

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 572

INTRODUCER: Commerce Committee, Senator Deutch and others

SUBJECT: Civil Rights, Sexual Orientation and Familial Status

DATE: April 8, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Cooper	CM	Fav/CS
2.			CA	
3.			JU	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This CS amends ch. 760, F.S., the Florida Civil Rights Act, to replace the term “handicap” with “disabilities,” consistent with the terminology used in the Americans with Disabilities Act (ADA).

This CS revises several provisions of the Florida Civil Rights Act and Fair Housing Act to include “sexual orientation,” “marital status” and “familial status” as impermissible grounds for discrimination.

Specifically, the CS expands statutory protections against discrimination based on:

- “sexual orientation” in public accommodation, employment, public lodging and food service establishments, housing, brokerage services, financing of housing, land use decisions and permitting of development, and certain clubs;
- “familial status” in employment, public lodging and food service establishments and certain clubs; and
- “marital status” in public accommodation, housing, brokerage services, financing of housing, and land use decisions and permitting of development.

The CS expands the duties of the Florida Commission on Human Relations to include the promotion and encouragement of fair treatment and equal opportunity for persons regardless of their sexual orientation and familial status.

This CS amends the following sections of the Florida Statutes: 419.001, 509.092, 760.01, 760.02, 760.05, 760.07, 760.08, 760.10, 760.22, 760.23, 760.24, 760.25, 760.26, 760.29, 760.31, 760.50, and 769.60.

II. Present Situation:

Florida Commission on Human Relations

The Florida Commission on Human Relations (the commission) was established as a community relations-based agency in 1969.¹ With the passage of the Florida Human Rights Act of 1977 (act), the commission became an enforcement agency.² This act permitted the commission to investigate and resolve employment discrimination complaints through administrative and legal means. Over time, the purview of the commission expanded with the passage of the Florida Fair Housing Act in 1983,³ the Florida Civil Rights Act in 1992,⁴ and the Whistle-Blower's Act in 1999.⁵

Part I of ch. 760, F.S., is the Florida Civil Rights Act, the purpose of which is to protect individuals against discrimination in areas of employment, housing, and other opportunities based on race, color, religion, sex, national origin, age, handicap, or marital or familial status.

Section 760.03, F.S., creates the commission to carry out the purposes of this part. Section 760.04, F.S., assigns the commission to the Department of Management Services; however, the commission is not subject to any control of, supervision by, or direction from the department.

The commission is comprised of 12 persons who are appointed by the Governor and confirmed by the Senate. The membership of this commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. At least one member of the commission, as required by law, must be 60 years of age or older.

Pursuant to s. 760.06, F.S., the commission can receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice.

The Florida Civil Rights Act

Part I of ch. 760 (ss. 760.01-760.11, F.S.) and s. 509.092, F.S., constitute the Florida Civil Rights Act of 1992.⁶

¹ Section 1, ch. 69-287, L.O.F.

² Section 1, ch. 77-341, L.O.F.

³ Sections 1-19, ch. 83-221, L.O.F. (currently ss. 760.20-760.37, F.S.)

⁴ Chapter 92-177, L.O.F. (currently ss. 760.01-760.11, F.S.)

⁵ Currently s. 448.102, F.S.; Florida Commission on Human Relations. "About the Commission." 30 January 2008. http://fchr.state.fl.us/fchr/about_us.

⁶ Chapter 92-177, L.O.F.

Section 760.08, F.S., provides that all persons are entitled to the full and equal enjoyment of 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 509.092, F.S., allows operators of public lodging establishments and public food service establishments to refuse accommodations or service to any person who is objectionable or undesirable to the operator. However, consistent with s. 760.08, F.S., such refusal cannot be based upon race, creed, color, sex, physical disability, or national origin. The term “public accommodations” does not include lodge halls or other similar facilities of private organizations that are made for public use either occasionally or periodically.⁷

Section 760.10, F.S., addresses prohibited actions related to various aspects of employment, to include hiring, classification of employees or applicants; employment agencies; labor organizations; training; licensure, certification or credentialing; and advertising. Generally, it is unlawful to discriminate against a person because of their race, color, religion, sex, national origin, age, handicap, or marital status.

Florida Fair Housing Act

Part II of ch. 760, F.S., (ss. 760.20-760.37, F.S.) constitutes the Florida Fair Housing Act (act). It is the state’s policy, as provided in s. 760.21, F.S., to provide, within constitutional limits, fair housing throughout the state.

Section 760.23, F.S., specifies what constitutes unlawful housing discrimination. This act defines unlawful housing discrimination. It is unlawful to refuse to sell or rent or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. Those who are pregnant or in the process of securing legal custody of a child 18 years of age or younger;⁸ and disabled, or associated with a disabled person are all protected.⁹

The act also addresses prohibited actions related to various aspects of housing services, to include brokerage services; financing; and land use decisions. Generally, it is unlawful to discriminate against a person because of their race, color, national origin, sex, handicap, familial status, or religion.

Miscellaneous Provisions Related to Prohibited Discrimination

Section 760.50, F.S., provides that any person with or perceived as having acquired immune deficiency syndrome (AIDS), acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

⁷ Section 760.07, F.S.

⁸ Section 760.23(6), F.S.

⁹ Section 760.23(7), F.S.

Section 760.60, F.S., relates to membership in clubs with over 400 members. This provision states that it is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership, if the club provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It also prohibits notices or advertisements containing statements that deny membership privileges to these classes of individuals. An exception to these restrictions is provided for fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Definition of Disability vs. Handicap

Currently, the Florida Civil Rights Act does not define “handicap.” However, the Fair Housing Act does define that term to mean:

- (a) A person who has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or
- (b) A person who has a developmental disability as defined in s. 383.963.¹⁰

This definition is substantially similar to the term “disability” used in the Americans with Disabilities Act (ADA). The term “disability” is defined as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”¹¹ It further defines what constitutes physical or mental impairment. Under the ADA, a physical impairment is:

“Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.”

The ADA defines a mental or psychological disorder as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.¹²

In addition, paragraph (5) of the federal definition also lists certain conditions that are not included within the definition of disability. Excluded conditions under the term “disability” in federal law include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

¹⁰ Section 760.22(7), F.S.

¹¹ *Id.*

¹² <http://www.usdoj.gov/crt/ada/reg3a.html>

As individuals with disabilities and organizations representing such individuals began to object to the use of such terms as “handicapped person” or “the handicapped,” Congress changed the federal law accordingly. As a result, the use of the terms “disability” (instead of “handicap”) and “individual with a disability” (instead of an “individual with a handicap”) have been phased out of Federal law.

Florida law continues to use the term “handicap” and does not provide that certain conditions are excluded from its definition of handicap. This lack of clarity has led to the filing of several complaints with the Florida Commission on Human Relations on bases not covered by the Florida Civil Rights Act nor the ADA. However, the commission has routinely dismissed those cases on the basis of federal law, with orders stating that the commission had no jurisdiction over such matters.¹³

Discrimination Based on “Sexual Orientation”

Florida law does not offer protection from discrimination on the basis of sexual orientation. Currently, 22 jurisdictions have laws offering varying degrees of protection with regards to sexual orientation. These include:

California, Connecticut, Colorado, District of Columbia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Wisconsin, and Washington.¹⁴

Of these jurisdictions, 11 provide for “gender identity” protection as well. The Human Rights Campaign (HRC),¹⁵ defines “sexual orientation” as “attraction to another person; can be straight, gay, lesbian or bisexual.” The HRC defines “gender identity” as “identification with either the male or the female sex.”¹⁶

Within Florida, 14 cities and six counties offer protection based on sexual orientation. These include:

Broward County, Leon County, Miami Dade County, Monroe County, Orange County, Palm Beach County, Gulfport, Gainesville, Key West, Lake Worth, Largo, Miami Beach,

¹³ Florida Commission on Human Relations conversation with staff, January 29, 2008.

¹⁴ Cal. Gov. Code § 12940; Conn. Gen. Stat. § 46a-81c-m; D.C. Code §§ 2-1401.01 - 2-1401.02, 2-1402.11, 2-1402.21, 2-1402.31, 2-1402.41, 2-1402-71, 2-1402-73; Haw. Rev. Stat. §§ 515-2 - 7, Haw. Rev. Stat. §§ 378-1 - 3, Haw. Rev. Stat. § 489.2 - 3; 775 ILCS 5/1-102; La. Exec. Ord. 2004-54; Me. Rev. Stat. Ann. Tit. 5, §§ 4553 & 4571-76; Md. Code art. 49B § 5; Mass. Gen. Laws Ann. Ch. 151B, §§ 3 & 4; Minn. Stat. §§ 363A.01 - 363A.41; Nv. Rev. Stat. § 613.330; N.H. Rev. Stat. Ann. §§ 21-I:42, 354-A:2, 354-A:6; N.J. Stat. Ann. §§ 10:5-1 - 49; N.M. Stat. Ann. §§ 28-1-2, 28-1-7, 28-1-9; N.Y. Exec. Law §§ 296, 296-a; Oregon Public Law 100; Pa. Exec. Ord. 2003-10; R.I. Gen. Laws §§ 28-5-3, 28-5-7, 34-37-4, 34-37-4.3, 11-24-2; 21 Vt. Stat. Ann. § 495, 9 Vt. Stat. Ann. § 4503; 8 Vt. Stat. Ann. §§ 10403 & 4724; 3 Vt. Stat. Ann. § 963; WIS. STAT. §36.12, §106.50, §106.5, 2§111.31, §230.18, §224.77; Wash. Rev. Code §§ 49.60.130-175, 176, 178, 180, 190, 200, 215, 222-225, 300.

¹⁵ The Human Rights Campaign reports that it is America’s largest civil rights organization working to achieve gay, lesbian, bisexual and transgender equality. See www.hrc.org.

¹⁶ See http://www.hrc.org/issues/workplace/equal_opportunity/gender_identity_terms_definitions.asp.

Orlando, Oakland Park, Sarasota, St. Petersburg, Tampa, Tequesta, West Palm Beach, and Wilton Manors.

In some Florida counties or municipalities, protection extends only to one area (employment, housing, or public accommodations), and in others, the protection is offered for more than one classification. Also, nine of these jurisdictions include “gender identity” as a protected classification.¹⁷

Discrimination Based on “Familial Status”

Currently, the Fair Housing Act¹⁸ states that “familial status” is established:

“when an individual who has not attained the age of 18 years is domiciled with:

- (a) A parent or other person having legal custody of such individual; or
- (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.”

Familial status is a protected classification under the Florida Fair Housing Act.¹⁹

However, familial status is not a protected classification under the Florida Civil Rights Act of 1992,²⁰ with the exception of s. 760.08, F.S., which provides a general statement that all persons are entitled to the full and equal enjoyment of 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. As to the “Miscellaneous Provisions” in ch. 760, F.S., familial status is not impermissible grounds for discrimination for membership in certain clubs, as specified in s. 760.60, F.S.

Discrimination Based on “Marital Status”

“Marital status” is not defined in the Civil Rights Act, Fair Housing Act or in other provisions in Florida law. However, the Florida Supreme Court has held that marital status means “the state of being married, widowed, or separated, and does not include the specific identity or actions of an individual’s spouse.”²¹

Currently, marital status is an impermissible ground for discrimination under the Florida Civil Rights Act of 1992,²² with the exception of s. 509.092, F.S., which allows operators of public lodging establishments and public food service establishments to refuse accommodations or service to any person who is objectionable or undesirable to the operator, except on the basis of race, creed, color, sex, physical disability, or national origin.

¹⁷ “Sexual Orientation Ordinances in Florida’s Cities and Counties” as compiled by the National Center for Lesbian Rights, January 2008.

¹⁸ Part II of ch. 760, F.S., ss. 760.20-760.37, F.S.

¹⁹ Part II of ch. 760, F.S., ss. 760.20-760.37, F.S.

²⁰ Part I of ch. 760 (ss. 760.01-760.11, F.S.) and s. 509.092, F.S., constitute the Florida Civil Rights Act of 1992.

²¹ *Donato v. American Tel. & Tel. Co.*, 767 So. 2d 1146, 1155 (Fla. 2000).

²² Part I of ch. 760 (ss. 760.01-760.11, F.S.) and s. 509.092, F.S., constitute the Florida Civil Rights Act of 1992.

In addition, the general provision of the Florida Civil Rights Act in s. 760.08, F.S., does not include marital status as impermissible grounds for discrimination. Likewise, Florida's Fair Housing Act does not include marital status as impermissible grounds for discrimination.²³ Consistent with the specific provisions of the Florida Civil Rights Act, s.760.60, F.S., does include marital status as impermissible grounds for discrimination in non-exempt clubs with more than 400 members.

Housing for Older Persons

Section 760.29(4)(a), F.S., provides that the familial status provision of the Fair Housing Act does not apply to housing for older persons. Housing for older persons is defined to mean "any state or federal program that the commission determines is specifically designed and operated to assist elderly persons; is intended for, and solely occupied by, persons 62 years of age or older; or intended and operated for occupancy by persons 55 years of age or older."

III. Effect of Proposed Changes:

This CS amends ch. 760, F.S., the Florida Civil Rights Act, to replace the term "handicap" with "disabilities," consistent with the terminology used in the Americans with Disabilities Act (ADA). The definition remains functionally identical.

In addition, the CS revises several provisions of the Florida Civil Rights Act and Fair Housing Act to include "sexual orientation," "marital status," and "familial status" as impermissible grounds for discrimination.

Section 1 amends s. 760.01, F.S., relating to the purposes of the Florida Civil Rights Act by changing the word "handicap" to "disability" to reflect changes in federal law. This section includes "sexual orientation" and "familial status" as impermissible grounds for discrimination.

Section 2 amends s. 760.02, F.S., the definitions portion of the Florida Civil Rights Act, to include a definition of "sexual orientation," which is defined "as the condition of being heterosexual, homosexual, or bisexual;" and to include a definition of "disability." Definitions for "aggrieved person," "employment agency," "labor organization," "employer," and "familial status" are renumbered.

Section 3 amends s. 760.05, F.S., which relates to the functions of the commission, to change the word "handicap" to "disability," and adds "sexual orientation" and "familial status" as impermissible grounds for discrimination.

Section 4 amends s. 760.07, F.S., which relates to remedies for unlawful discrimination, to change the word "handicap" to "disability," and adds "sexual orientation" and "familial status" as impermissible grounds for discrimination.

²³ Part II of ch. 760, F.S., ss. 760.20-760.37, F.S.

Section 5 amends s. 760.08, F.S., which relates to discrimination in places of public accommodation, to change the term “handicap” to “disability,” and adds “sexual orientation” and “marital status” as impermissible grounds for discrimination.

Section 6 amends s. 760.10, F.S., which relates to unlawful employment practices, to change the terms “handicap” to “disability,” and adds “sexual orientation” and “familial status” as impermissible grounds for discrimination.

Section 7 amends s. 509.092, F.S., which relates to public lodging and food service establishments, adds “sexual orientation” and “familial status” as impermissible grounds for discrimination.

Section 8 amends s. 760.22, F.S., which relates to the Fair Housing Act, to replace the definition of “handicap” with a functionally identical definition of “disability”; and to include a definition for “sexual orientation;” and renumbers the section to reflect these changes.

Section 9 amends s. 760.23, F.S., relating to the sale or rental of housing, to change the terms “handicap” to “disability,” and adds “sexual orientation” and “marital status” as impermissible grounds for discrimination.

Section 10 amends s. 760.24, F.S., which relates to brokerage services, to change the term “handicap” to “disability,” and adds “sexual orientation” and “marital status” as impermissible grounds for discrimination.

Section 11 amends s. 760.25, F.S., which relates to financing of housing, to change the term “handicap” to “disability,” and adds “sexual orientation, and “marital status” as impermissible grounds for discrimination.

Section 12 amends s. 760.26, F.S., which relates to land use decisions and permitting of development, to add “sexual orientation” and “marital status” as impermissible grounds for discrimination.

Section 13 amends s. 760.29, F.S., which relates to appraisals, to change the term “handicap” to “disability,” and adds “sexual orientation” and “marital status” as impermissible grounds for discrimination.

Section 14 amends s. 760.31, F.S., which relates to powers of the commission, to change the term “handicapped” to “disabled.”

Section 15 amends s. 760.50, F.S., which relates to discrimination on the basis of AIDS, to change the term “handicapped” to “disabled.”

Section 16 amends s. 760.60, F.S., which relates to memberships in certain clubs, to change the term “handicap” to “disability,” and adds “sexual orientation” and “familial status” as impermissible grounds for discrimination.

Section 17 amends s. 419.001(1)(d), F.S., to replace the cross-reference to s. 760.22(7)(a), F.S., with s. 760.22(3)(a), F.S., to reflect the reordering of the definitions in the Fair Housing Act.

Section 18 provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that businesses do not comply with the expansion of prohibited discrimination relating to the Florida Civil Rights Act and the Fair Housing Act, they may be subject to complaints or lawsuits by affected persons. This could result in increased litigation costs.

C. Government Sector Impact:

The expansion of prohibited discrimination relating to the Florida Civil Rights Act and the Fair Housing Act may result in an indeterminate increase in the number of complaints submitted to the Florida Commission on Human Relations. Due to the notification procedures and timeframes with which the commission must comply, the increase in complaints may result in the need for additional full time employees.²⁴

VI. Technical Deficiencies:

None.

²⁴ Conversation with staff at the Florida Commission on Human Relations, January 23, 2008.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Commerce Committee on April 8, 2008:

This CS inserts a definition of “disability” in Part I of the Florida Civil Rights Act, consistent with the definition provided in the bill for The Florida Fair Housing Act. This CS also inserts a definition of “sexual orientation” in the Florida Fair Housing Act, consistent with the definition provided in the bill for The Florida Civil Rights Act.

- B. **Amendments:**

None.