

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Discriminatory Practices/Clubs
SPONSOR(S): Greenstein
TIED BILLS: **IDEN./SIM. BILLS:** SB 1502

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Workforce and Economic Development (Sub)</u>	<u>3 Y, 2 N</u>	<u>Ken Winker</u>	<u>Paul Whitfield</u>
2) <u>Commerce</u>	_____	_____	_____
3) <u>Business Regulation</u>	_____	_____	_____
4) <u>Judiciary</u>	_____	_____	_____
5) <u>Commerce and Local Affairs Appropriations</u>	_____	_____	_____
6) <u>Appropriations</u>	_____	_____	_____

SUMMARY ANALYSIS

HB 179 provides for civil rights remedies to individuals who have been discriminated against by business establishments (not just specified clubs, as stated in current law) on the basis of race, color, religion, gender, national origin, handicap, age, or marital status and adds recreational clothing and mode of transportation as grounds for the discrimination. The bill also 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 if the person was denied access to services or privileges on the basis of recreational clothing or mode of transportation.

The bill has no fiscal impact and will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

HB 179 amends s. 760.60, F.S., to provide for civil rights remedies to an individual for specified discriminatory acts by a business establishment serving the public and not just specified clubs as is current law. 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, if the discrimination is based on race, color, religion, gender, national origin, handicap, age, *recreational clothing [added, see below]*, *mode of transportation [added, see below]*, or marital status.

The bill also expands the grounds upon which a discrimination complaint may be currently filed against specified clubs by prohibiting a club from discriminating against persons based his or her *recreational clothing*, or the *mode of transportation*.

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. The Office of Civil Rights was created as part of a recommendation of the 1990 Racial and Ethnic Bias Study Commission of the Florida Supreme Court. 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. [Section 760.51, F.S., prohibits 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 and administratively attached to the Department of Management Services (DMS) one year following the creation of the Office of Civil Rights within the Attorney General’s office. The commission previously existed as the Commission on Human Rights as early as 1977 before being placed in DMS.

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 (often

in collaboration with the federal Equal Employment Opportunity Commission), housing or public accommodations (includes public lodging and eating establishments only), 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 chose 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 against by a club whose membership exceeds 400, and that provides 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. The FCHR or the Attorney General must first attempt to resolve the complaint by “informal methods of conference, conciliation and persuasion.”

If the FCHR or the Attorney General fails to give notice to the club, 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.

The U.S. Attorney General has some authority under Title II of the Federal Civil Rights Acts of 1964 and 1991, which the FCHR and the state Attorney General do not have under state law, to enforce the law against discrimination by public facilities or public accommodations. 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* [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; and other covered establishments. The U.S. Attorney General is authorized to independently 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 [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.”

C. SECTION DIRECTORY:

SECTION 1: Amends s. 760.60, F.S., by providing for civil rights remedies to persons who have been discriminated against by business establishments and not just specified clubs as is current law and expands the grounds for such discrimination to include recreational clothing and mode of transportation.

SECTION 2: The bill takes effect upon becoming law.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES