

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1502

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Campbell

SUBJECT: Discriminatory Practices

DATE: April 3, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	Roberts	JU	Favorable
2.	Gillespie	Maclure	CM	Favorable/CS
3.	_____	_____	GO	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1502 prohibits certain clubs and business establishments serving the public from discriminating against any individual by denying to the individual the accommodations, advantages, facilities, membership, or privileges of the business establishment or club because of *race, color, religion, gender, national origin, handicap, age above the age of 21, recreational clothing, mode of transportation, or marital status*. The committee substitute prohibits business establishments serving the public from including statements in their advertisements, notices, or solicitations declaring that the establishment practices these proscribed forms of discrimination. The committee substitute also prohibits discrimination by certain clubs in evaluating an application for membership, or in publishing, circulating, issuing, displaying, posting, or mailing certain statements declaring that the club practices discrimination, because of *recreational clothing or mode of transportation*, thereby extending the prohibitions that apply under current law to discrimination because of *race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status*.

The committee substitute authorizes an aggrieved person who is discriminated against by a business establishment or club to seek informal resolution of his or her complaint through the Florida Commission on Human Relations or the Attorney General’s Office of Civil Rights. If the complaint is not resolved, the committee substitute authorizes the aggrieved person to bring a civil action for injunctive relief to discontinue the discriminatory practice.

This committee substitute substantially amends section 760.60, Florida Statutes.

II. Present Situation:

Attorney General's Office of Civil Rights

The Legislature established the Attorney General's Office of Civil Rights within the Department of Legal Affairs in 1991.¹ Under current law, the Attorney General has authority to bring a civil or administrative action for damages and for injunctive or other appropriate relief against any person who interferes, or attempts to interfere, by threats, intimidation, or coercion with the rights of another person established under the State Constitution or state law (s. 760.51, F.S.). These civil damages are limited to \$10,000 for each violation, which accrue to the injured person. In addition, if the Attorney General prevails, the Department of Legal Affairs is entitled to reasonable attorney's fees and costs.

Florida Commission on Human Relations

The Florida Commission on Human Relations is the state agency created by the Legislature to hear complaints under the Florida Civil Rights Act of 1992 (ss. 760.01-760.11 and 509.092, F.S.). The act prohibits employment discrimination based on an individual's race, color, religion, sex, national origin, age, handicap, or marital status (s. 760.10, F.S.).

In addition to complaints involving employment discrimination, the commission hears complaints against public lodging establishments and public food service establishments that refuse accommodations or service based on race, creed, color, sex, physical disability, or national origin (s. 509.092, F.S.).² The commission also hears complaints under the Fair Housing Act (ss. 760.20-760.37, F.S.), which prohibits discrimination in the sale or renting of a dwelling on account of race, color, national origin, sex, handicap, familial status, or religion.

State Resolution for Complaints of Discrimination by Certain Clubs

Under current law, certain clubs are prohibited from discriminating against an individual in evaluating an application for membership because of *race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status*. This provision applies to a club that has more than 400 members, that provides regular meal service, and that regularly receives payments (i.e., payments for dues, fees, use of space, facilities, services, meals, or beverages) from nonmembers for business purposes, but does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent (s. 760.60(1), F.S.).

¹ See ch. 91-74, L.O.F.; s. 16.57, F.S. The Office of Civil Rights was created, in part, based on the recommendations of the Florida Supreme Court's Racial and Ethnic Bias Commission for the purpose of bringing injunctive and compensatory suits against individuals who engage in harassment or other inappropriate conduct on the basis of race or ethnicity. See Florida Supreme Court, Racial & Ethnic Bias Commission, *Where the Injured Fly for Justice, Report & Recommendations 7* (Deborah Hardin Wagner ed., 1991), available at <http://www.flcourts.org/sct/sctdocs/bin/racial.pdf> (last visited Mar. 30, 2003).

² Although s. 509.092, F.S., prohibits an establishment from refusing accommodations or service based on race, creed, color, sex, physical disability, or national origin, an establishment is permitted to refuse accommodations or services on the basis that a person is "objectionable or undesirable to the operator."

In addition, current law prohibits this type of club from publishing, circulating, issuing, displaying, posting, or mailing any advertisement, notice, or solicitation containing a statement expressing that the accommodations, advantages, facilities, membership, or privileges of the club are denied to an individual because of *race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status (id.)*.

A person who is discriminated against by a club that violates either of these provisions may file a complaint with the Florida Commission on Human Relations or the Attorney General's Office of Civil Rights (s. 760.60(2), F.S.). After receiving a complaint, the commission or the Attorney General's office has discretion whether to resolve the complaint, but must investigate the alleged discrimination. The commission or the Attorney General's office must give notice to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General's office fails to give notice within 30 days after the complaint is filed, or fails to resolve the complaint within 30 days after notice is given, the person who filed the complaint is authorized to file a lawsuit seeking injunctive relief against the club to discontinue the discriminatory practice or other appropriate action (s. 760.60(3), F.S.).

Federal Relief for Discrimination by Places of Public Accommodation

Under Title II of the Civil Rights Act of 1964, all persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination on the ground of *race, color, religion, or national origin* (42 U.S.C. s. 2000a). The act defines a "place of public accommodation" to include:

- Any inn, hotel, motel, or other establishment that provides lodging to transient guests, other than an establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied by the proprietor of the establishment as his or her residence;
- Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any facility located on the premises of any retail establishment, or any gasoline station; and
- Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment (*id.*).

A person aggrieved by an act or practice of discrimination may bring a civil action in federal court seeking preventative relief, including permanent or temporary injunctions, or restraining orders (42 U.S.C. 2000a-3). In addition, the Attorney General of the United States may also seek preventative relief if he or she has reasonable cause to believe that any person or group is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted under the act, and the pattern or practice is of a nature and is intended to deny the full exercise of those rights (42 U.S.C. s. 2000a-5). The Attorney General may also intervene in actions brought by individuals aggrieved by discriminatory acts or practices if the case is of "general public importance" (42 U.S.C. s. 2000a-3).

III. Effect of Proposed Changes:

Discrimination by Business Establishments and Certain Clubs

The committee substitute prohibits certain clubs and business establishments serving the public from discriminating against any individual by denying to the individual the accommodations, advantages, facilities, membership, or privileges of the business establishment or club because of *race, color, religion, gender, national origin, handicap, age above the age of 21, recreational clothing, mode of transportation, or marital status*. The committee substitute prohibits business establishments serving the public from including statements in their advertisements, notices, or solicitations declaring that the establishment practices these proscribed forms of discrimination.

The committee substitute also prohibits certain clubs from discriminating against any individual in evaluating an application for membership, or from including statements in their advertisements, notices, or solicitations declaring that the club practices discrimination, because of *recreational clothing or mode of transportation*, thereby extending the prohibitions that apply under current law to discrimination because of *race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status* to discrimination because of *recreational clothing or mode of transportation*. The committee substitute applies to a club that has more than 400 members, that provides regular meal service, and that regularly receives payments (i.e., payments for dues, fees, use of space, facilities, services, meals, or beverages) from nonmembers for business purposes, but does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

Enforcement

The committee substitute allows a person who is discriminated against by certain clubs or business establishments serving the public to file a complaint with the Florida Commission on Human Relations or the Attorney General's Office of Civil Rights. After receiving a complaint, the commission or the Attorney General's office has discretion whether to resolve the complaint, but must investigate the alleged discrimination. The commission or the Attorney General's office must give notice to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General's office fails to give notice within 30 days after the complaint is filed, or fails to resolve the complaint within 30 days after notice is given, the person who filed the complaint is authorized to file a lawsuit seeking injunctive relief against the club or business establishment to discontinue the discriminatory practice or other appropriate action.

Effective Date

The committee substitute takes effect upon becoming a law.

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:

The committee substitute authorizes an aggrieved person who is discriminated against by certain clubs or business establishments serving the public, to seek informal resolution of his or her complaint through the Florida Commission on Human Relations or the Attorney General's Office of Civil Rights. If the complaint is not resolved, the committee substitute authorizes the aggrieved person to bring a civil action for injunctive relief to discontinue the discriminatory practice.

C. Government Sector Impact:

The committee substitute may cause a workload increase for the Florida Commission on Human Relations, and for the Office of Civil Rights of the Department of Legal Affairs, associated with potentially increased number of complaints. The committee substitute, however, provides the commission and the Attorney General's office with discretion on whether to resolve each complaint. The committee substitute does not provide an appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The committee substitute prohibits a business establishment serving the public from practicing certain proscribed forms of discrimination. The committee substitute, however, does not define the term "business establishment serving the public." The Legislature may wish to amend the committee substitute to clarify which establishments are prohibited from the specified discriminatory practices.

VIII. Amendments:

None.