

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: SB 280
 SPONSOR: Senators Cowin and Webster
 SUBJECT: Public Lodging Establishments
 DATE: January 16, 2004 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Kruse</u> | <u>Maclure</u> | <u>CM</u> | <u>Favorable</u> |
| 2. | _____ | _____ | <u>CJ</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Senate Bill 280 prohibits the distribution of handbills at a public lodging establishment without permission where, in a reasonably conspicuous manner, a sign is posted stating that advertising or solicitation is prohibited. A violation of the bill’s provisions is a first-degree misdemeanor, and, if a battery is committed while in violation of the bill’s provisions, the offense is a third-degree felony. The bill also makes it a first-degree misdemeanor for a person to direct another person to distribute handbills at a public lodging establishment without permission when the conditions regarding the posting of a sign have been met.

The bill substantially amends section 509.013 and creates section 509.144, Florida Statutes.

II. Present Situation:

Public Lodging Establishments

Chapter 509, F.S., governs 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 operator of an establishment, among other things,

¹ Section 509.013(4)(a), F.S.

² Section 509.013(3), F.S.

to remove intoxicated guests or guests using profanity or who are involved in a brawl. Section 509.142, F.S., allows an operator 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 operator 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 law, which includes the offenses of trespass in a structure or conveyance and trespass on property other than a structure or conveyance, may be used to prosecute persons entering private property without permission. Trespass in a structure or conveyance is divided into two parts. The first part requires no warning be given to a person to leave the structure or conveyance prior to an arrest for trespass in a structure or conveyance. This situation occurs only when a person enters or remains in a structure or conveyance without being authorized, licensed, or invited. The second part, which relates to a person who *is* authorized, licensed, or invited into the structure or conveyance, requires that a warning be given to the person to leave the premises, and that the person refuse to do so, before the person may be arrested for trespass.³ The offense of trespass in a structure or conveyance is a second-degree misdemeanor,⁴ punishable by not more than 60 days imprisonment and a fine of not more than \$500.

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 first-degree misdemeanor,⁵ punishable by not more than one year in prison and a fine of not more than \$1,000. 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 third-degree felony,⁶ punishable by not more than five years in prison and a fine of not more than \$5,000.

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; or

³ Section 810.08(1), F.S., defines trespass in a structure or conveyance: "Whoever, 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, commits the offense of trespass in a structure or conveyance."

⁴ Section 810.08(2)(a), F.S.

⁵ Section 810.08(2)(b), F.S.

⁶ Section 810.08(2)(c), F.S.

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,

commits the offense of trespass on property other than a structure or conveyance.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 certain posted signs is punishable as a third-degree felony.⁹

Local Regulation of 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, or attempt to deliver, distribute or place, handbills on private property upon which is posted a reasonably conspicuous sign reading ‘No Advertising’ or ‘No Solicitation’.”¹⁰ The ordinance also states that it “is unlawful for any business advertising by means of handbills to direct, encourage or allow any individual, employee or independent contractor distributing handbills on behalf of the business to deliver, distribute or place handbills on private property upon which is posted a reasonably conspicuous sign reading ‘No Advertising’ or ‘No Solicitation’.”¹¹

Other State Laws

California law regulates the distribution of handbills on public lodging establishments in its Business and Professions Code, under unfair competition.¹² “Handbill” means, and is specifically limited to, any tangible commercial solicitation to guests of the hotel urging that they patronize any commercial enterprise.¹³ Regarding the distribution of handbills, it states:

Every person (hereinafter “distributor”) engages in unfair competition for purposes of this chapter who deposits, places, throws, scatters, casts, or otherwise distributes any handbill to any individual guest rooms in any hotel, including, but not limited to, placing, throwing, leaving, or attaching any handbill adjacent to, upon, or underneath any guest room door, doorknob, or guest room entryway, where either the innkeeper has expressed objection to handbill distribution, either orally to the distributor or by the posting of a sign or other notice in a conspicuous place within the lobby area and at all points of access from the exterior of the premises to guest room areas indicating that handbill distribution is prohibited, or the distributor has received written notice pursuant to subdivision (e) that the

⁷ Section 810.09(1)(a), F.S.

⁸ Section 810.09(2)(a), F.S.

⁹ Section 810.09(2)(d)-(f), F.S.

¹⁰ Tampa Code s. 6-171(a).

¹¹ *Id.* at s. 6-171(b).

¹² Cal. Bus. & Prof. Code § 17210 (West 2004).

¹³ *Id.* at § 17210(b).

innkeeper has expressed objection to the distribution of handbills to guest rooms in the hotel.¹⁴

California's law also penalizes a person who directs another person to distribute handbills, but requires that the person directing the distributor be informed in writing that the establishment objects to the distribution of handbills in the hotel.¹⁵ A person who violates the law may be subject to a civil fine not to exceed \$2,500.¹⁶ If an injunction prohibiting the distribution of handbills is disregarded, a person may be liable for a penalty not to exceed \$6,000 per violation.¹⁷

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.¹⁸ The 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.¹⁹ 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.²⁰

However, some state constitutions, such as California's, have been interpreted to provide for a right to access to shopping mall property.²¹ The U.S. Supreme Court has found that state constitutions may expand upon existing federal rights.²² Florida's constitution contains freedom of speech and assembly provisions²³ comparable to California's constitution, but research for this staff analysis has not found that the Florida Supreme Court has interpreted the Florida constitution in a similar manner as the California Supreme Court has interpreted California's constitution regarding the right to access shopping mall property.

III. Effect of Proposed Changes:

The bill 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, or attempt to deliver, distribute, or place, a handbill on private property controlled by a

¹⁴ *Id.* at § 17210(c).

¹⁵ *Id.* at § 17210(d).

¹⁶ Cal. Bus. & Prof. Code § 17206(a) (West 2004).

¹⁷ Cal. Bus. & Prof. Code § 17207(a) (West 2004).

¹⁸ *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

¹⁹ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

²⁰ *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).

²¹ *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

²² *Id.* at p. 81.

²³ Sections 4 & 5, Art. I of the State Constitution.

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.

The bill also makes it unlawful for a person to direct another person to deliver, distribute, or place, or attempt to deliver, distribute, or place, a handbill on private property controlled by a 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.

The bill 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 advertises, promotes, or informs persons about an individual, business, company, or food service establishment.

A violation of the bill's provisions is a first-degree misdemeanor, punishable by not more than one year in prison and a fine of not more than \$1,000. The bill also states that anyone violating the bill's provisions, and committing a battery, commits a third-degree felony, punishable by not more than five years in prison and a fine of not more than \$5,000.

The bill takes effect July 1, 2004.

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 bill'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 a public lodging establishment without permission where a no-advertising-or-solicitation sign is posted in a reasonably

conspicuous manner is prohibited by the provisions of the bill. Patrons and guests may encounter fewer solicitations while staying in a public lodging establishment. Businesses which previously advertised in this manner may be subject to a penalty under the bill's provisions.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

The bill uses different language to describe the area covered by its provisions: "private property controlled by" and "on or about the premises of" a public lodging establishment. The Legislature may wish to amend the bill to use the same terminology to describe the covered area. (See, e.g., page 2, lines 26 and 27, versus page 2, line 30.)

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.
