

# 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: Judiciary Committee

---

BILL: CS/SB 1454

SPONSOR: Judiciary Committee and Senator Webster

SUBJECT: Public Lodging Establishments

DATE: March 24, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siebert</u>	<u>Cooper</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

---

## I. Summary:

This committee substitute prohibits the distribution of handbills at or in a public lodging establishment without permission where, in a conspicuous manner, a sign is posted stating that advertising or solicitation is prohibited. This committee substitute 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 committee substitute creates section 509.144, Florida Statutes.

## II. Present Situation:

### Public Lodging Establishments

Chapter 509, F.S., governs the regulation of 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 one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”<sup>1</sup> The term “guest” includes “any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment.”<sup>2</sup>

---

<sup>1</sup> Section 509.013(4)(a), F.S.

<sup>2</sup> Section 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.<sup>3</sup> An owner may also refuse service to an intoxicated guest or to a guest who is using profane language or brawling.<sup>4</sup> 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.<sup>5</sup>

### **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.<sup>6</sup> The offense of trespass in a structure or conveyance is a second-degree misdemeanor,<sup>7</sup> 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,<sup>8</sup> punishable by not more than one 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,<sup>9</sup> punishable by not more than five years in prison and a fine of not more than \$5,000. Terms of imprisonment are longer for violent felony offenders.<sup>10</sup>

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

---

<sup>3</sup> Section 509.141(1), F.S.

<sup>4</sup> Section 509.142, F.S.

<sup>5</sup> Section 509.143(1), F.S.

<sup>6</sup> 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.”

<sup>7</sup> Section 810.08(2)(a), F.S.

<sup>8</sup> Section 810.08(2)(b), F.S.

<sup>9</sup> Section 810.08(2)(c), F.S.

<sup>10</sup> Section 775.084, F.S.

communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

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.<sup>11</sup>

Trespass on property other than a structure or conveyance is a first-degree misdemeanor.<sup>12</sup> Also, trespass on property other than a structure or conveyance with certain posted signs is punishable as a third-degree felony.<sup>13</sup>

### **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.’”<sup>14</sup> 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.’”<sup>15</sup>

### **III. Effect of Proposed Changes:**

This committee substitute prohibits the distribution of handbills at or in a public lodging establishment without permission where, in a conspicuous manner, a sign is posted stating that advertising or solicitation is prohibited. This committee substitute 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.

**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 persons about an individual, business, company, or food service establishment. “Without permission” is defined 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. “At or in a public lodging establishment” is defined to mean property under the sole ownership

---

<sup>11</sup> Section 810.09(1)(a), F.S.

<sup>12</sup> Section 810.09(2)(a), F.S.

<sup>13</sup> Section 810.09(2)(d)-(f), F.S.

<sup>14</sup> Tampa Code s. 6-171(a).

<sup>15</sup> *Id.* at s. 6-171(b).

or control of the public lodging establishment. This committee substitute also specifies signage requirements.

This committee substitute 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 at or in a public lodging establishment without permission where it is posted, in a conspicuous manner, that advertising or solicitation is prohibited on or about the premises.

Further, this committee substitute 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 at or in a public lodging establishment without permission where it is posted, in a conspicuous manner, that advertising or solicitation is prohibited at or in about the premises. Any person found guilty of this offense will additionally be assessed a minimum fine of \$500.<sup>16</sup>

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

#### **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.<sup>17</sup> 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.<sup>18</sup> The current position

---

<sup>16</sup> 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.

<sup>17</sup> *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

<sup>18</sup> *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

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.<sup>19</sup>

However, some state constitutions, such as California's, have been interpreted to provide for a right to access to shopping mall property.<sup>20</sup> The U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.<sup>21</sup> Florida's constitution contains freedom of speech and assembly provisions<sup>22</sup> 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 having been told to stop the solicitation in the mall or leave.<sup>23</sup> The circuit court held that the State Constitution "prohibits a private owner of a 'quasi-public' place from using state trespass laws to exclude peaceful political activity."<sup>24</sup> However, this prohibition has only been applied to a situation involving a "quasi-public" forum of a shopping mall. This committee substitute 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 at or in a public lodging establishment without permission where a no-advertising-or-solicitation sign is posted in a conspicuous manner is prohibited by the provisions of the committee substitute. Businesses or individuals violating this prohibition may be subject to a penalty under the committee substitute's provisions.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

---

<sup>19</sup> *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).

<sup>20</sup> *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

<sup>21</sup> *Id.* at 81.

<sup>22</sup> Sections 4 & 5, Art. I, STATE CONST.

<sup>23</sup> See *Wood v. State*, 2003 WL 1955433 (Fla.Cir.Ct., Feb. 26, 2003).

<sup>24</sup> *Id.* at \*2.

**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.

---

## **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.

---