

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1469 w/CS Public Lodging and Food Service Establishments
SPONSOR(S): Homan
TIED BILLS: **IDEN./SIM. BILLS:** SB 2438

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

SUMMARY ANALYSIS

HB 1469 with committee substitute will make it a first degree misdemeanor to distribute a handbill on or about the premises of any public lodging establishment without permission upon which it is posted that advertising or solicitation is prohibited. The term "handbill" is defined to include fliers, 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 to violate this provision and also commit a battery.

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:

Trespass in structure: Section 810.08 provides that whoever, without being authorized, licensed or invited willfully enters or remains in any structure¹ 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.

Trespass on property other than structure: Section 810.09 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"² 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.³

Changes made by CS/HB 1469: The committee substitute creates a new section of statute in part I of chapter 509 which contains provisions relating to public lodging and food service establishments. The bill creates a first degree misdemeanor offense 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 establishment⁴;

¹ 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.

² s. 810.011(5)(a), F.S.

³ 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"

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 lodging⁵ 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 term "handbill" is defined to mean "any flier, pamphlet, or other written material that seeks to advertise, promote, or inform persons about an individual, business, company or food service establishment.

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

Further, the committee substitute provides that any person who violates this section and who also commits a battery⁶ 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.

C. SECTION DIRECTORY:

Section 1: Amending s. 509.013, F.S.; provides a definition of the term "handbill".

Section 2: Amending s. 509.144, F.S.; creates section relating to handbill distribution on premises of public lodging establishment.

Section 3: Providing effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

One provision of this 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

⁴ 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.

⁵ Section 509.013(4), F.S. defines the term "public lodging establishment" to mean "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." The section also excludes a number of facilities from the definition of public lodging establishment including dormitories, hospitals, nursing homes and condominiums. See s. 509.013(4)(b), F.S.

⁶ 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.

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 committee substitute 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 who uses handbills as a method of advertising.

D. FISCAL COMMENTS:

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.”⁷ 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:

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”.

⁷ 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).