

Bill No. SB 736

Barcode 824338

CHAMBER ACTION

Senate

House

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The Committee on Commerce (Oelrich) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 810.091, Florida Statutes, is created to read:

810.091 Trespass on commercial property; liability for wrongful charge of trespass.--

(1) INTENT.--It is the intent of the Legislature to protect and preserve order, the private property rights of businesses, and the rights of patrons to engage in commerce. All shopping centers and shopping malls shall not be deemed "quasi public" in nature. The Legislature is in agreement with the ruling of the Second Judicial Circuit Court in the case Publix Super Markets, Inc. v. Tallahasseeans for Practical Law Enforcement, No. 2004 CA 1817 (2nd Jud. Cir. 2005).

(2) DEFINITIONS.--As used in this section, the term:

(a) "Authorized person" means any of the following

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1 individuals who are on the property for commercially

2 reasonable purposes:

3 1. The owner of a commercial premises.

4 2. An authorized representative or employee of the
5 owner of a commercial premises.

6 3. The tenant.

7 4. An authorized representative or employee of a
8 tenant.

9 (b) "Commercial property" means any developed real
10 property owned or leased by a business or businesses for the
11 purpose of offering goods or services for sale to the public.

12 1. Where a single business owns or leases the entire
13 commercial property, commercial property shall consist of all
14 real property and improvements including, but not limited to,
15 all structures, sidewalks, and parking lots.

16 2. Where there are two or more businesses that own or
17 lease all or part of the commercial property, commercial
18 property consists of:

19 a. Any enclosed space in a structure which space is
20 leased to the tenant.

21 b. Where a public entrance to the leased premises
22 opens to the outdoors, the sidewalk directly outward from the
23 structure to the area consisting of a projection outward from
24 the interior partitions of the leased enclosed space up to the
25 apparent edge of such sidewalk.

26 c. Where a public entrance to the leased premises
27 opens to an enclosed space, the area necessary for ordinary
28 pedestrian ingress and egress to the entrance.

29 d. The area immediately surrounding an emergency exit
30 to the extent necessary to afford egress from the structure.

31 (3) CONTROL OF PROPERTY.--An owner of commercial

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1 property, individually or through an agent or manager, has the
2 lawful right to authorize persons to enter the commercial
3 property, the lawful right to exclude persons from entering
4 the commercial property, and the right to revoke a previous
5 authorization and to demand that a person immediately leave
6 the commercial property. The tenant of commercial property,
7 individually or through an agent or manager, has the lawful
8 right to authorize persons to enter the commercial property,
9 the lawful right to exclude persons from entering the
10 commercial property, and the right to revoke a previous
11 authorization and to demand that a person immediately leave
12 the commercial property.

13 (4) ORDER TO LEAVE; OFFENSE.--As related to any
14 commercial property invitees may remain on such commercial
15 property as long as such invitees are on the commercial
16 property for commercially reasonable purposes. Any authorized
17 person may order any invitee to leave commercial property held
18 open to the public, where the invitee's conduct is deemed by
19 an authorized person to be detrimental to the commercial
20 purposes for which the commercial property is held open to the
21 public. Any authorized person may call upon any law
22 enforcement officer to enforce such order. A law enforcement
23 officer may reasonably rely upon the representation of any
24 person that he or she is an authorized person under this
25 statute. Upon receipt from an authorized person of notice that
26 a person has been ordered to leave the commercial property, a
27 law enforcement officer shall issue a trespass warning and
28 shall instruct the person that they have been ordered to leave
29 the commercial property. If the person fails to leave, or if
30 the person returns to the commercial property within 6 months
31 after receipt of the trespass warning, the person commits the

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1 offense of trespassing on commercial property, a misdemeanor
 2 of the second degree, punishable as provided in s. 775.082 or
 3 s. 775.083. Where a person fails to leave or returns within 6
 4 months after receipt of the trespass warning as provided in
 5 this section, a law enforcement officer shall have probable
 6 cause to arrest any person for violation of this section.
 7 Nothing in this section shall preclude prosecution under s.
 8 810.08 when s. 810.08 is charged in lieu of this section.

9 (5) RECORDS.--When issuing a trespass warning, a law
 10 enforcement officer shall record the name and address of the
 11 authorized person together with the position of the authorized
 12 person that makes such person an authorized person.

13 (6) LIABILITY.--The exclusive remedy for a wrongful
 14 issuance of trespass warning or the wrongful arrest of a
 15 person pursuant to a trespass warning is an action against the
 16 person who claimed to be an authorized person or against the
 17 employer of such authorized person. A person that maliciously
 18 claims to be an authorized person with the intent of
 19 wrongfully having a trespass warning issued commits a
 20 misdemeanor of the second degree, punishable as provided in s.
 21 775.082 or s. 775.083.

22 (7) PROTECTION FROM DISCRIMINATION.--Notwithstanding
 23 any other provision in this section, no owner, tenant, or
 24 agent thereof of commercial property shall discriminate or
 25 take action against any person because of such person's race,
 26 color, religion, sex, national origin, age, handicap, or
 27 marital status.

28 (8) RELATION TO BURGLARY LAWS.--Nothing in this
 29 section shall be used or construed to affect laws relating to
 30 burglary.

31 (9) RELATION TO THE FAIR LABOR STANDARDS ACT.--Nothing

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1 in this section shall be used or construed to affect or impede
2 the enforcement of any part of the Fair Labor Standards Act.

3 Section 2. This act shall take effect October 1, 2007.

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete everything before the enacting clause

9

10 and insert:

11 A bill to be entitled

12 An act relating to trespass on commercial
13 premises; creating s. 810.091, F.S.; providing
14 that a person may not remain on commercial
15 premises held open to the public following an
16 order to leave on specified grounds; providing
17 penalties; providing an effective date.

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