

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 637 Public Lodging Establishments  
**SPONSOR(S):** Business & Professions Subcommittee; Porter  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 900

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Butler	Anstead
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

**SUMMARY ANALYSIS**

Under state and federal law, operators of public lodging establishments are prohibited from discriminating against guests based solely upon the race, color, religion, national origin, or sex, and additionally under state law based solely upon handicap or familial status. Operators are not prohibited by either federal or state law from discriminating against a guest based solely upon the age of the guest.

The bill prohibits operators of public lodging establishments from discriminating against a guest based solely upon the age of the guest, so long as the guest is 18 years of age or older or an emancipated minor, and creates a cause of action under the Florida Civil Rights Act for any person aggrieved by an operator's age discrimination.

The bill may result in a significant fiscal impact for state government (see Fiscal Analysis and Economic Impact Statement section for more detail). The Florida Commission on Human Relations anticipates needing 3 FTE positions, \$187,849 in recurring funds, and \$17,434 in non-recurring funds to implement the bill.

The bill provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Title VII of the Civil Rights Act of 1964<sup>1</sup>**

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for an employer to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

##### **Age Discrimination in Employment Act<sup>2</sup>**

The Age Discrimination in Employment Act of 1967 (ADEA), forbids employment discrimination against anyone at least 40 years of age in the United States. Differing from Title VII, the ADEA only covers employers with 20 or more employees.<sup>3</sup>

##### **Florida Civil Rights Act of 1992**

The Florida Civil Rights Act of 1992 (FCRA) was enacted to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex [or gender], national origin, age, handicap, or marital status...”<sup>4</sup> The FCRA gives a cause of action for discrimination in employment for every protected class above, and in public accommodations for every protected class above except age.<sup>5</sup> Additionally, any violation of any Florida statute in regards to education, employment, or public accommodations gives rise to an additional, separate cause of action if the violation was made based on an unlawful discrimination of any protected class (including age).<sup>6</sup>

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.<sup>7</sup> For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual’s color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

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<sup>1</sup> 42 U.S.C. s. 2000e. *et seq.*

<sup>2</sup> 29 U.S.C. s. 621 to s. 634 (2012).

<sup>3</sup> 29 U.S.C. s. 630 (2012). *See also Morelli v. Cedel*, 141 F.3d 39, 45 (2d Cir. 1998) (stating that the number of employees of the corporation “a U.S. corporation with many foreign employees but fewer than 20 domestic ones would certainly be subject to the ADEA”

<sup>4</sup> ss. 760.01 & 760.07, F.S.

<sup>5</sup> ss. 760.08 & 760.10, F.S. (s. 760.08, F.S., states that, “All persons are entitled to ... accommodations ... without discrimination ... [based on] race, color, national origin, sex, pregnancy, handicap, familial status, or religion.” Compare against s. 760.10, F.S., which states, “It is an unlawful employment practice for an employer ... to discriminate ... [based on] race, color, religion, sex, pregnancy, national origin, **age**, handicap, or marital status.” Because familial status and marital status are likely the same concept, the only protected class that appears within the employment protections but not within the public accommodations protections is age.

<sup>6</sup> ss. 760.07, 760.08, & 760.10, F.S.

<sup>7</sup> s. 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

## **Procedures for Filing Claims under Title VII and the FCRA**

A person may file a charge of an unlawful discrimination with either the federal Equal Employment Opportunity Commission (EEOC) or the Florida Commission on Human Relations (FCHR). A person who wishes to file a complaint with the EEOC must do so within 300 days of a violation in a jurisdiction with a fair employment practices agency (such as Florida, which has the FCHR), or within 180 days in a jurisdiction with no such agency.<sup>8</sup>

The EEOC may investigate the charge of discrimination, or refer it to a local fair employment practices agency, and if it finds reasonable cause to believe a violation of Title VII occurred, it may issue a right to sue notice and the suit must then be filed within 90 days.<sup>9</sup> However, the EEOC will only investigate cases that may violate federal law, and for the purposes of Title VII, age discrimination is limited to discrimination in employment of persons over 40 years of age.

A person who wishes to file a complaint with the FCHR must do so within 365 days of a violation. If a complaint is filed with the FCHR, the FCHR has 180 days to mediate the claim or determine whether there is reasonable cause to conclude that a discriminatory practice prohibited by FCRA took place, at which point it must notify the complainant and respondent of its determination.<sup>10</sup> If the FCHR concludes that there is reasonable cause to conclude that a violation took place, or if it fails to make any determination as required, the aggrieved person may either bring a civil action in an appropriate court, which may be filed within one year of the determination of reasonable cause, or request an administrative hearing under ss. 120.569 and 120.57, F.S., within 35 days of the determination of reasonable cause.<sup>11</sup>

If the FCHR determines that there is no reasonable cause to believe a violation of the FCRA occurred, a complainant may only request an administrative proceeding under ss. 120.569 and 120.57, F.S. If the complainant prevails, a final order from the FCHR may be entered requiring affirmative relief, including back pay. The complainant then has one year to accept the affirmative relief offered, or to bring a civil action in state court as if there had originally been a determination of reasonable cause.<sup>12</sup>

### **Remedies under the FCRA**

Remedies available to persons who bring discrimination claims under the FCRA in a public accommodations case include an order prohibiting the discriminatory practice, compensatory damages and punitive damages.<sup>13</sup> A claimant who prevails in a discrimination claim against a private entity under the FCRA may recover up to \$100,000 in punitive damages.<sup>14</sup> Compensatory damages against private entities, such as damages for mental anguish, loss of dignity, and other intangible injuries, are not limited under the FCRA. However, the total recovery, for a claimant who brings a discrimination claim against the state or its subdivisions is limited under the FCRA to \$300,000.<sup>15</sup>

### **Effect of the Bill**

The bill creates a cause of action under the FCRA for discrimination based on age at a public lodging establishment. The operator of a public lodging establishment is prohibited from refusing accommodations or service or from removing or causing a guest to be removed based solely upon the age of the guest, so long as the guest is 18 years of age or older or an emancipated minor. A person aggrieved by an operator's discrimination may file a charge of unlawful discrimination with the FCHR, and has all the rights and remedies available under s. 760.11, F.S., and the FCRA.

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<sup>8</sup> EEOC Compliance Manual, Chapter 2-IV. The enforcement procedures referenced in this paper do not apply to individuals affected by federal agencies, who have a separate process. 29 C.F.R. part 1614.

<sup>9</sup> 29 C.F.R. s. 1601.70. 42 U.S.C. s. 2000e-5(f)(1); 42 U.S.C. s. 12117.

<sup>10</sup> Section 760.11(3), F.S.

<sup>11</sup> Section 760.11(6), F.S.

<sup>12</sup> Section 760.11(7), F.S.

<sup>13</sup> Section 760.11(5), F.S.

<sup>14</sup> Section 760.11(5), F.S.

<sup>15</sup> Section 760.11(5), F.S., referring to the limited waiver of sovereign immunity in section 768.28, F.S.

B. SECTION DIRECTORY:

**Section 1** amends s. 509.092, F.S., prohibiting refusal of accommodations or service at a public lodging establishment based solely upon age.

**Section 2** amends s. 509.141, F.S., prohibiting removing or causing a guest to be removed from a public lodging establishment based solely upon age.

**Section 3** amends s. 509.142, F.S., prohibiting refusing service at a public lodging establishment based solely upon age.

**Section 4** provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.

2. Expenditures:

	(FY 16-17) Amount	(FY 17-18) Amount	(FY 18-19) Amount
<b><u>Recurring FTE</u></b>			
Senior Attorney	\$ 72,278	\$ 72,278	\$ 72,278
Investigation Specialist II	\$ 56,776	\$ 56,776	\$ 56,776
<u>Secretary Specialist</u>	<u>\$ 29,029</u>	<u>\$ 29,029</u>	<u>\$ 29,029</u>
<b>TOTAL</b>	<b>\$158,083</b>	<b>\$158,083</b>	<b>\$158,083</b>
 Recurring Expense Package			
Senior Attorney	\$10,367	\$10,367	\$10,367
Investigation Specialist II	\$10,367	\$10,367	\$10,367
<u>Secretary Specialist</u>	<u>\$ 9,042</u>	<u>\$ 9,042</u>	<u>\$ 9,042</u>
<b>TOTAL</b>	<b>\$29,776</b>	<b>\$29,776</b>	<b>\$29,776</b>
 <b>TOTAL RECURRING</b>	 <b>\$187,849</b>	 <b>\$187,849</b>	 <b>\$187,849</b>
 <b><u>Non-Recurring</u></b>			
Senior Attorney	\$ 6,085	\$ 6,085	\$ 6,085
Investigation Specialist II	\$ 6,085	\$ 6,085	\$ 6,085
<u>Secretary Specialist</u>	<u>\$ 5,264</u>	<u>\$ 5,264</u>	<u>\$ 5,264</u>
<b>TOTAL NON-RECURRING</b>	<b>\$17,434</b>	<b>\$17,434</b>	<b>\$17,434</b>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.

2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2016, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarified that a public lodging establishment may not deny service or accommodations based solely upon the age of a person 18 years of age or older or upon the age of an emancipated minor.

The staff analysis is drafted to reflect the committee substitute.