

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 Committee on Criminal Justice

BILL: SB 1174

INTRODUCER: Senator Simmons

SUBJECT: Trespass on Airport Property

DATE: March 27, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 1174 provides that it is a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, cargo ramp, or apron area.

II. Present Situation:

Trespass on Property Other than a Structure or Conveyance

Section 810.09, F.S, punishes trespass on property other than a structure or conveyance.

Section 810.09(1)(a), F.S., provides that it is a first degree misdemeanor¹ for a person, without being authorized, licensed, or invited, to willfully enter upon or remain in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
- If the property is the unenclosed curtilage² of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.³

¹ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 77.082 and 77.083, F.S.

² “Unenclosed curtilage” means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

³ Currently, a law enforcement officer may arrest a person without a warrant if there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. Section 901.15(14), F.S. A law enforcement officer may also arrest without a warrant if the person has committed a felony or misdemeanor offense in the officer’s presence. Section 901.15(1), F.S.

Section 810.09(2)(a), F.S., provides that 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 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.

There are seven third degree felony⁴ trespassing offenses:

- 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.
- The offender trespasses on a construction site that is:
 - Greater than 1 acre in area and is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”; or
 - One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: “THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”⁵
- The offender trespasses on commercial horticulture property and the property is legally posted and identified in substantially the following manner: “THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”
- The offender trespasses on an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”
- The offender trespasses on a domestic violence center certified under s. 39.905, F.S., which is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”
- A person, in taking or attempting to take any animal described in s. 379.101(19) or (20), F.S., or in killing, attempting to kill, or endangering any animal described in s. 585.01(13), F.S., knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization.⁶
- The offender trespasses on an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: “THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.”

⁴ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁵ The sign must be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it is not necessary to give notice by posting as defined in s. 810.011(5), F.S.

⁶ “Potentially lethal projectile” includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This provision does not apply to any governmental agent or employee acting within the scope of his or her official duties.

Unlawful Entry on Property

Section 876.43, F.S., authorizes the following persons or entities to post on the property of the person or entity at each gate, entrance, dock or railway entrance and every 100 feet of waterfront a sign reading “No Entry Without Permission”:

- Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in, or preparing to engage in:
 - The manufacture, transportation or storage of any product to be used in the preparation of the United States, or of any country with which the United States shall then maintain friendly relations, or of any of the states for defense or for war or in the prosecution of war by the United States; or
 - The manufacture, transportation, distribution or storage of gas, oil, coal, electricity, or water.
- Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings.

It is a second degree misdemeanor⁷ for a person, without permission of such owner, to willfully enter upon premises so posted.

Trespass on the Operational Area of an Airport

Three incidents reported in the media in 2014-15 are examples of airport trespassing. In 2014, a man breached a fence at the Orlando International Airport and tried to crawl into the wheel well of a parked airplane.⁸ That same year, a man scaled a fence at Tampa International Airport and went onto an active runway.⁹ In March of 2015, a woman scaled a fence on the Western perimeter of the Miami-Dade International Airport.¹⁰

It appears that trespass (if the trespasser is unarmed) in the operational area of an airport may be charged as either a first degree misdemeanor violation under s. 810.09(1)(a), F.S., or as a second degree misdemeanor violation under s. 876.43, F.S. (assuming the operational area qualifies as a premises described in that statute).¹¹

⁷ A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

⁸ “Arrest at Orlando International Airport.” September 18, 2014. cityoforlando.net. This article is available at <http://www.cityoforlando.net/police/arrest-at-orlando-international-airport/> (last viewed on March 9, 2015).

⁹ Ahlers, Mike M. “Man Jumps Tampa airport fence, taken into custody.” May 19, 2014. CNN. This article is available at <http://www.cnn.com/2014/05/19/us/florida-airport-fence-jumper/index.html> (last viewed on March 9, 2015).

¹⁰ D’Oench, Peter. “Police: Woman Arrested for Scaling Miami Airport Fence.” March 2, 2015. CBS Miami. This article is available at <http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (Last viewed on March 9, 2015).

¹¹ For an example of airport trespass being charged as a violation of s. 876.43, F.S., see the arrest affidavit at the “Download the Arrest Affidavit” link for the article referenced in footnote 7 of this analysis.

Federal law punishes entry by fraud or false pretenses into a secure area of an airport.¹²

III. Effect of Proposed Changes:

The bill provides that it is a third degree felony for a person to trespass on the operational area of an airport with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, cargo ramp, or apron area.

The bill defines “operational area of an airport” as any portion of an airport where access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.¹³ Therefore, by definition, for trespassing to be punished as a third degree felony the area in which the trespassing occurred must be enclosed by fencing or have signage indicating that access to the area by the general public is prohibited.¹⁴

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² See 18 U.S.C. § 1036. The offense is punishable by a fine or imprisonment for not more than 6 months, or both. *Id.* However, if the offense is committed with the intent to commit a felony, the offense is punishable by a fine or imprisonment of not more than 10 years, or both. *Id.*

¹³ This definition is substantially similar to the definition of “operational area” in New Jersey law: “any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft.” N.J. Rev. Stat. § 2C:18-1. The definition is relevant to N.J. Rev. Stat. § 2C:18-3, which, in part, punishes a person who, knowing he is or she is not licensed or privileged to do so, enters or surreptitiously remains in any operational area of an airport.

¹⁴ Federal regulations require airports to post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs must be posted by each airport operator in accordance with its security program. 49 CFR Part 1542.201(6). Airports must also post signs on air operations area (AOA) access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs must be posted by each airport operator in accordance with its security program. 49 CFR Part 1542.203(4). E-mail (March 9, 2015) from Mr. Larry Dale, President/CEO, Orlando Sanford International Airport (on file with the Senate Committee on Criminal Justice).

B. Private Sector Impact:

The bill may result in a cost savings to airports if it deters or reduces airport trespassing.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that SB 1174 will have a positive insignificant prison bed impact (an increase of 10 or fewer prison beds per year).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some of the states that specifically punish airport trespassing include California, Illinois, Mississippi, New Jersey, North Carolina, South Carolina, and Tennessee.¹⁵

VIII. Statutes Affected:

This bill substantially amends section 810.09 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁵ See Cal. Penal Code § 602(u), 725 Ill. Comp. Stat. § 5/21-7, Miss. Code Ann. § 97-17-87(2)(a), N.J. Rev. Stat. § 2C:18-3, N.C. Gen. Stat. § 63-26.1, S.C. Code Ann. § 55-13-40, and Tenn. Code Ann. §.39-17-109.