

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1469 w/CS Public Lodging and Food Service Establishments
SPONSOR(S): Homan
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	7 Y, 0 N	Kramer	De La Paz
2) Public Safety & Crime Prevention	17 Y, 0 N w/CS	Kramer	De La Paz
3) Tourism (Sub)	4 Y, 0 N	McDonald	Whitfield
4) Commerce			
5)			

SUMMARY ANALYSIS

HB 1469 with committee substitute will make it a first degree misdemeanor to distribute without permission a handbill on or about private property controlled by any public lodging establishment upon which it is posted that advertising or solicitation is prohibited. The term "handbill" is defined to include fliers, leaflets, pamphlets, or other written material that seeks to advertise, promote or inform persons about an individual or business. The bill will make it a third degree felony for any person committing a battery while in violation of the handbill provision.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1469d.com.doc
DATE: April 23, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: The bill prohibits a business or individual from distributing handbills on the premises of a public lodging or food service establishment.

B. EFFECT OF PROPOSED CHANGES:

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 “Guest” means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment.² Sections 509.141-509.143, F.S., discuss the behavior of guests on public lodging establishment property. Section 509.141(1), F.S., allows the owner of an establishment, among other things, to remove intoxicated guests or guests using profanity or who are involved in a brawl. Section 509.142, F.S., allows an owner to refuse service to an intoxicated guest or to a guest who is using profane language or brawling. Section 509.143(1), F.S., allows an owner of an establishment to take a guest into custody, through reasonable means, who the owner believes 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.

Florida Law Governing Trespass

Trespass in structure

Section 810.08, F.S., provides that whoever, without being authorized, licensed, or invited willfully enters or remains in any structure³ or having been authorized is warned by the owner or lessee or a person authorized by the owner or lessee to depart and refuses to do so commits a second degree misdemeanor. In this context, a person authorized to warn someone to depart includes any law enforcement officer whose department has received written authorization to communicate an order to depart the property in the case of a threat to public safety or welfare. If there is a human being in the structure at the time that the offender trespassed, the offense is a first degree misdemeanor, punishable by up to one year of incarceration.

¹ Section 509.013(4)(a), F.S.

² Section 509.013(3), F.S.

³ The term “structure” means a building of any kind, whether temporary or permanent, which has a roof over it, together with the cartilage thereof.” This section also applies to trespass in a conveyance.

Trespass on property other than structure

Section 810.09, F.S., provides that a person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given, either by actual communication to the offender or by posting or fencing commits a first degree misdemeanor, punishable by up to one year of incarceration.

“Posted land”⁴ is land upon which signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land. They must be posted in a manner and in a position as to be clearly noticeable from outside the boundary line. The signs must have the words “no trespassing” displayed prominently, in letters no less than 2 inches in height, as well as the name of the owner, lessee, or occupant of the land.

“Fenced land” is land which has been enclosed by a fence of substantial construction which stands at least 3 feet in height.⁵

Effect of Changes

The bill amends part I of chapter 509, F.S., relating to the regulation of public lodging establishments and public food service establishments, to both define the term “handbill” and to make it unlawful to distribute without permission a handbill on private property controlled by any public lodging establishment upon which it is posted that advertising or solicitation is prohibited.

First, s. 509.013, F.S., is amended to define a handbill as any flier, leaflet, pamphlet, or other written material that seeks to advertise, promote, or inform a person about an individual, business, company, or food service establishment.

Secondly, s. 509.144, F.S., created by the bill, makes it unlawful to distribute without permission a handbill on or about the private property controlled by any public lodging establishment upon which it is posted that advertising or solicitation is prohibited. Two penalties are created under this section.

The bill creates a first degree misdemeanor offense, punishable by up to 1 year in prison and a fine up to \$1,000, which would require proof of the following elements:

1. an individual, agent, contractor, or volunteer who was acting on behalf of any individual, business, company or food service establishment⁶;
2. delivered, distributed, or placed or attempted to deliver, distribute, or place;
3. any handbill;
4. on or about the private property controlled by any public lodging establishment;
5. without permission;
6. whereupon it was posted in a reasonably conspicuous manner that advertising or solicitation is prohibited on or about the premises of the public lodging establishment.

The bill also makes it a first degree misdemeanor to direct any other person to distribute handbills in the manner described above.

⁴ s. 810.011(5)(a), F.S.

⁵ s. 810.011(7), F.S. The fence can be constructed with “rails, logs, post and railing, iron, steel, barbed wire, other wire or other material”

⁶ Section 509.013(5), F.S. defines the term “public food service establishment” to mean “any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.” The section also excludes a number of facilities from the definition of public food service establishment including school cafeterias, eating places maintained by a nonprofit organization and theaters. See s. 509.013(5)(b), F.S.

Further, the bill provides that any person who violates this section and who also commits a battery⁷ on any person who is on the premises of the public lodging establishment commits a third degree felony, punishable by up to five years in prison and a fine up to \$5,000.

Finally, the provisions of the bill take effect July 1, 2003.

C. SECTION DIRECTORY:

Section 1: Amends s. 509.013, F.S., by adding a definition of the term "handbill".

Section 2: Creates s. 509.144, F.S., relating to prohibition of handbill distribution on private property controlled by public lodging establishment; provides an exception if permission is given; and, provides penalties.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Section 509.144, F.S., created by the bill, creates a third degree felony offense for any person who commits a battery while violating the section by distributing handbills on specified private property. The Criminal Justice Impact Conference has not met to consider whether this bill will have any impact on the prison bed population at the Department of Corrections. However, the conference has historically determined that a third degree felony which is not ranked in the Offense Severity Ranking Chart of the Criminal Punishment Code will have an insignificant impact because the lowest permissible sentence for such an offense is any non-state prison sanction.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will prohibit private companies from distributing handbills on the premises of certain public lodging establishments. This may have an undetermined negative economic impact on an individual or business who distributes handbills as well as any business that uses handbills as a method of advertising.

D. FISCAL COMMENTS:

None.

⁷ Section 784.03(1) provides that the offense of battery occurs when a person: 1) Actually and intentionally touches or strikes another person against the will of the other; or 2) Intentionally causes bodily harm to another person. The offense is a first degree misdemeanor.

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:

HB 1469 prohibits the distribution of a handbill that seeks to advertise, promote or inform persons about an individual or business on the property of a public lodging establishment where a warning is posted. This could limit the distribution of information regarding a number of topics ranging from political pamphlets to commercial advertisements.

The First Amendment provides: "Congress shall make no law ...abridging the freedom of speech, or of the press" The Fourteenth Amendment makes this limitation applicable to the States. In Lloyd Corporation v. Tanner, 92 S.Ct. 2219 (1972), the United States Supreme Court considered the issue of whether a privately owned shopping mall could prohibit the distribution of handbills on its property. The respondent argued that because the mall was open to the public, it was essentially a public forum and the private company could therefore not enforce a restriction against handbilling on the premises. In ruling that the respondents were not entitled to exercise their First Amendment rights on the mall property, the court noted that, "this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminatorily for private purposes only." Id. at 2228. The court also ruled that "property [does not] lose its private character merely because the public is generally invited to use it for designated purposes."⁸ HB 1469 does not impact the right of an individual to distribute handbills on public property - it only applies to public lodging establishments and, therefore, does not appear to violate the First Amendment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 1469, as originally filed, prohibited the distribution of handbills on the premises of food service establishments and public lodging establishment. The Committee on Public Safety & Crime Prevention limited the scope of the bill by adopting a strike-all amendment which removed the prohibition on distribution of handbills on the premises of food service establishments. The amendment inserted an additional element into the offenses created by the bill by indicating that the offenses are committed when the handbill distribution is done "without permission".

On April 23, 2003, the Subcommittee on Tourism of the Committee on Commerce adopted an amendment offered by Representative Homan. The bill uses different terminology to describe the area covered by its provisions: "on private property controlled by" and "on or about the premises of". The amendment replaces the second phrase with the first, thereby making the terminology consistent.

⁸ See also, Cape Cod Nursing Home Council v. Rambling Rose Rest Home, 667 F.2d. 238 (1st Cir. 1981)(holding that police action in removing individuals from private nursing home did not create a first amendment right of access where none would otherwise exist).