

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.)

BILL: CS/SB 2438

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Cowin

SUBJECT: Public Lodging Establishments

DATE: April 9, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Maclure	CM	Favorable/CS
2.	_____	_____	CJ	_____
3.	_____	_____	RI	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute prohibits the distribution of handbills at a public lodging establishment without permission where a no-solicitation sign is posted in a reasonably conspicuous manner. The committee substitute provides a penalty and an additional penalty for committing a battery while in violation of the handbill provision.

The committee substitute substantially amends section 509.013 and 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 “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

¹ Section 509.013(4)(a), F.S.

² Section 509.013(3), F.S.

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.

State Trespass Law

State trespass laws may be used to prosecute persons entering private property without permission. A trespass on a structure or conveyance is defined as “[w]hoever, 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.”³ A trespass on a structure or conveyance is a misdemeanor of the second degree.⁴ 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 misdemeanor of the first degree.⁵ 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 felony of the third degree.⁶ 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
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.”⁷

Trespass on property other than a structure or conveyance is a first-degree misdemeanor.⁸ Also, trespass on property other than a structure or conveyance with a firearm or on property with certain designated signs is punishable as a third-degree felony.⁹

Free Expression 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.¹⁰ The

³ Section 810.08(1), F.S.

⁴ Section 810.08(2)(a), F.S.

⁵ Section 810.08(2)(b), F.S.

⁶ Section 810.08(2)(c), F.S.

⁷ Section 810.09(1)(a), F.S.

⁸ Section 810.09(2)(a), F.S.

⁹ Section 810.09(2)(c) and (d)-(f), F.S.

¹⁰ *Amalgamated Food Employees Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

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.¹¹ 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.¹²

However, some state constitutions, such as California's, have been interpreted to provide for a right to access to shopping mall property.¹³ The U.S. Supreme Court found that state constitutions may expand upon existing federal rights.¹⁴

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, handbills on private property upon which is posted a reasonably conspicuous sign reading 'No Advertising' or 'No Solicitation'."¹⁵

III. Effect of Proposed Changes:

The committee substitute adds a definition of a handbill to s. 509.013, F.S., and defines 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.

The committee substitute makes it unlawful 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 any handbill on private property controlled by any 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 of the public lodging establishment.

The committee substitute also makes it unlawful for any person to direct any individual, agent, contractor, or volunteer to deliver, distribute, or place any handbill on private property controlled by any 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 of the public lodging establishment.

A violation of the committee substitute's provisions is a first-degree misdemeanor, punishable by up to 1 year in prison and a fine up to \$1,000. The committee substitute also states that anyone

¹¹ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

¹² *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).

¹³ *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

¹⁴ *Id.* at p. 81.

¹⁵ Ord. Code Tampa (Fla.) s. 6-171 and 6-172 (1997).

violating the committee substitute's provisions and committing a battery commits a third-degree felony, punishable by up to 5 years in prison and a fine up to \$5,000.

The committee substitute takes effect July 1, 2003.

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 committee substitute's provisions appear to fall within existing allowable limitations on free expression on private property. See "Free Expression Issues" in the Present Situation section of this staff analysis.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The placing of handbills on private property controlled by any public lodging establishment where a no-solicitation sign is posted in a reasonably conspicuous manner is prohibited by the provisions of the committee substitute. Public lodging patrons and guests may encounter fewer solicitations while staying in a hotel/motel.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The committee substitute uses different language to describe the area covered by its provisions: "private property controlled by" and "or about the premises of." The Legislature may wish to amend the committee substitute to use the same terminology to describe the covered area. (See, e.g., page 2, lines 27 and 28, versus page 3, line 1.)

VII. Related Issues:

None.

VIII. Amendments:

None.

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