be certified by a certified rape crisis center in this state ~~or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a certified domestic violence center in this state.~~

(d) The center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. ~~If the victim seeking relocation assistance is a victim of a human trafficking offense as described in s. 787.06(3)(b), (d), (f), or (g), the certified rape crisis center's or certified domestic violence center's certification must include, if applicable, approval of the state attorney or statewide prosecutor attesting that the victim is cooperating with law enforcement officials.~~

(e) The act of sexual battery ~~or human trafficking, as described in s. 787.06(3)(b), (d), (f), or (g),~~ must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

(3) Relocation payments for a sexual battery ~~or human trafficking~~ claim under this section shall be denied if the department has previously approved or paid out a human trafficking or domestic violence relocation claim under s. 960.196 or s. 960.198 to the same victim regarding the same incident.

Section 20. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 21. This act shall take effect July 1, 2015.

Approved by the Governor June 2, 2015.

Filed in Office Secretary of State June 2, 2015.