

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: SB 736

INTRODUCER: Senator Oelrich

SUBJECT: Trespass on Commercial Premises

DATE: March 23, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinley/Earlywine	Cooper	CM	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill prohibits a person from remaining on any property or in any structure that is open to the public for commercial purposes if the owner or owner’s agent has ordered the person to leave the premises due to activity deemed detrimental to the commercial purpose of the property.

This bill creates section 810.091 of the Florida Statutes.

II. Present Situation:

Section 810.08, F.S., provides that when a person, with or without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance is warned by the owner of the premises or other authorized person to leave and refuses to do so, commits the offense of “trespass in a structure or conveyance,” which is a second degree misdemeanor. It is a first degree misdemeanor if there is a person in the structure or conveyance at the time of the trespass.¹ If the person is armed with a firearm or other dangerous weapon, or arms him or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a third degree felony.²

Section 810.09, F.S., provides that a person who, without being authorized, licensed, or invited, willfully enters upon or remains on any property other than a structure or conveyance commits the offense of “trespass on property other than a structure or conveyance,” which is a first degree misdemeanor if:

¹ Section 810.08(b), F.S.

² Section 810.08(c), F.S.

- Notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- 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.

It is a first degree misdemeanor if the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate, or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance.³ It is a third degree felony if the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance.⁴

III. Effect of Proposed Changes:

Section 1 creates s. 810.091, F.S., to prohibit a person that is engaged in an activity that is deemed detrimental to the commercial purpose of the property from remaining on any property or in any structure that is open to the public for commercial purposes if the owner or owner's agent has ordered the person to leave the premises due to that activity.

Section 2 provides an effective date of October 1, 2007.

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:

This bill may raise issues related to conflicts between private property rights and an individual's right to freedom of speech.

The First Amendment of the U.S. Constitution protects the exercise of free speech in public forums against interference by the state. The U.S. Constitution generally prohibits

³ Section 810.09(b), F.S.

⁴ Section 810.09(c), F.S.

governmental infringement of constitutional rights. Thus, to find some action unconstitutional it is generally necessary to attribute the action to the state. However, “state action” can also be found in actions of seemingly private individuals who perform exclusive public functions, or have significant state involvement in their activities.

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. The court generally gives greater deference to free expression over property rights when a public forum is involved. In one case, 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.⁵ However, 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.⁶ 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.⁷

Freedom of speech is guaranteed under s. 4, Art. I, of the State Constitution. The United States Supreme Court ruled in *Lloyd Corp. v. Tanner* that states are free to interpret their constitutions to confer more expansive protection of free speech than that required by the federal constitution.⁸ Accordingly, Florida’s Constitution must also be reviewed to determine whether it affords a stronger protection of free speech which would allow a person to exercise this right on private commercial property.⁹ In general, the Florida Supreme Court has held that the scope of the protection accorded to freedom of speech in Florida is the same as is required under the First Amendment of the U.S. Constitution,¹⁰ and the free speech provisions of the Florida Constitution are to be analyzed in the same manner as the First Amendment of the U.S. Constitution.¹¹ However, later lower court decisions are not so clear.

In *Publix Super Markets, Inc. v. Tallahasseeans For Practical Law Enforcement (TPLE)*,¹² TPLE members were seeking signatures for a petition outside of a Publix grocery store, in a shopping center strip mall. Customers complained to the Publix store manager about being approached by TPLE members, and the store managers asked them to leave the store property. The TPLE members refused to leave, and when Publix called the police to have the members of TPLE removed from the property or give them trespassing warnings, the police responded that they were uncertain about the legality of taking such action. The Second Judicial Circuit Court ruled that Publix had the right to exclude persons who seek to use its private property for purposes other than shopping, including the solicitation of signatures on political initiatives. The court reasoned that “the First

⁵ *Amagated Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968).

⁶ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

⁷ *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.)

⁸ 407 U.S. 551 (1972).

⁹ *Pruneyard Shopping Center v. Robins*, 447 U.S. 74. (2003).

¹⁰ *Dept. of Education v. Lewis*, 416 So.2d 455 (Fla. 1982).

¹¹ *Id.*

¹² 2005 WL 3673662 (2nd Fla. Cir. Ct. 2005).

Amendment to the U.S. Constitution and Article I, Section 4 of the Florida Constitution only protect against governmental infringement of an individual's right to engage in free speech, or similarly protected conduct, and the Publix shopping center in question is not considered a 'town center' and therefore not analogous to government infringement of free speech." The court concluded that Publix could remove people from their property even if they are exercising their constitutionally protected right to freedom of speech.

On the other hand, in *Wood v. State*, Wood was arrested for trespassing at the Panama City Mall after he was asked to leave because he was on mall property soliciting signatures to get his name on an election ballot.¹³ That trial court held that Florida's Constitution is more expansive than the U.S. Constitution and Florida's Constitution does protect free-speech activities in privately owned shopping malls. The court held that malls and other shopping centers are still private property but have a "quasi-public" nature, and therefore, the Constitution of Florida prohibits a private owner of a "quasi-public" place from using state trespass laws to exclude peaceful political activity.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill creates new criminal offenses, which could result in convictions, with potential costs for prosecution and punishment. The bill does not specify the degree of the offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

¹³ 2003 WL 1955433 (14th Fla. Cir. C. 2003).

VIII. Summary of Amendments:

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