

# 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: SB 1502

SPONSOR: Senator Campbell

SUBJECT: Discriminatory Practices/Clubs

DATE: March 23, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill expands civil rights remedies to individuals who have been discriminated by business establishments on the basis of *race, color, religion, gender, national origin, handicap, age, recreational clothing, mode of transportation, or marital status*. It additionally expands the grounds upon which a complaint may be filed with the Florida Commission on Human Relations or the Attorney General based on discrimination by specified clubs if the person was denied access to services or privileges on the basis of *recreational clothing or mode of transportation*.

This bill substantially amends the following section of the Florida Statutes: 760.60, F.S.

## II. Present Situation:

### Attorney General's Office of Civil Rights

The Florida Legislature established the Attorney General's Office of Civil Rights within the Department of Legal Affairs in 1991.<sup>1</sup> The Attorney General has limited independent authority to take action against discrimination under chapter 760, F.S., particularly for violations of civil rights under the Florida Civil Rights Act of 1992. Currently, the Attorney General only has independent authority to investigate and take civil action against violations of constitutional and statutory rights and the violations must have been made through threat, intimidation, or coercion or attempts thereto.<sup>2</sup>

<sup>1</sup> See ch. 91-74, L.O.F.; s. 16.57, F.S. The creation of the Office of Civil Rights was based in part on a recommendation of the Racial and Ethnic Bias Study Commission of the Supreme Court for the purpose of bringing a state suit against individuals and agencies for harassment and brutality against minorities.

<sup>2</sup> See s. 760.51, F.S. These rights prohibit discrimination based upon race, color, religion, gender, national origin, disability or marital status.

### **Florida Commission on Human Relations**

Primary administrative authority and resolution of discrimination matters lies with the Florida Commission on Human Relations (FCHR). The 12-member FCHR was created within the Department of Management Services (administratively only) one year following the creation of the Office of Civil Rights within the Attorney General's office.<sup>3</sup> Specifically, the Florida Commission on Human Relations is statutorily authorized to "receive, initiate, investigate (including subpoena power), seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice" under the Florida Civil Rights Act in the areas of education, employment,<sup>4</sup> housing or public accommodations,<sup>5</sup> and certain private clubs. Although the law says that the FCHR can "act upon complaints alleging any discriminatory practice" under the Florida Civil Rights Act of 1992, the FCHR has construed this authority narrowly to limit its authority to handle discrimination complaints solely administratively.

The FCHR can not initiate an investigation or take any independent action until an individual files a complaint with the FCHR. Under current law, it is the person allegedly injured by the discriminatory practice who must initiate steps to address the discrimination claim. The person who raises the claim may opt to file a complaint with the FCHR, file a civil action, or notify the Attorney General's Office to take action in some circumstances.

### **Civil Remedy for Individuals for Discrimination in Public Places**

Civil remedies for individuals against discrimination in public places such as clubs, accommodations or other business establishments are limited under the law. Under s. 760.60, F.S., an applicant who has been discriminated by a club whose membership exceeds 400, and that provide regular meal services, rents facilities, and collects dues, or a person who has been denied club accommodations, membership, and facilities on the basis of race, color, religion, gender, national origin, disability, age or marital status, may file a complaint against discrimination with the FCHR or the Attorney General. A copy of the complaint must be sent to the club. Within 30 days of the complaint, the FCHR or the Attorney General is required to investigate and send notice to the complainant that it intends to resolve the complaint. If there is such intent, the FCHR or the Attorney General must attempt to resolve the complaint by "informal methods of conference, conciliation and persuasion."

If the FCHR or the Attorney General fails to give such notice, or if it fails to resolve the matter within 30 days after giving notice, the complainant or the Attorney General on behalf of the complainant can file an action. As noted above, upon request by the complainant, the Attorney General on behalf of the complainant, can initiate action for discriminatory practices by private clubs if the alleged discrimination is not eliminated or corrected.

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<sup>3</sup> See. s. 760.03, F.S. This commission however existed as the Commission on Human Rights dating to at least 1977. Most states have a human rights commission, or some similarly named commission, that acts as the investigatory agency for complaint intake and investigations. In some cases, these agencies have exclusive enforcement authority of state civil rights laws, however, in most instances the state attorney general is authorized to intervene, file a complaint, or enforce orders of a commission.

<sup>4</sup> The FCHR and its federal counterpart, the Equal Employment Opportunity Commission (EEOC), sometimes coordinate to conduct intake and investigate individual complaints of employment discrimination.

<sup>5</sup> See s. 509.092, F.S. Public accommodations includes public lodging and eating establishments only. It does not include lodge halls or other similar facilities or private organizations which are made available for public use occasionally or periodically.

The U.S. Attorney General has some authority, which the FCHR and the state Attorney General do not under state law, to enforce the law against discrimination by public facilities or public accommodations. *See* Title II of the Federal Civil Rights Acts of 1964 and 1991. All persons are entitled to goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of *race, color, religion, or national origin*. *See* 42 U.S.C. §2000a. Public accommodations are defined as establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments. The U.S. Attorney General can take independent authority to take civil action if he or she has reasonable cause to believe that the persons or group of persons are engaged in a “pattern or practice of resistance” as to deny full enjoyment of a right and the practice is intended to deny the right fully. *See* 42 U.S.C. §2000a-5. If the U.S. Attorney General wants to expedite the matter, he or she may certify to the court that the matter is of “general public importance.”

### III. Effect of Proposed Changes:

This bill amends s. 760.60, F.S., to expand civil rights remedies available to an individual for specified discriminatory acts by a public establishment. The bill permits an individual to file a complaint with the Florida Commission on Human Relations or the Attorney General for specified discriminatory actions by business establishments serving the public. The discrimination must be based on *race, color, religion, gender, national origin, handicap, age, recreational clothing, mode of transportation, or marital status*. The bill additionally expands the grounds upon which a discrimination complaint may be currently filed against specified clubs whose membership exceeds 400. If a person is discriminated by such club on the basis of his or her *recreational clothing*, or the *mode of transportation*, the person can file a complaint with the Florida Commission on Human Relations or the Attorney General.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

This bill extends civil remedies to individuals who have been discriminated by certain establishments on the basis of recreational clothing or mode of transportation. These

grounds are not currently constitutionally or statutorily protected or recognized grounds for discrimination actions as are race, color, religion, gender, and national origin.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Persons aggrieved by discriminatory practices or policies that may become the basis of an administrative complaint and civil action for damages may benefit from relief afforded by actions taken by the FCHR or the Attorney General on their behalf to eliminate or correct the discriminatory practices at business establishments are not currently subject to the prohibition under s. 760.60, F.S.

**C. Government Sector Impact:**

The bill may affect the workload of the FCHR and the Attorney General but it is indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not define “business establishment” other than as one that serves the public and whose discriminatory action denies an individual “accommodations, advantages, facilities, membership or privileges” which could include restaurants, lodgings, grocery stores or any establishment where goods or services are offered or exhibited for sale, lease, or rental. Fraternal or benevolent organizations, ethnic clubs, and religious organizations where business activity is not prevalent would not be included as they are already exempt under the law.

**VIII. Amendments:**

None.