

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 63 Handbill Distribution
SPONSOR(S): Crisafulli and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 2 N	Cunningham	Cunningham
2) Business & Consumer Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 509.144, F.S., prohibits persons from distributing handbills, or directing another to distribute handbills, at or in a public lodging establishment without permission. "Without permission" is defined as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation." Violations are punishable as 1st degree misdemeanors, and persons who direct another to distribute handbills without permission are also subject to a minimum \$500 fine.

The bill amends the definition of the term "without permission" to remove "oral permission." The bill also increases the fine for persons who direct another to distribute handbills from \$500 to \$1,000. Additionally, the bill provides the following fines for subsequent violations of the handbill statute:

- For a second violation, a minimum fine of \$2,000
- For a third or subsequent violation, a minimum fine of \$3,000.

The bill amends the definition of the term "contraband article" in the Florida Contraband Forfeiture Act to specify that property used as an instrumentality in the commission of a person's third or subsequent violation of the handbill distribution statute is subject to seizure and forfeiture.

The bill also adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the bill provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., has been committed; and
- If the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

This bill takes effect October 1, 2011, and may have a positive fiscal impact on local governments. See fiscal section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Handbill Distribution

Section 509.144(2), F.S., prohibits persons acting on behalf of another to, without permission, deliver, distribute, or place a handbill at or in a public lodging establishment.¹ Subsection (3) of the statute also prohibits persons to, without permission, direct another person to deliver, distribute, or place a handbill in a public lodging establishment. Both crimes are punishable as 1st degree misdemeanors.² In addition to the 1st degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of \$500.³

Currently, s. 509.144, F.S., defines the term "without permission" as "without the expressed written or oral permission of the owner, manager, or agent of the owner or manager of the public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (4)."⁴ The term "handbill" is defined as "a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act."⁵

Effect of the Bill

The bill, entitled the "Tourist Safety Act of 2011," amends the definition of the term "without permission" to remove "oral permission." Thus, a person who distributes handbills must have the written permission of the public lodging establishment's owner or manager. The bill also amends the definition of the term "handbill" to specify that the term does not include communications protected by the First Amendment to the United States Constitution.

The bill increases the fine for violating subsection (3) of the handbill statute from \$500 to \$1,000. Additionally, the bill provides the following fines for subsequent violations of subsections (2) and (3) of the handbill statute:

- For a second violation, a minimum fine of \$2,000
- For a third or subsequent violation, a minimum fine of \$3,000.

The bill also specifies that it does not affect or impede the provisions of s. 790.251, F.S.,⁶ or any other protection or right guaranteed by the 2nd Amendment to the United States Constitution.⁷

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (Act)⁸ provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or

¹ Section 509.013, F.S., defines the term "public lodging establishment" as a transient public lodging establishment or a non-transient public lodging establishment. "Transient public lodging establishment" means 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. "Non-transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 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 for periods of at least 30 days or 1 calendar month.

² A first degree misdemeanor is punishable by up to one year in county jail and a maximum \$1,000 fine. ss. 775.082 and 775.083, F.S.

³ s. 509.144(3), F.S.

⁴ Section 509.144(4), F.S., sets forth the manner in which public lodging establishments who intend to prohibit advertising or solicitation must post signs prohibiting such behavior.

⁵ s. 509.144, F.S.

⁶ Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

⁷ The 2nd Amendment to the United States Constitution sets forth the right of the people to keep and bear arms.

in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Act. Section 932.701, F.S., defines the term “contraband article” to include:

- Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
- Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.
- Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
- Any motor fuel upon which the motor fuel tax has not been paid as required by law.
- Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
- Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
- Any motor vehicle offered for sale in violation of s. 320.28., F.S.
- Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.
- Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.
- Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920, F.S., or s. 409.9201, F.S.

The current definition of the term “contraband article” does not include property that was used as an instrumentality in the commission of a violation of s. 509.144, F.S., relating to handbill distribution.

⁸ Sections 932.701 – 932.706, F.S., contain the Florida Contraband Forfeiture Act.

Effect of the Bill

The bill amends the definition of the term “contraband article” in s. 932.701, F.S., to include the following:

Any personal property, including, but not limited to, any vehicle of any kind, item, object, tool, device, weapon, machine, money, securities, books, or records, which was used or was attempted to be used as an instrumentality in the commission of, or aiding and abetting in the commission of, a person’s third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

The bill also amends s. 509.144, F.S., to specify that the above-described property is subject to seizure and forfeiture under the Act.

Warrantless Arrest

Section 901.15, F.S., sets forth the instances in which a law enforcement officer can arrest a person without a warrant. For misdemeanor offenses, the general rule is that law enforcement officers must witness the occurrence of the offense in order to make an arrest without a warrant. If the officer does not witness the offense, the officer must obtain an arrest warrant.

In certain instances the Legislature has deemed particular misdemeanor offenses to be of such a nature that they should be exceptions to the above rule. Those crimes, which are listed in s. 901.15, F.S., are:

- Violations of injunctions for protection in domestic violence, repeat violence, sexual violence, and dating violence situations.
- Violations of pretrial release conditions in domestic and dating violence cases
- Acts of domestic or dating violence.
- Luring or enticing a child.
- Aggravated assault upon a law enforcement officer, firefighter and other listed persons.
- Battery.
- Criminal mischief or graffiti-related offenses.
- Violations of certain naval vessel protection zones or trespass in posted areas in airports.

For these offenses, an officer does not have to witness the crime in order to make a warrantless arrest - they only need to have probable cause to believe the person committed the crime.⁹

Effect of the Bill

The bill adds another exception to the general rule that officers must witness a misdemeanor offense in order to make a warrantless arrest. Specifically, the bill provides that an officer may arrest a person without a warrant:

- If there is probable cause to believe that a violation of s. 509.144, F.S., (the handbill statute) has been committed; and
- If the owner or manager of the public lodging establishment in which the violation occurred signs an affidavit containing information that supports the probable cause determination.

⁹ s. 901.15, F.S.

B. SECTION DIRECTORY:

Section 1. Cites the bill as the "Tourist Safety Act of 2011."

Section 2. Amends s. 509.144, F.S., relating to prohibited handbill distribution in a public lodging establishment; penalties.

Section 3. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 4. Amends s. 932.701, F.S., relating to short title; definitions.

Section 5. Specifies that the bill does not affect or impede the provisions of s. 790.251, F.S., or any right guaranteed by the 2nd Amendment to the United States Constitution.

Section 6. This bill takes effect October 1, 2011.

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:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such, local governments may see increased revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES