

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 199 Discriminatory practices in public food service establishments
SPONSOR(S): Cretul
TIED BILLS: **IDEN./SIM. BILLS:** SB 438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	_____	<u>Morris</u>	<u>Liepshutz</u>
2) <u>Judiciary</u>	_____	_____	_____
3) <u>Subcommittee on Public Safety Appropriations</u>	_____	_____	_____
4) <u>Appropriations</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 199 creates a new s. 760.61, Florida Statutes, to provide for civil rights remedies to an individual for specified discriminatory acts by a public food service establishment.

Specifically, the bill permits an individual to file a complaint with the Florida Commission on Human Relations [Commission] or the Attorney General's Office of Civil Rights [AGOCR] for discrimination if a public food service establishment restricts admission to the establishment solely because the person operates a motorcycle or is wearing clothing that displays the name of a motorcyclist organization or association. An exception is created for any public food service establishment that has posted a written formal dress code requiring the wearing of a suit, dress, jacket, or tie as a condition for admission. The bill does not prohibit the restriction of admission to a person because the person's conduct poses a risk to the health, safety, or property of another.

A person who is discriminated against may file a complaint with the Commission or the AGOCR. The commission or AGOCR may attempt to resolve the claim with informal methods of conference, conciliation, and persuasion. If informal resolution fails or if the commission or AGOCR do not attempt informal resolution, the person who is discriminated against may file a claim for civil injunctive relief against the owners of the public food service establishment.

The bill has no anticipated fiscal impact and will take effect upon becoming a law.

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

STORAGE NAME h0199.br
DATE January 12, 2004

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. EFFECT OF PROPOSED CHANGES:

Florida’s civil rights statutes are primarily contained in Chapter 760, Florida Statutes: Part I - Florida Civil Rights Act; Part II - Fair Housing Act; Part III - Miscellaneous Provisions; Part IV - Minority Representation in Certain Bodies; and Part V - Environmental Equity and Justice.

Part I, Florida Civil Rights Act

The “Florida Civil Rights Act of 1992” [the Act] consists of ss. 760.01-760.11 and 509.092, Florida Statutes. The purpose of the act is to:

“...secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.”

Section 760.08, Florida Statutes, provides that all persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status, or religion. Section 760.02(11), Florida Statutes, defines the term “public accommodations” for purposes of the Florida Civil Rights Act and includes hotels, motels, restaurants, gas stations, theaters and similar retail establishments

Section 760.07, Florida Statutes, provides remedies for unlawful discrimination. Any unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations, gives rise to a cause of action for all relief and damages described in s. 760.11(5),¹ Florida Statutes, unless greater damages are expressly provided for.

Section 509.092, Florida Statutes, provides that public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator as long as the refusal is not based upon race, creed, color, sex, physical disability, or national origin.

¹ s. 760.11(5), F.S. provides for affirmative relief from the effects of the discriminatory practice, including back pay, awards for mental anguish, loss of dignity and other intangible injuries, and punitive damages not to exceed \$100,000.

Attorney General's Office of Civil Rights

The Florida Legislature established the Attorney General's Office of Civil Rights within the Department of Legal Affairs in 1991. The Office of Civil Rights was created as part of a recommendation of the 1990 Racial and Ethnic Bias Study Commission of the Florida Supreme Court. Section 16.57, Florida Statutes, authorizes the Office of Civil Rights to investigate and initiate actions for violations of constitutional and statutory rights under chapter 760.

Section 760.51, Florida Statutes, provides that the Attorney General may bring a civil action in the name of the state for violation of an individual's constitutional rights or other rights secured by state law by threats, intimidation, or coercion and provides for civil penalties up to \$10,000 per violation.

In addition, recently enacted s. 760.021, Florida Statutes, [chapter 2003-396, LOF] gives the Attorney General the authority to initiate, upon reasonable cause, a civil action for damages, injunctive relief, civil penalties up to \$10,000 per violation, and other appropriate relief against any person or group for *patterns or practices of discrimination* or for discrimination that raises an issue of *great public interest*.

Florida Commission on Human Relations

Primary administrative authority and resolution of discrimination matters lies with the Florida Commission on Human Relations (FCHR). [see s. 760.03, F.S.]

The Florida Commission on Human Relations is statutorily authorized to "receive, initiate, investigate (including subpoena power), seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice" under the Florida Civil Rights Act in the areas of education, employment, housing or public accommodations, and certain private clubs. [s. 760.06, F.S.]

The FCHR cannot initiate an investigation or take any independent action until an individual files a complaint with the FCHR. Under current law, it is the person allegedly injured by the discriminatory practice who must initiate steps to address the discrimination claim.

Federal Civil Rights Acts of 1964 and 1991

Under Title II of the Civil Rights Act of 1964, all persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination on the ground of *race, color, religion, or national origin* (42 U.S.C. s. 2000a). The act defines a "place of public accommodation" to include:

- Any inn, hotel, motel, or other establishment that provides lodging to transient guests, other than an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied by the proprietor of the establishment as his or her residence;
- Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any facility located on the premises of any retail establishment, or any gasoline station; and
- Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment (id.).

A person aggrieved by an act or practice of discrimination may bring a civil action in federal court seeking preventative relief, including permanent or temporary injunctions, or restraining orders (42 U.S.C. 2000a-3).

The U.S. Attorney General is authorized to independently take civil action if he or she has reasonable cause to believe that the persons or group of persons are engaged in a "pattern or practice of resistance" as to deny full enjoyment of a right and the practice is intended to deny the right fully [42 U.S.C. §2000a-5]. If the U.S. Attorney General wants to expedite the matter, he or she may certify to the court that the matter is of "general public importance." (42 U.S.C. s. 2000a-3).

Public Food Service Establishments

Section 509.013(5) (a), Florida Statutes, defines a public food service establishment as an establishment 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." Paragraph (b) of that subsection excludes certain establishments from this definition, e.g. convenience stores, places operated by a church, nonprofit fraternal or civic organization, places located on a common carrier, etc.

The definition for "public accommodations" in s. 760.02(11), F.S., however, includes hotels, motels, restaurants, lunch counters, or other facilities primarily engaged in selling food for consumption on the premises, places of exhibition or entertainment, gas stations and similar retail establishments.

Summary

HB 199 creates a new s. 760.61, Florida Statutes, to provide for civil rights remedies to an individual for specified discriminatory acts by a public food service establishment. Specifically, the bill permits an individual to file a complaint with the Florida Commission on Human Relations [Commission] or the Attorney General's Office of Civil Rights [AGOCR] for discrimination if a public food service establishment, as defined in s. 509.013, F.S., restricts admission to the establishment solely because the person operates a motorcycle or is wearing clothing that displays the name of a motorcyclist organization or association. These grounds are not currently constitutionally or statutorily protected or recognized grounds for discrimination actions as are race, color, religion, gender, and national origin.

An exception is created for a public food service establishment that has posted a written formal dress code requiring the wearing of a suit, dress, jacket, or tie as a condition for admission. The bill further states that the act does not prohibit the restriction of admission to a person because the person's conduct poses a risk to the health, safety, or property of another.

The bill allows a person who is discriminated against by a public food service establishment to file a written complaint with the commission or the AGOCR. After receiving a complaint, the commission or the AGOCR is required to investigate the alleged discrimination, but may ultimately decide in its discretion to not attempt to informally resolve the complaint. If the commission or AGOCR chooses to resolve the complaint, it may attempt to eliminate or correct the discrimination by informal methods of conference, conciliation, and persuasion.

The commission or the AGOCR must give written notice to the person who filed the complaint if it intends to resolve the complaint within 30 days after receiving the complaint. If the commission or the AGOCR fails to give notice within this 30 day period or if it fails to resolve the complaint within 30 days after such notice is given, the person who filed the complaint, or the Attorney General on behalf of the person, is authorized to file a lawsuit seeking injunctive relief against the owners of the public food service establishment to discontinue the discriminatory practice or other appropriate action.

C. SECTION DIRECTORY:

Section 1. Creates s. 760.61, Florida Statutes.

Section 2. Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes an aggrieved person, who is discriminated against by a public food service establishment, to seek informal resolution of his or her complaint through the commission or the AGOCR. If the complaint is not resolved, the bill authorizes the aggrieved person to bring a civil action for injunctive relief to discontinue the discriminatory practice.

D. FISCAL COMMENTS:

The bill may affect the workload of the FCHR and the Attorney General but any potential increase in workload or expenditures is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

This bill extends civil remedies to individuals who have been discriminated by public food service establishments on the basis of recreational clothing or mode of transportation. These grounds are not currently constitutionally or statutorily protected or recognized grounds for discrimination actions as are race, color, religion, gender, and national origin.

Freedom of Association

The First Amendment of the United States Constitution includes the freedom of association. Public accommodation laws, like this bill, that proscribe discrimination by proprietors based on enumerated grounds implicate this freedom.

For example in *Roberts v. United States Jaycees*,² the United States Supreme Court considered whether application of the Minnesota Human Rights Act, which proscribes discrimination because of sex, to the Jaycees violated the Jaycees' freedom to associate only with men. The court found that the organization's right to freedom of expressive association was implicated by the act; however, the court stated that this right is not absolute.³ Infringements on this right may be justified by regulations adopted to serve compelling state interests, which cannot be achieved through less restrictive means.⁴ Applying this test, the court held that Minnesota's compelling interest in eliminating gender discrimination justified any infringement on the Jaycees' freedom of expressive association.⁵

More recently in *Boy Scouts of America v. Dale*, the United States Supreme Court considered whether application of New Jersey's public accommodations law, which proscribes discrimination by a public accommodation because of sexual orientation, to the Boy Scouts of America violated the group's freedom to associate only with heterosexuals. The Court noted that the forced inclusion of an unwanted person in a group infringes on a group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints. Further, the Court stated that, "Freedom of association plainly presupposes a freedom not to associate." Ultimately, the Court held that the Boy Scouts were not required to admit homosexuals, as New Jersey's interests in its public accommodation law did not justify an infringement on the Boy Scouts' right to advocate its viewpoint that homosexuality is not a legitimate form of behavior.

This bill may be subject to constitutional challenges arguing that its proscriptions against discrimination based on clothing and transportation unconstitutionally impinge on a proprietor's freedom of association. Whether such arguments would be successful appears to be an issue of first impression as no case law appears to address the precise issue of whether the state has a sufficiently compelling interest in eliminating discrimination based on clothing and transportation that would justify any impingement on the freedom to associate by the bill.

Equal Protection

Article I, s. 2 of the State Constitution, which sets forth Florida's constitutional guaranty of equal protection, provides:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Similarly, the United States Constitution provides in s. 1 of Amendment 14 that no state shall deny to any person within its jurisdiction the equal protection of the laws. Additionally, the due process clause of the Federal Constitution embraces the principle of equal protection of the law.

² 468 U.S. 609 (1984).

³ *Roberts*, 468 U.S. at 623.

⁴ *Id.*

⁵ *Id.* at 623-627.

These constitutional guarantees of equal protection of the laws are designed to prevent any person or class of persons from being singled out as a special subject for arbitrary and unjust discrimination and hostile legislation. Equal protection requires that once a state grants a right, it must accord that right to all without invidious discrimination.

The guaranty of equal protection, however, does not require that a statute apply equally and uniformly to all persons within the state. It is sufficient if the statute applies uniformly to all persons who are similarly situated. Furthermore, reasonable classifications, meaning a grouping of things because they agree with one another in certain particulars and differ from other things in those particulars, is permissible under the equal protection clause, so long as the classification is not arbitrary and is based on some difference in the classes having a substantial relation to the purpose of the legislation.

This bill may be challenged on equal protection grounds asserting that it does not apply uniformly to all persons who are similarly situated, e.g., the bill applies to “public food service establishments,” but does not apply to other classes of businesses open to the public. Businesses, however, are not suspect classes; thus, the statute created by the bill would be evaluated by the rational basis test. The test requires that a statutory classification bear some reasonable relationship to the achievement of a legitimate state purpose. Here it may be argued that the statute is reasonably related to achievement of the state’s purpose to eliminate discrimination against motorcyclists by restaurants, which reportedly are the businesses most often engaged in such activity.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES