

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 63 Public Lodging and Food Service Establishments

**SPONSOR(S):** Business & Consumer Affairs Subcommittee, Crisafulli and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/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	13 Y, 0 N, As CS	Whittington	Creamer
3) Judiciary Committee	17 Y, 0 N	Cunningham	Havlicak

### SUMMARY ANALYSIS

The bill creates the "Tourist Safety Act of 2011". The bill amends current law related to distribution of handbills at public lodging establishments and public food service establishments. Specifically the bill:

- Imposes fines for persons who unlawfully distribute handbills and who direct others to unlawfully distribute handbills for subsequent violations of the statute (\$2,000 for the second violation, and \$3,000 for the third and any subsequent violations);
- Expands the property that is subject to seizure or forfeiture under the Florida Contraband Forfeiture Act to include property used in violation of a person's third or subsequent violation of the handbill distribution statute; and
- Permits a law enforcement officer to issue a notice to appear when probable cause is determined that a violation violations of the handbill statute has occurred.

Additionally, the bill preempts matters related to the nutritional content and marketing of foods offered in public lodging establishments and public food service establishments to the state – thereby prohibiting local governments from enacting such ordinances.

The bill clarifies that completion, rather than attendance, is required at remedial education programs for operating without a license, or operating with a revoked or suspended license. In addition, such educational programs are to be administered by a food safety training program provider whose program has been approved by the Division of Hotels and Restaurants, rather than programs sponsored by the Hospitality Education Program.

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.<sup>1</sup> 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 1<sup>st</sup> degree misdemeanors.<sup>2</sup> In addition to the 1<sup>st</sup> degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of \$500.<sup>3</sup>

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).”<sup>4</sup> 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.”<sup>5</sup>

##### 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, or communications that relate to the public health, safety, or welfare that are distributed by a federal, state, local governmental entity, or a public or private utility..

Additionally, the bill provides the following fines for second and third 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.,<sup>6</sup> or any other protection or right guaranteed by the 2<sup>nd</sup> Amendment to the United States Constitution.<sup>7</sup>

The bill creates s. 901.1503, to authorize a law enforcement office to issue a “notice to appear”:

- 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.  
<sup>3</sup> s. 509.144(3), F.S.

<sup>4</sup> 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.

<sup>5</sup> s. 509.144, F.S.

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

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

## Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (Act)<sup>8</sup> 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 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.

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<sup>8</sup> Sections 932.701 – 932.706, F.S., contain the Florida Contraband Forfeiture Act.

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.

#### 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.

#### **Restaurants**

Under chapter 509, F.S., the Division of Hotels and Restaurants within the DBPR oversees public food service establishments.

#### *State Preemption*

Regulation of public food service and public lodging establishments, including inspections for compliance with sanitation standards and food service personnel food safety training standards, is preempted to the state. Some local governments have adopted ordinances governing issues of food marketing, including nutritional values.

#### *Remedial Training*

The DBPR may take disciplinary action against licensees for violations of chapter 509, F.S., including requiring remedial training. This training used to be provided by the Hospitality Education Program, which is funded by a \$10 annual fee on all public food service and public lodging licenses. Until 2009, the Hospitality Education Program provided training programs, including continuing education and remedial training, for no additional charge to the licensee.

The DBPR also selects private nonprofit providers to administer the food safety training certificate program for food service employees. The DBPR has approved approximately 130 such food service employee training programs.

#### Effect of the Bill

#### *State Preemption*

The bill amends the preemptions for regulation of public lodging and public food service establishments to preempt to the state the regulation of food nutritional content and marketing in restaurants.

#### *Remedial Training*

The bill also amends available disciplinary actions to permit a food safety training provider with an approved remedial educational program to administer disciplinary action-related educational programs, in place of the Hospitality Education Program.

## **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.** Creating s. 901.1503, F.S.; authorizing a law enforcement officer to give a notice to appear to a person without a warrant when probable cause is determined.

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

**Section 5.** Amends s. 509.032, F.S.; relating to duties.

**Section 6.** Amends s. 509.261, F.S.; relating to revocation or suspension of licenses; fines; procedure.

**Section 7.** Specifies that the bill does not affect or impede the provisions of s. 790.251, F.S., or any right guaranteed by the 2<sup>nd</sup> Amendment to the United States Constitution.

**Section 8.** This bill takes effect October 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have a positive fiscal impact on state government in that it increases the fine for second and subsequent violations of s. 509.144, F.S.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill provides a civil forfeiture provision relating to third and subsequent violations of the handbill distribution statute. This will have a positive fiscal impact on local law enforcement agencies who seize any property pursuant to this provision.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the fine for second and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to third and subsequent violations of the handbill distribution statute. As such, violators will be required to pay fines as required by the bill. Third time offenders may also have their property seized.

### 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**

On March 22, 2011, the Business & Consumer Affairs Subcommittee adopted a Proposed Committee Substitute (PCS) to HB 63 and reported the bill favorably. The PCS:

- Specified that the term "handbill" does not include communications that relate to the public health, safety, or welfare that are distributed by a federal, state, local governmental entity, or a public or private utility.
- Removed the increased penalty for first violations of s. 509.144(3), F.S., that was contained in the original bill.
- Authorizes a law enforcement officer to give a notice to appear to a person without a warrant when the officer has determined that probable cause exists to believe that a violation of s. 509.144, F.S., has occurred and the owner or manager of the public lodging establishment where the violation occurred signs an affidavit containing information that supports the officer's probable cause determination.
- Preempt to the state the regulation of food nutritional content and marketing in restaurants.
- Permits a food safety training provider with an approved remedial educational program to administer disciplinary action-related educational programs, in place of the Hospitality Education Program.

This analysis is drafted to the Committee Substitute.