

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - #08-006

TO: Commissioner Marc D. Sarnoff, District 2
FROM: Julie O. Bru, City Attorney 
DATE: August 26, 2008
RE: Legal Opinion - 24 hour Gas Stations - Mandatory Security

You have requested a legal opinion on the following question:

Whether it is permissible for the City to adopt an ordinance requiring gas stations that are open twenty four (24) hours a day to provide a security guard on the premises during the entire twenty four (24) hour period.

For the reasons set forth below, your question is answered in the negative.

ANALYSIS

Sections 812.1701-812.175, Fla. Stat. (2007), constitute the Convenience Business Security Act (hereinafter the "Act"), which prescribes the type of security measures which must be taken at certain convenience businesses to protect store employees and the consumer public.¹ The intent of such legislation is expressed in s. 812.172, Fla. Stat. (2007), which states:

"The Legislature finds that the provisions of this act are intended to prevent violent crimes and thereby to protect employees and the consumer public at late-night convenience businesses. It is the further intent of the Legislature that security standards for late-night convenience businesses be uniform throughout this state."²

¹ It is assumed that the gas stations that you are referring to in this request also sell groceries from the premises. The Act defines "convenience business" to mean "any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m. The term "convenience business" does not include:

- (1) A business that is solely or primarily a restaurant.
- (2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.
- (3) A business that has at least 10,000 square feet of retail floor space.

The term "convenience business" does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m." §812.171 Fla. Stat. (2007).

² The Act provides the following safety measures for convenience businesses:

- (1) Every convenience business shall be equipped with the following security devices and standards:

Section 812.1725, Fla. Stat. (2007), preempts this area from local regulation, by providing:

"A political subdivision of this state may not adopt, for convenience businesses, security standards which differ from those contained in ss. 812.173 and 812.174, and all such differing standards, whether existing or proposed, are hereby preempted and superseded by general law, except any local ordinance in effect prior to September 1988 and determined by the Department of Legal Affairs to providing more stringent security standards than those contained in ss. 812.173 and 812.174 shall not be preempted and superseded by general law for a period of 2 years from December 31, 1992."

The statute does, however, provide that Florida Attorney General is the entity given the responsibility of enforcing the provisions of the Act. The attached brochure provides information on the Act and contact information for Attorney General's Office.

- (a) A security camera system capable of recording and retrieving an image to assist in offender identification and apprehension.
- (b) A drop safe or cash management device for restricted access to cash receipts.
- (c) A lighted parking lot illuminated at an intensity of at least 2 foot-candles per square foot at 18 inches above the surface.
- (d) A conspicuous notice at the entrance which states that the cash register contains \$50 or less.
- (e) Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area.
- (f) Height markers at the entrance of the convenience business which display height measures.
- (g) A cash management policy to limit the cash on hand at all times after 11 p.m.
- (2) A convenience business shall not have window tinting that reduces exterior or interior view in a normal line of sight.
- (3) Every convenience business shall be equipped with a silent alarm to law enforcement or a private security agency, unless application for an exemption is made to and granted by the Attorney General. An application for exemption must be in writing and must be accompanied by an administrative fee of \$25 for each store for which an exemption would apply.
- (4) If a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnapping or false imprisonment, as those crimes are identified and defined by Florida Statutes, occurs or has occurred at a convenience business since July 1, 1989, and arises out of the operation of the convenience business, that convenience business shall implement at least one of the following security measures:
 - (a) Provide at least two employees on the premises at all times after 11 p.m. and before 5 a.m.;
 - (b) Install for use by employees at all times after 11 p.m. and before 5 a.m. a secured safety enclosure of transparent polycarbonate or other material that meets at least one of the following minimum standards:
 1. American Society for Testing and Materials Standard D3935 (classification PC110 B 3 0800700) and that has a thickness of at least 0.375 inches and has an impact strength of at least 200 foot pounds; or
 2. Underwriters Laboratory Standard UL 752 for medium power small arms (level one), Bullet Resisting Equipment;
 - (c) Provide a security guard on the premises at all times after 11 p.m. and before 5 a.m.;
 - (d) Lock the business premises throughout the hours of 11 p.m. to 5 a.m., and only transact business through an indirect pass-through trough, trapdoor, or window; or
 - (e) Close the business at all times after 11 p.m. and before 5 a.m.

CONCLUSION

Therefore, until legislatively or judicially determined otherwise, the City is preempted by statute and may not adopt an ordinance requiring gas stations that are open twenty four (24) hours a day to provide a security guard on the premises during the entire twenty four (24) hour period.

PREPARED BY:

George K. Wysong III

George K. Wysong III, Assistant City Attorney

REVIEWED BY:

Maria J. Chiaro

Maria J. Chiaro, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission

When Are Additional Security Measures Required?

Convenience businesses at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, or kidnaping or false imprisonment has occurred in connection with the operation of the business must have one of the following additional security measures in place between 11 p.m. and 5 a.m.:

- At least two employees on the premises at all times
- A secured safety enclosure made of transparent polycarbonate
- A security guard or off-duty law enforcement officer on the premises
- Locked premises, with business conducted through an indirect pass-through, trap door, or window

The additional security measures must be in place for a minimum of 24 months after the date of the most recent crime. After 24 months, the convenience business may file a notice of exemption from the additional security measures with the Office of the Attorney General.

For More Information...

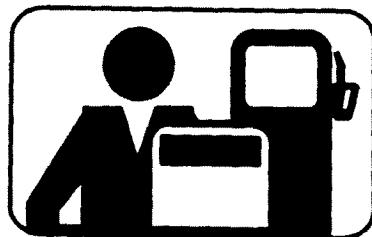
This brochure is designed for informational purposes only and does not describe in detail the requirements of the law. For more specific information on the Convenience Business Security Act, call (850) 414-3360 or write to:

Bureau of Criminal Justice Programs
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050

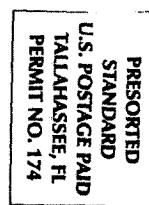
Revised 12/04

Office of Attorney General Bill McCollum
PL-01, The Capitol
Tallahassee, FL 32399-1050

Convenience Business Security Act



Helping to Create
Safer Florida
Convenience
Businesses



Office of Attorney General
Bill McCollum

Message From The Attorney General

Convenience businesses serve an important role in Florida, making life easier for our citizens while creating a large number of jobs. Unfortunately, they also provide convenient targets for criminals.

In 1992, the Florida Legislature passed the Convenience Business Security Act to protect convenience businesses from violent crimes. This brochure is designed to help you better understand the requirements of the Act, which establishes minimum security standards for the operation of convenience businesses.

I encourage every convenience business to use this brochure as a handy guide to complying with the law. Together, we can help make sure Florida's convenience businesses provide the safest possible environment for customers and employees alike.



What Is The Convenience Business Security Act?

The Convenience Business Security Act requires that certain security devices and standards be established at all convenience businesses open anytime

between 11 p.m. and 5 a.m.

The Act, which is contained in sections 812.1701-812.175, Florida Statutes, places enforcement authority within the Office of the Attorney General.

Violations of the law may result in civil penalties of up to \$5,000.

What Are The Minimum Security Standards?

Training in robbery deterrence and safety for each retail employee, conducted through an approved curriculum

- Drop safe or cash management device that is secured to the floor or counter or that weighs at least 500 pounds
- Lighted parking lot
- Notice at the entrance that the cash register contains \$50 or less
- Height markers at the entrance
- Window sign placement allowing an unobstructed view of the sales transaction area from inside and outside the building
- Window tinting that allows for physical identification of all persons in the sales transaction area from outside the building
- A written cash management policy, kept on-site, that limits cash on hand between the hours of 11 p.m. and 5 a.m.
- Security camera system that is capable of retrieving an identifiable image of an offender, including annual test photos and a maintenance log showing maintenance every four months
- A silent alarm
- Additional security measures, if required (see next page)

What Is A Convenience Business?

Under the Act, a convenience business is defined as one that:

- Is primarily engaged in the sale of groceries, or both groceries and gasoline; and
- Is open for business during any hours between 11 p.m. and 5 a.m.

Excluded from the requirements of the Act are businesses that:

- Are solely or primarily in the restaurant business; or
- Have five or more employees on the premises between the hours of 11 p.m. and 5 a.m.; or
- Have more than 10,000 square feet of retail floor space; or
- Have the owner or a member of the owner's family working on the premises between the hours of 11 p.m. and 5 a.m.