

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB1454

SPONSOR: Senator Webster

SUBJECT: Public Lodging Establishments

DATE: March 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits the distribution of handbills at a public lodging establishment without permission where, in a reasonably conspicuous manner, a sign is posted stating that advertising or solicitation is prohibited. This bill also makes it a first degree misdemeanor to violate this prohibition or to direct another person to violate the prohibition. Further, a person who directs another to violate the prohibition shall be ordered to pay a minimum fine of \$500.

This bill creates section 509.144, Florida Statutes.

II. Present Situation:

Public Lodging Establishments

Chapter 509, F.S., sets out the regulations for public lodging establishments through the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. A public lodging establishment is defined as “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”¹ The term “guest” includes any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment.²

¹ See s. 509.013(4)(a), F.S.

² See s. 509.013(3), F.S.

Additionally, ch. 509, F.S., addresses the behavior of guests on public lodging establishment property. The owner of a public lodging establishment may, among other things, remove intoxicated guests or guests using profanity or who are involved in a brawl.³ An owner may also refuse service to an intoxicated guest or to a guest who is using profane language or brawling.⁴ Further, an owner of an establishment may take a guest into custody, through reasonable means, when the owner believes the guest is in violation of s. 877.03, F.S., (breach of the peace or disorderly conduct) if that conduct is threatening the life or safety of that person or others.⁵

State Trespass Law

State trespass law, which includes the offenses of trespass in a structure or conveyance and trespass on property other than a structure or conveyance, may be used to prosecute persons entering private property without permission. Trespass in a structure or conveyance is divided into two parts. The first part requires no warning be given to a person to leave the structure or conveyance prior to an arrest for trespass in a structure or conveyance. This situation occurs only when a person enters or remains in a structure or conveyance without being authorized, licensed, or invited. The second part, which relates to a person who *is* authorized, licensed, or invited into the structure or conveyance, requires that a warning be given to the person to leave the premises, and that the person refuses to do so, before the person may be arrested for trespass.⁶ The offense of trespass in a structure or conveyance is a second-degree misdemeanor,⁷ punishable by not more than 60 days imprisonment and a fine of not more than \$500.

However, if there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass is a first-degree misdemeanor,⁸ punishable by not more than 1 year in prison and a fine of not more than \$1,000. Also, if the offender is armed with a firearm or other dangerous weapon, or arms himself or herself while in the structure or conveyance, the trespass in a structure or conveyance is a third-degree felony,⁹ punishable by not more than 5 years in prison and a fine of not more than \$5,000.

A trespass on property other than a structure or conveyance is defined as:

A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011 F.S.; or

³ See s. 509.141(1), F.S.

⁴ See s. 509.142, F.S.

⁵ See s. 509.143(1), F.S.

⁶ Section 810.08(1), F.S., defines trespass in a structure or conveyance: "Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance."

⁷ Section 810.08(2)(a), F.S.

⁸ Section 810.08(2)(b), F.S.

⁹ Section 810.08(2)(c), F.S.

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.¹⁰

Trespass on property other than a structure or conveyance is a first-degree misdemeanor.¹¹ Also, trespass on property other than a structure or conveyance with certain posted signs is punishable as a third-degree felony.¹²

Local Regulation of Handbill Distribution

To deal with persons distributing handbills on public lodging establishment property, on vehicles or under room doors, some cities have passed ordinances prohibiting individuals or businesses from distributing handbills. For example, the city of Tampa passed an ordinance in 1997 stating that it “is unlawful for any individual to deliver, distribute or place, or attempt to deliver, distribute or place, handbills on private property upon which is posted a reasonably conspicuous sign reading ‘No Advertising’ or ‘No Solicitation’.”¹³ The ordinance also states that it “is unlawful for any business advertising by means of handbills to direct, encourage or allow any individual, employee or independent contractor distributing handbills on behalf of the business to deliver, distribute or place handbills on private property upon which is posted a reasonably conspicuous sign reading ‘No Advertising’ or ‘No Solicitation’.”¹⁴

Other State Laws

California law regulates the distribution of handbills on public lodging establishments in its Business and Professions Code, under unfair competition.¹⁵ “Handbill” means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.¹⁶ Regarding the distribution of handbills, it states:

Every person (hereinafter “distributor”) engages in unfair competition for purposes of this chapter who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the innkeeper has expressed objection to handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the

¹⁰ Section 810.09(1)(a), F.S.

¹¹ Section 810.09(2)(a), F.S.

¹² Section 810.09(2)(d)-(f), F.S.

¹³ Tampa Code s. 6-171(a).

¹⁴ *Id.* at s. 6-171(b).

¹⁵ Cal. Bus. & Prof. Code § 17210 (West 2004).

¹⁶ *Id.* at § 17210(b).

premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to subdivision (e) that the innkeeper has expressed objection to the distribution of handbills to guest rooms in the hotel.¹⁷

California's law also penalizes a person who directs another person to distribute handbills, but requires that the person directing the distributor be informed in writing that the establishment objects to the distribution of handbills in the hotel.¹⁸ A person who violates the law may be subject to a civil fine not to exceed \$2,500.¹⁹ If an injunction prohibiting the distribution of handbills is disregarded, a person may be liable for a penalty not to exceed \$6,000 per violation.²⁰

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the "Tourist Safety Act of 2005."

Section 2 creates s. 509.144, F.S., which defines a handbill as a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs about an individual, business, company, or food services establishment. This bill also defines "without permission" to mean without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation. This bill also specifies signage requirements.

This bill also makes it a first degree misdemeanor for an individual, agent, contractor, or volunteer who is acting on behalf of any individual, business, company, or food service establishment to deliver, distribute, or place, or attempt to deliver, distribute, or place, a handbill on private property controlled by a public lodging establishment without permission where it is posted, in a reasonably conspicuous manner, that advertising or solicitation is prohibited on or about the premises.

Further, this bill makes it a first degree misdemeanor for a person to direct another person to deliver, distribute, or place, or attempt to deliver, distribute, or place, a handbill on private property controlled by a public lodging establishment without permission where it is posted, in a reasonably conspicuous manner, that advertising or solicitation is prohibited on or about the premises. Any person found guilty of this offense will additionally be assessed a minimum fine of \$500.²¹

Section 3 provides an effective date of July 1, 2005.

¹⁷ *Id.* at § 17210(c).

¹⁸ *Id.* at § 17210(d).

¹⁹ Cal. Bus. & Prof. Code § 17206(a) (West 2004).

²⁰ Cal. Bus. & Prof. Code § 17207(a) (West 2004).

²¹ *See* s. 775.083(1)(g), F.S., providing that fines assessed in addition to punishment may be for any higher amount if specifically authorized by statute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The rights of private property owners to prohibit certain activities versus a person's right to free expression on that private property has been addressed by the U.S. Supreme Court. In one example, the court allowed picketers to protest on shopping mall property because the characteristics of the shopping mall were more like a public forum than private property.²² The court generally gives greater deference to free expression over property rights when a public forum is involved. Later, the court revised its position, stating that a relationship must exist between the speech and the object of the protest when it upheld a ban against anti-war protesters on mall property.²³ The current position of the court appears to be that the right to free expression on private property is not guaranteed in the U.S. Constitution when the property owner objects.²⁴

However, some state constitutions, such as California's, have been interpreted to provide for a right to access to shopping mall property.²⁵ The U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.²⁶ Florida's constitution contains freedom of speech and assembly provisions²⁷ comparable to California's constitution, but research for this staff analysis has not found that the Florida Supreme Court has interpreted the Florida constitution in a similar manner as the California Supreme Court has interpreted California's constitution regarding the right to access shopping mall property. However, one circuit court recently reversed the conviction of a man (Wood) who was convicted in county court of trespass for staying in the Panama City Mall after having been told by mall security that his solicitation of signatures in the mall to appear on a ballot for political office violated the mall's rules and was told to stop the solicitation in the mall or leave.²⁸ The circuit court held that the State Constitution

²² *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

²³ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

²⁴ *Hudgens v. NLRB*, 424 U.S. 507 (1976) (finding no right of free expression for picketers wishing to demonstrate on mall property when the mall owner objected).

²⁵ *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

²⁶ *Id.* at p. 81.

²⁷ Sections 4 & 5, Art. I of the State Constitution.

²⁸ See *Wood v. State*, 2003 WL 1955433 (Fla.Cir.Ct., Feb. 26, 2003).

“prohibits a private owner of a ‘quasi-public’ place from using state trespass laws to exclude peaceful political activity.”²⁹

In summary, a Florida circuit court has interpreted the Florida Constitution to prohibit “a private owner of a ‘quasi-public’ place from using state trespass laws to exclude peaceful political activity.” However, this prohibition has only been applied to a situation involving a “quasi-public” forum of a shopping mall. This bill only addresses public lodging establishments, which unlike shopping malls are generally open only to paying patrons.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The placing of handbills on private property controlled by a public lodging establishment without permission where a no-advertising-or-solicitation sign is posted in a reasonably conspicuous manner is prohibited by the provisions of the bill. Businesses that violate this prohibition may be subject to a penalty under the bill’s provisions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

²⁹ *Id.* at 2.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
