

STORAGE NAME: h0627c.cp

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 627

RELATING TO: Minor/Approaching Vehicle/Soliciting

SPONSOR(S): Representatives C. Smith and Wilson

COMPANION BILL(S): SB 2254 (s) SB 1678 ©

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TRANSPORTATION YEAS 10 NAYS 1
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Current law does not place age restrictions on persons who stand, or approach vehicles, on public streets, highways, roads, or state transportation facility rights-of-way for the purpose of soliciting.

The bill prohibits minors under the age of 18 from standing or approaching vehicles on any public street, highway, or road for the purpose of soliciting. Minors under the age of 18 are not subject to the age requirement for activities on non-state roads if they are acting on behalf of an organization qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, F.S.

A person who violates this provision would be guilty of a misdemeanor of the second degree, punishable by a fine of up to \$500 or up to 60 days in jail.

One amendment was adopted by the Committee on Transportation. The amendment deletes an unintended exception in the bill for minors under the age of 18 on non-state roads if they are acting on behalf of a 501(c)(3) organization that is registered pursuant to chapter 496, F.S. As a result, the amendment would prohibit minors from soliciting on all public streets, highways, and roads. The age restriction for solicitation would apply to those areas of the street, highway, or road that are used for vehicular traffic purposes. The amendment also requires a law enforcement officer to issue a warning for a first time violation of the age/solicitation restriction.

The bill has no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Current law does not place age restrictions on persons who stand or approach vehicles on public streets, highways, roads, or state transportation facility rights-of-way for the purpose of soliciting. Section 316.2045, F.S., provides that it is a \$15 pedestrian violation for a person to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon, by standing or approaching a motor vehicles thereon, or by endangering the safe movement of vehicles or pedestrians. Local governments are authorized to issue permits for using streets, roads, or rights-of-way not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way are required pursuant to s. 337.406.

This section further provides that it is unlawful, without proper authorization or a lawful permit, for any person or persons to *willfully* obstruct the free, convenient, and normal use of any public street, highway, or road in order to solicit. A violation of this provision is a second degree misdemeanor, punishable by a fine of up to \$500 or up to 60 days in jail. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf are exempted from the authorization/permit requirement for activities on non-state roads.

Section 337.406, F.S., governs the use of state transportation facility rights-of-way (all public roads). Generally, the law prohibits using the right-of-way of any state transportation facility outside of an incorporated municipality in any manner that interferes with the safe and efficient movement of people and property. Within incorporated municipalities, the local governmental entity may issue permits of limited duration for the temporary use of the right-of-way of a state transportation facility if it determines that the use will not interfere with the safe and efficient movement of traffic and the use will cause no danger to the public. A violation of this section is a misdemeanor of the second degree, punishable by a fine of up to \$500 or up to 60 days in jail.

B. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill prohibits minors under the age of 18 from standing or approaching vehicles on any public street, highway, or road for the purpose of soliciting. Minors under the age of 18 are not subject to the age requirement for activities on non-state roads if they are acting on behalf of an organization qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, F.S.

Section 2 of the bill, like section one, prohibits soliciting by a person under 18, however, the area where the soliciting is proscribed is "the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality." The term "right-of-way of any state transportation facility" as defined in section 334.03 is broadly and vaguely defined by statute to mean much more than public streets, roads, and highways.

A person who violates this provision would be guilty of a misdemeanor of the second degree, punishable by a fine of up to \$500 or imprisonment for up to 60 days.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The state and local governments would be responsible for enforcing this law.

- b. Does the bill authorize any fee or tax increase by any local government?

No.

2. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

3. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, persons under the age of 18 would no longer be able to solicit on public streets, highways, roads or state transportation facility rights-of-way

4. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 316.2045 and 337.406, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill prohibits minors under the age of 18 from standing or approaching vehicles on any public street, highway, or road for the purpose of soliciting. Minors under the age of 18 are not subject to the age requirement for activities on non-state roads if they are acting on behalf of an organization qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, F.S.

Section 2 of the bill, like section one, prohibits soliciting by a person under 18, however, the area where the soliciting is proscribed is "the right-of-way of any state transportation facility, including appendages thereto, outside of an incorporated municipality." The term "right-of-way of any state transportation facility" as defined in section 334.03 is broadly and vaguely defined by statute to mean much more than public streets, roads, and highways.

Section 3 provides that the bill takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill makes it more difficult for minors to sell publications on public roads.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill would negatively affect publications that use minors under age 18 to sell material on public streets.

D. FISCAL COMMENTS:

The bill does not have an impact on the state prison system because the second degree misdemeanor penalty created authorizes a maximum of 60 day in jail and no time in state prison. The bill limits the number of prosecutions by requiring that first offenders be warned instead of arrested. Nonetheless, the bill will have some slight impact on the number of cases handled by the courts, and it is possible that offenders could receive some jail time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

The bill could raise a number of constitutional challenges including issues as to whether the bill is unconstitutionally vague or overbroad, or whether it violates the equal protection clause or the first amendment of the United States Constitution. Many of these issues are raised or exacerbated because the term "solicit" is very ambiguous.

The term "solicit" is very broadly defined by Black's Law Dictionary to mean "to appeal for something; to apply to for obtaining something; to ask earnestly...though the word implies a serious request, it requires no particular degree of importunity, entreaty... or supplication." Thus, the bill could make it illegal for a minor to ask a question while standing on a public road. The bill does not require the person solicited to be in a motor vehicle, therefore, if a minor asks a question of another pedestrian while in a public road, or even a crosswalk, that act could be made illegal by the bill. Furthermore, unlike current law, the bill is not limited to soliciting that obstructs the free, convenient, and normal use of any public road. Thus, asking a question on an infrequently used neighborhood road could be made illegal.

Vagueness and Overbreadth

The United States Supreme Court's doctrine of substantial overbreadth is a tool used by the courts to ensure that statutes do not extend into that realm protected by the First Amendment. The United State Supreme Court has held that the doctrine of overbreadth "is predicated on the danger that an overly broad statute, if left in place, may cause persons whose expression is constitutionally protected to refrain from exercising their rights for fear of criminal sanctions." Massachusetts v. Oakes, 491 US 576, 581 (1989).

In Grayned v. City of Rockford, 408 U.S. 104 (1972) the United States Supreme Court explained three standards for evaluating vagueness: 1.) Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and provide fair warning; 2.) Laws must provide explicit standards to avoid arbitrary and discriminatory enforcement; 3.) Laws must not interfere with the exercise of First Amendment freedoms by leading citizens to steer far wider of the unlawful activity than if the boundaries of the forbidden conduct were clearly marked. Grayned 408 U.S., at 108-9.

The First Amendment of the United States Constitution

"Regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if they are narrowly drawn to achieve a compelling state interest." Perry Ed. Assn. v. Perry Local Educators' Assn., 460 US 37, 45 (1983) cited in International Soc. For Krishna Consciousness, Inc. v. Lee, 505 US 672, 679 (1992).

Since this statute applies to streets it should be noted that the United States Supreme Court has historically considered public streets a traditional public forum. "Streets and parks...have immemorially been held in trust for the use of the public and, time out of mind have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. Committee for Industrial Organization, 307 US 496, 516 cited in International Soc. For Krishna Consciousness, Inc. v. Lee, 505 US 672, 679 (1992). Groups which intend to solicit on public streets may challenge this statute and the state will be forced to prove it has a compelling interest for its regulation. The bill could be more narrowly drawn to achieve the compelling state interest of protecting the safety of the minors.

A definition for the term "solicit" may help the bill overcome vagueness and first amendment challenges. An example of a more limited definition of "solicit" may be found in the Florida Telemarketing Act, section 501.603, F.S., provides the following definition:

"Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell consumer goods or services, where such purchaser

has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold.

Because the term solicit is so broad, it could be helpful to clarify that it is only the occupants of a motor vehicle that may not be solicited. Furthermore, it is not clear whether it is the offender or the motor vehicle that must be on the public road, street, or highway.

The bill could also be more narrowly drawn in a manner consistent with the sponsor's intent by requiring that there be at least some risk to the safety of the minor before the minor may be charged with committing the new offense. More specifically, the following phrase could be added on page 1, line 27 of the amendment adopted by the Transportation Committee, after the word "solicit:" where there is some risk to the safety of the minor. This additional element would cause the penalty to apply only where there is a compelling state interest to protect the safety of minors while at the same time protecting the first amendment rights of the minors when their safety is not at issue.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1999, the Committee on Transportation adopted 1 amendment to HB 627. The amendment deletes an unintended exception in the bill for minors under the age of 18 on non-state roads if they are acting on behalf of a 501(c)(3) organization that is registered pursuant to chapter 496, F.S. As a result, the amendment would prohibit minors from soliciting on all public streets, highways, and roads. The age restriction for solicitation would apply to those areas of the street, highway, or road that are used for vehicular traffic purposes. The amendment also requires a law enforcement officer to issue a warning for a first time violation of the age/solicitation restriction.

On March 30, 1999, the Committee on Crime and Punishment adopted a strike-everything amendment to HB 627. The amendment adds an element to the offense to require that there be some risk to the safety of the minor. The amendment also requires that the minor engage in soliciting (or collecting or distributing) an occupant of a motor vehicle in order to have a violation of the offense created by the bill. The amendment contradicts two changes made by the amendment passed by the Committee on Transportation. First, the strike-everything amendment includes an amended version of section 2 of the bill which was removed by the Committee on Transportation. Second, the strike-everything amendment does not include commas that were inserted by the Committee on Transportation to clarify that the phrase "on any public street" modifies minor and not motor vehicle. The concerns that the Transportation Committee had about the broadness of the term "right-of-way of any state transportation facility," were not addressed by the strike-everything amendment passed by the Crime and Punishment Committee.

VII. SIGNATURES:

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