

March 1964

Fraud on the Innkeeper: The Need for Legislative Reform

Gerald F. Richman

Follow this and additional works at: <https://scholarship.law.ufl.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Gerald F. Richman, *Fraud on the Innkeeper: The Need for Legislative Reform*, 16 Fla. L. Rev. 622 (1964).
Available at: <https://scholarship.law.ufl.edu/flr/vol16/iss4/6>

This Note is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

FRAUD ON THE INNKEEPER: THE NEED FOR LEGISLATIVE REFORM

Every state has recognized the need for criminal legislation for the protection of the innkeeper or hotel owner against fraudulent guests.¹ The problems in this area are unique due to the transient nature of the guests, the general and unqualified extension of credit, and the fact that the "commodity" dispensed is in the form of good will and intangible services rather than tangible property. The scope of this note will be confined to the legal problems of the innkeeper² concerning fraudulent guests, with particular emphasis on the weakness and need for improvement of present legislation in this field.

A conservative estimate indicates that Florida hotel and motel owners were defrauded to the extent of over a half-million dollars in 1962.³ This problem is particularly pressing in Florida because of the influx of the professional "skip" artist during the lucrative winter season. Other states are confronted with the problem in degrees vary-

1. ALA. CODE tit. 24, §§18, 19 (Supp. 1961); ALASKA STAT. §11.20.480 (1962); ARIZ. REV. STAT. ANN. §13-318 (Supp. 1963); ARK. STAT. ANN. §§41-1908,-1909 (1947); CAL. PEN. CODE §537; COLO. REV. STAT. ANN. §§68-1-1 to -1-3 (1953); CONN. GEN. STAT. REV. §53-371 (1958); DEL. CODE ANN. tit. 11, §602 (1953); FLA. STAT. §§509.151, .161, .162 (1963); GA. CODE ANN. §§52-9902 to -9905 (1963); HAWAII REV. LAWS §272-1 (1955); IDAHO CODE ANN. §§18-3107, -3108 (1947); ILL. REV. STAT. ch. 71, §§31, 32 (1961); IND. ANN. STAT. §§37-201, -202, -204, -205, -206 (1949); IOWA CODE §§713.7, .8 (1963); KAN. GEN. STAT. ANN. §§36-201, -203, -206, -207, -208 (1949); KY. REV. STAT. §§373.340, 434.290 (1963); LA. REV. STAT. §§21:21, :22 (1950); ME. REV. STAT. ANN., ch. 100, §§42-46 (1954); MD. ANN. CODE art. 27, §§161, 162 (1957); MASS. GEN. LAWS ch. 140, §§12-14 (1932); MICH. COMP. LAWS §§28.502-.504 (1948); MINN. STAT. §§327.05-.08 (1961); MISS. CODE ANN. §§7154-7158 (1952); MO. REV. STAT. §419.080 (1959); MONT. REV. CODE ANN. §94-3550 (1947); NEB. REV. STAT. §§41-124, -125, -127, -128 (1960); NEV. REV. STAT. §§108.480, 205.445 (1960); N.H. REV. STAT. ANN. §580:6 (1955); N.J. REV. STAT. §2A:111-19 (1951); N.M. STAT. ANN. §40A-16-16 to -18 (Supp. 1963); N.Y. PEN. LAW §925; N.C. GEN. STAT. §§14-110 (1953), 44-30 (1950); OHIO REV. CODE ANN. §2911.14 (Page 1954); OKLA. STAT. tit. 21, §1503 (1961); ORE. REV. STAT. §165.230 (1961); PA. STAT. ANN. tit. 18, §4871 (1945); R.I. GEN. LAWS ANN. §11-18-26 (1956); S.C. CODE ANN. §§5-3, -5, -6 (1962); S.D. CODE §13.4206 (1939); TENN. CODE ANN. §§62-707 to -709 (1955); TEX. PEN. CODE art. 1551 (1948); UTAH CODE ANN. §§38-2-2, 73-31-1 (Supp. 1963); VT. STAT. ANN. tit. 13, §2010 (1958); VA. CODE ANN. §18.1-120 (1960); WASH. REV. CODE §19.48.110 (1957); W. VA. CODE ANN. §4981 (1961); WIS. STAT. §943.21 (1961); WYO. STAT. ANN. §§33-249 to -251 (1957).

2. The term innkeeper shall hereinafter be used to refer collectively to hotel, motel, motor court, apartment house, boarding house, rooming house, inn, trailer park, and restaurant proprietors, keepers, and managers.

3. Interview With David Arpin, Executive Vice President of the Florida

ing with their volume of tourism. Certainly the innkeeper can bring a civil suit against these people, but as a practical matter, the judgments are often uncollectible, leaving recovery at a minimum. As a result fraud remains widespread.

Most states recognize the innkeeper's common law lien⁴ on guest's baggage. Innkeeper's lien statutes generally provide for a specified waiting period on the part of the proprietor in order to allow a guest to reclaim his baggage by settling his bill, followed by a public sale or auction of the baggage and other personal belongings remaining unclaimed. Waiting periods range from a high of six months⁵ to a low of ten days.⁶ Requirements for notification or publication vary from that of the sending of a registered letter to the address on the guest register and posting a public notice for four weeks,⁷ to a mere ten days notice by poster.⁸ Florida requires a ninety-day waiting period and thirty-days notice by mail and newspaper.⁹ This remedy, however, proves relatively ineffectual against the skip artist who obtains accommodations by the use of very inexpensive (and often empty) luggage, or surreptitiously exits with inexpensive luggage after having accumulated numerous charges. Also, the innkeeper who, in order to protect his lien¹⁰ against surreptitious removal of baggage, "locks out" a guest faces possible civil or criminal liability if he acts too hastily.¹¹ Thus, civil remedies afford little practical protection against the "professional skipper." Without strong criminal legislation the innkeeper's only real protection is to require payment in advance, an undesirable and inexpedient practice for his type of business.

General larceny statutes¹² provide little protection, for they are applicable only when the guest actually departs with property of the establishment. Fraud and false pretense statutes are similarly unsuited to the needs of the innkeeper, for they require that the fraudu-

Hotel and Motel Association, in Jacksonville, Florida, Nov. 7, 1963.

4. *Ruff v. Hanson*, 222 Ala. 676, 133 So. 716 (1931); *Halsey v. Svitack*, 163 Minn. 253, 203 N.W. 968 (1925). See FLA. STAT. §§85.18, .19 (1963).

5. MASS. GEN. LAWS ch. 140, §14 (1932).

6. MISS. CODE ANN. §7158 (1952).

7. MASS. GEN. LAWS ch. 140, §14 (1932).

8. TENN. CODE ANN. §62-709 (1955).

9. FLA. STAT. §509.191 (1963).

10. *E.g.*, FLA. STAT. §§85.18, .19 (1963); KAN. GEN. STAT. ANN. §36-201 (1949); ME. REV. STAT. ANN. ch. 100, §42 (1954).

11. See [1953-1954] FLA. ATT'Y GEN. BIENNIAL REP. 55, stating that the owner or operator of a hotel or apartment house would not be criminally liable for justifiably locking a delinquent tenant out of his room or apartment and thereby preventing him from recovering his personal property. This implies that the owner or operator would be liable if his action was not justified. See also *Kloepfel v. Bradford*, 133 Fla. 695, 182 So. 839 (1938).

12. FLA. STAT. §811.021 (1963).

lent guest obtain property by false personation¹³ or, when the provisions are directed at fraudulent procurement of credit, the false representation as to financial standing must be in writing.¹⁴ Thus, when credit and services are obtained by unwritten false pretenses or representations¹⁵ the innkeeper is without protection except that afforded by specific legislation directed at his unique situation.

In addition to a basic statute to facilitate the prosecution of fraudulent guests, legislation is needed to allow the innkeeper to act with reasonable legal safety when he has probable cause to believe he is being defrauded. Absence of such legislation renders the protection afforded by any statute in this area little more than illusory. The innkeeper finds himself vulnerable to actions of false imprisonment, false arrest, and malicious prosecution. The constant threat of such action provides the professional skipper with a powerful weapon to deter the innkeeper from acting until he is virtually positive of the fraud; by then the skipper has skipped leaving worthless luggage and a debt that, as a practical matter, is generally uncollectible.

PRESENT LEGISLATION

Innkeeper statutes throughout the nation range from those that are very short¹⁶ and relatively ineffectual to those that are more comprehensive and provide some measure of protection.¹⁷ Florida's recently amended statutes¹⁸ fall within the latter group, but nevertheless provide far less than desirable protection. The laws vary considerably with regard to the type of establishment covered. For example, the Delaware statute includes "any inn, tavern or hotel"¹⁹ as contrasted with California's broad statute, which encompasses "any hotel, inn, restaurant, boarding house,²⁰ lodging house, apartment house, bungalow,

13. FLA. STAT. §817.02 (1963).

14. FLA. STAT. §§817.03, .05 (1963).

15. It appears that this is a major "loophole" in Florida law, one in dire need of corrective legislation. However, a discussion of this broad area is beyond the scope of this Note. See N.M. STAT. ANN. §40A-16-16 (Supp. 1963) for an innkeeper law that includes a general provision on obtaining "services" by false pretenses.

16. DEL. CODE ANN. tit. 11, §602 (1953): "Whoever absconds from any inn, tavern or hotel in this state without first paying the keeper or proprietor thereof any bill owed for board and lodging, shall be fined \$25.00 or imprisoned 30 days, or both."

17. E.g., MD. ANN. CODE art. 27, §§161, 162 (1957); NEV. REV. STAT. §205.445 (1960); WASH. REV. CODE §19.48.110 (1957).

18. FLA. STAT. §§509.151, .161, .162 (1963), see APPENDIX.

19. DEL. CODE ANN. tit. 11, §602 (1953).

20. See *State v. McRae*, 170 N.C. 712, 86 S.E. 1039 (1915).

motor court, motel, or auto camp."²¹ The present trend is toward more extensive coverage, as evidenced by recent amendments to existing legislation.²² All such statutes require an intent to defraud, and many include "prima facie" provisions specifying that proof of certain enumerated acts by the defendant will raise a rebuttable presumption²³ of fraudulent intent.²⁴ These acts generally include departure without paying or offering to pay,²⁵ surreptitious removal or attempted removal of baggage,²⁶ failure to pay on demand,²⁷ and payment by check or other instrument that is not backed by sufficient funds.²⁸

Statutory provisions making an act evidence of intent generally have been upheld as constitutional.²⁹ Such provisions have withstood attacks that they deny trial by jury,³⁰ permit imprisonment of the defendant for bad debts,³¹ and constitute an attempt to use a criminal statute for collection of civil debts.³² They do not shift the burden of proof from the prosecution,³³ although they do provide an effective means of establishing at least prima facie evidence of the requisite fraudulent intent. The constitutionality of the "prima facie" provisions of Florida Statutes, section 509.161 has never been specifically tested

21. CAL. PEN. CODE §537.

22. See, e.g., ARIZ. REV. STAT. ANN. §13-318 (Supp. 1963); FLA. STAT. §§509.151, .161, .162 (1963); N.M. STAT. ANN. §40A-16-16 (Supp. 1963).

23. See *State v. Hill*, 166 N.C. 298, 81 S.E. 408 (1914).

24. E.g., FLA. STAT. §509.161 (1963); KAN. GEN. STAT. ANN. §36-207 (1949); R.I. GEN. LAWS ANN. §11-18-26 (1956).

25. See MISS. CODE ANN. §7155 (1952).

26. See NEV. REV. STAT. §205.445 (1960).

27. See ARK. STAT. ANN. §41-1909 (1947).

28. WASH. REV. CODE §19.48.110 (1957).

29. Annot., 51 A.L.R. 1160 (1927). See Brosman, *The Statutory Presumption*, 5 TUL. L. REV. 178 (1931).

30. *State v. Kingsley*, 108 Mo. 135, 18 S.W. 994 (1892).

31. *State v. Benson*, 28 Minn. 424, 10 N.W. 471 (1881); *State v. Yardley*, 95 Tenn. 546, 32 S.W. 481 (1895); *In re Milecke*, 52 Wash. 312, 100 Pac. 743 (1909).

32. *State v. Sibley*, 152 La. 825, 827, 94 So. 410 (1922). The court stated that the innkeeper statute had "no application where credit has been given; and hence does not cover the case of one who had no intent to cheat or defraud, who was not expected to pay immediately upon procuring such food or accommodations, and who simply finds himself unable to pay at some future time, when his bill becomes due. But it seems to us that it is a proper exercise of legislative functions to declare and punish as an offender, one who, intending to cheat and defraud, procures food or accommodation, on the representation, as it were, that he has the wherewith to pay for it and will do so immediately, and yet fails or refuses to do so." *Ibid.*

33. *Commonwealth v. Berryman*, 72 Pa. Super. 479 (1919).

in this regard in any reported cases, but the Florida Supreme Court has upheld similar "presumption" provisions of other Florida statutes.³⁴

Compounding Crime and Extortion

The primary interest of the innkeeper, except in extreme cases of fraud, is to receive payment for services rendered, rather than to prosecute the guest. Present law leaves the innkeeper on a tightrope in his attempts to obtain payment. If the accommodations were in fact fraudulently obtained, the innkeeper who agrees not to prosecute in return for full or partial payment of the debt is guilty of compounding a crime, a misdemeanor at common law.³⁵ However, Florida's "compounding a crime" statute³⁶ refers only to felonies. Since violation of Florida Statutes, section 509.151³⁷ constitutes only a misdemeanor, an offer not to prosecute would not be criminally actionable.³⁸ The innkeeper, however, must be extremely careful not to couch any offer in threatening terms, for in so doing he could subject himself to prosecution for extortion.³⁹ In this regard it is advisable that the innkeeper in Florida promise only that "he will state to the prosecuting officer and to the court the unadorned fact that restitution has been made."⁴⁰

False Arrest

A major problem confronting the innkeeper lies in the onerous threat of actions for false arrest and false imprisonment. Statutes with strong prima facie evidence provisions, coupled with well informed prudence on the part of the innkeeper, tend to decrease this problem. Nevertheless, without a strong statutory assurance of protection, the innkeeper, as well as the peace officer, is understandably reluctant to

34. *City of Coral Gables v. Brasher*, 120 So. 2d 5, 9 (Fla. 1960). In upholding the validity of a statute providing that any impairment of health of police officers caused by certain diseases resulting in disability shall be presumed to have been suffered in the line of duty unless shown to the contrary, the Florida Supreme Court stated: "the general rule that so long as there is a rational connection between the fact proven and the ultimate fact presumed and the adverse party is given reasonable opportunity to proffer evidence and have a jury decide the facts in issue, there is no violation of due process or equal protection. . . ." *Ibid.* See *Atlantic Coast Line R.R. v. Webb*, 112 Fla. 449, 150 So. 741 (1933).

35. *State v. Carver*, 69 N.H. 216, 39 Atl. 973 (1898).

36. FLA. STAT. §843.14 (1963).

37. See APPENDIX.

38. Compounding a crime is a problem in states such as New Mexico whose innkeeper statute prescribes varying degrees of felonies depending on the amount of the fraud. N.M. STAT. ANN. §40A-16-16 (Supp. 1963).

39. FLA. STAT. §836.05 (1963).

40. Address by E. A. Shure, Surety Company Claim Men's Forum, Jan. 16,

act. Such reluctance works strongly in favor of the skipper.⁴¹ Any unlawful detention, no matter how slight, will support an action for false imprisonment.⁴² In an unusual case,⁴³ a Missouri hotel owner followed a departing guest whom he claimed owed fifty cents. He then induced a police officer to attempt to collect the money. The court held that when, in the presence of the hotel owner, the officer threatened the guest so as to require him to return and pay the amount, the owner had at least impliedly ratified the acts of the officer and was liable for false arrest.

The Florida Innkeeper Statutes⁴⁴

The problem of false arrest has been somewhat lessened by Florida Statutes, section 509.162, which permits the innkeeper or a peace officer to take into custody a person suspected of having committed fraud and to detain him for "such reasonable period of time as may be necessary to bring him before the nearest magistrate." Part (2) of the same statute similarly authorizes the innkeeper or peace officer to detain a guest absconding with property of the establishment. On its face this enactment presents a number of improvements over past legislation, but there are a number of glaring weaknesses still unremedied. A major weakness is found in the provision that authorizes only the manager or assistant manager, in the absence of the owner or keeper, to make an arrest, leaving a night desk clerk who lacks the status of assistant manager powerless to act. Certainly, it is not advisable to insert a broad and ambiguous provision such as that contained in the recently enacted "skipper law" of Texas.⁴⁵ There, it is specified that the departing person appear before the "room clerk or other agent of the establishment."⁴⁶ During the 1961 Florida Legislature an attempt was made to amend section 509.162. Senate Bill No. 882, which

1946. As a practical matter, the county solicitor's office in many parts of Florida will often aid in the matter of collection to avoid any risk of prosecution of the innkeeper for extortion.

41. The innkeeper can avoid the risk of prosecution or suit for false arrest by giving the facts to the state attorney's office, instead of swearing out a warrant himself. This method, however, overlooks the need for immediate detention and provides the skipper added time to escape.

42. See *Martin v. Lincoln Park West Corp.*, 219 F.2d 622 (7th Cir. 1955); *Watkins v. Oaklawn Jockey Club*, 86 F. Supp. 1006 (D.C. Ark. 1950), *affirmed*, 183 F.2d 440 (8th Cir. 1950).

43. *Gibson v. Ducker*, 170 Mo. App. 135, 155 S.W. 462 (1913). See also *Knowlton v. Ross*, 114 Mo. 18, 95 Atl. 281 (1915).

44. See APPENDIX.

45. Texas Laws 1963, ch. 476, at 1193.

46. See OPS. ATT'Y GEN. TEXAS, May 23, 1963, which points out the possible

was defeated, would have expanded the statute to include an "owner or keeper including manager, assistant manager, desk clerk or other person in authority." The omission of this broader enumeration in the present act apparently indicates a legislative intent to limit the persons who may act under the statute. It appears, however, that the present version is too restrictive. It is suggested that both problems would be alleviated by addition of the provision, "desk clerk or other person in charge of the establishment by authority of the owner or keeper in the absence of the owner or keeper. . . ."

A second weakness of section 509.162 is apparent in the paradox of the provision of part (2) that limits a taking into custody to the premises when a person "has taken" property illegally from the premises. It seems unlikely that once property is taken from the premises, the person will be available on the premises for detention. This section should be amended to include any person who "has taken or is taking" personal property belonging to the establishment illegally from the premises. This would allow an innkeeper to detain a person who is apprehended removing property of a value under one hundred dollars. Under present Florida law, since such removal constitutes only petit larceny,⁴⁷ a misdemeanor, the innkeeper is powerless to act without an arrest warrant.⁴⁸

The innkeeper's right of detention is further limited to the premises. This restriction is desirable to prevent the manager or assistant manager from pursuing violators and becoming involved in a possible altercation.⁴⁹

It is important to note that the present act was originally characterized as the "innkeeper's shoplifting bill."⁵⁰ This is due to its marked similarity to Florida's Shoplifting Law,⁵¹ which allows a merchant to detain and take into custody a person whom he has probable cause to believe has unlawfully taken merchandise. Section (3) of the Shoplifting Law⁵² additionally specifies that the peace officer and the merchant or his employee shall be immune against civil and criminal actions of false imprisonment and false arrest if probable cause for the

confusion that may result from the use of the words "other agents." The "skipper" could possibly avoid the statutory presumption of departure with intent not to pay by protesting his bill with some employee of the hotel not connected with the management.

47. FLA. STAT. §811.021(3) (1963).

48. 6 FLA. LAW & PRACTICE §174 (1957).

49. Interview, *supra* note 3.

50. This characterization was made in the 1961 Florida Legislature with respect to proposed House Bill No. 90, which was defeated.

51. FLA. STAT. §811.022 (1963).

52. *Ibid.*

detention or arrest can be shown.⁵³ This law has been recently upheld in an action for false arrest against a merchant.⁵⁴ A similar provision intended for the protection of the innkeeper was incorporated in the proposed version of Florida Statutes, section 509.162 in 1963, but was deleted as unacceptable. A provision of this nature is not only highly desirable, but a dire necessity for successful use of statutes concerning the defrauding of an innkeeper.

It is suggested that a "detention" provision should be specifically limited in scope to avoid possible abuse of this privilege by the innkeeper. Florida Statutes, section 509.162 allows detention for "such reasonable period of time as may be necessary to take him before the nearest magistrate." Although this is a desirable limitation on the authority of the peace officer, a narrower restriction is necessary with respect to the innkeeper. The innkeeper's concern is not to bring the "suspected skipper" before a magistrate, but rather to detain him long enough to allow police officials to handle the matter. This is particularly true since detention often takes place at night when a magistrate may not be available, although a police official should be. To avoid an unreasonable detention by the innkeeper the statute should specify the right of the innkeeper to use only "reasonable non-deadly force," and restrict the time of detention to that necessary to turn the suspect over to the authorities. For example, the statute might specify one hour as the maximum permissible period of detention.

To provide for the situation in which a guest honestly forgets his wallet,⁵⁵ the innkeeper should be required to comply with reasonable requests of the guest during the period of detention. For example, the guest should be allowed to call his wife or other persons who could verify his forgetfulness and thus negate any inference of an intent to defraud.

53. *Isaiah v. Great Atl. & Pac. Tea Co.*, 111 Ohio App. 537, 174 N.E.2d 128 (1959), where the court held that such provisions do not shift the burden of proof and that the defendant still must show probable cause.

54. *Rothstein v. Jackson's of Coral Gables, Inc.*, 133 So. 2d 331 (3d D.C.A. Fla. 1961).

55. Concern for the protection of innocent persons in this and similar situations was evidenced by objections in committee to the original bill. An attempt was made to insert the phrase, "intended or premediated," before the phrase, "the failure to make payments," wherever it appeared in the parts of the bill that correspond to §509.151 and §509.161 as presently enacted. Although this addition was contained in the submitted amended version of Senate Bill No. 441 (1963), the phrase was deleted in the final bill as enacted. If the phrase had not been deleted, a proof of intent would have been required in even the "presumption section" of the statute, thus destroying the utility of such a section to the prosecutor. Interview, *supra* note 3.

The present Florida statute⁵⁶ evinces still another vital weakness. Since violation of its provisions constitutes a misdemeanor, the existing penalty provision affords an inadequate deterrent to many professional skippers who run up bills of hundreds and even thousands of dollars.⁵⁷ Unfortunately, this is true of the innkeeper laws found in the great majority of states. The desirable solution would be to make the first offense a misdemeanor and the second offense a felony,⁵⁸ and to make the amount obtained by fraud determinative of whether the offense is a felony or a misdemeanor,⁵⁹ as is done in Florida today in differentiating between petit larceny and grand larceny.⁶⁰ This should further be coupled with a statutory authorization of an offer to compromise as recognized by Wyoming.⁶¹ Thus, first and minor offenders would not be penalized heavily, and the habitual criminal, who would probably have difficulty in raising the amount of a large bill, would be effectively penalized. Moreover, the risk of prosecution for compounding a felony and extortion would be minimized by the compromise provision.

Malicious Prosecution

The threat of an action for malicious prosecution is an effective weapon in the hands of the professional skipper. Such actions have been successfully prosecuted against innkeepers.⁶² In Florida the plaintiff must prove malice as well as the lack of probable cause.⁶³ Evidence of false representation establishing probable cause for the arrest and prosecution will constitute a valid defense to such action,⁶⁴ as will a showing that the action was instituted upon advice of reputable counsel.⁶⁵ In this area there appears to be no need for a specific statutory provision to protect the innkeeper from harassment by threats and actions of malicious prosecution; the innkeeper can best protect himself by consultation with counsel prior to prosecuting.

56. FLA. STAT. §509.151 (1963).

57. See Interview, *supra* note 3.

58. ARIZ. REV. STAT. ANN. §13-318 (Supp. 1963).

59. N.M. STAT. ANN. §40A-16-16 (Supp. 1963).

60. FLA. STAT. §811.021 (1963).

61. WYO. STAT. ANN. §33-250 (1957).

62. *E.g.*, *Saner v. Bowker*, 69 Mont. 463, 222 Pac. 1056 (1924), conviction of the innkeeper for malicious prosecution was upheld where the facts revealed that prior to the prosecution by the innkeeper a valid credit arrangement existed; *Galzian v. Henry*, 71 W. Va. 292, 76 S.E. 440 (1912), where an innkeeper had plaintiff arrested but failed on trial or in defense of the malicious prosecution action to show proof of an arrest warrant.

63. See *White v. Miami Home Milk Producers Ass'n*, 143 Fla. 518, 197 So. 125 (1940); *Hopke v. O'Byrne*, 148 So. 2d 755 (1st D.C.A. Fla. 1963).

64. *Andrews v. Hotel Sherman*, 138 F.2d 524 (7th Cir. 1943).

65. *Cragin v. DePape*, 159 Fed. 691 (5th Cir. 1908); *Adler v. Segal*, 108 So.

Delay in Payments

Several innkeeper statutes contain specific provisions making the statute inapplicable when there has been an agreement for a delay in payments. Such provisions vary from a "special agreement for delay in payment,"⁶⁶ to an "agreement in writing for more than ten days delay in such payment."⁶⁷ It is not necessary that "lack of delay" be alleged by the prosecution; rather the agreement for delay is a matter of defense.⁶⁸ The Florida statute that specifies "an agreement in writing for delay in payment"⁶⁹ should provide ample protection without the unnecessary complication of a specified period for such delay.

Posting

Several states require that the statute be posted in various places.⁷⁰ Such provisions raise the question whether the statute will be enforceable if the innkeeper fails to post it as required. Some statutes specify that there can be no conviction until the innkeeper makes it "appear to the court that such notice was posted."⁷¹ A problem is raised if there is merely a requirement for posting without any specificity as to the effect of the failure to post.⁷² Florida avoids this problem, as do the majority of states, by omitting any requirement for posting.⁷³ The present trend is toward elimination of posting requirements, as evidenced by the repeal of provisions in Idaho⁷⁴ and,

2d 773 (3d D.C.A. Fla. 1959).

66. *E.g.*, MISS. CODE ANN. §7155 (1952); N.J. REV. STAT. §2A:111-19 (1951); R.I. GEN. LAWS ANN. §11-18-26 (1956).

67. *E.g.*, ME. REV. STAT. ANN. ch. 100, §45 (1954); MINN. STAT. §327.08 (1961); NEB. REV. STAT. §41-128 (1960).

68. *State v. Turnidge*, 93 S.W.2d 1031 (Mo. Ct. App. 1936).

69. FLA. STAT. §509.151 (1963). See also S.D. CODE §13.4206 (1939).

70. *E.g.*, ALA. CODE tit. 24, §20 (1958); MASS. GEN. LAWS ch. 140, §13 (1932); WYO. STAT. ANN. §33-251 (1957).

71. *E.g.*, ALA. CODE tit. 24, §20 (Supp. 1961); COLO. REV. STAT. ANN. §68-1-3 (1953); GA. CODE ANN. §52-9905 (1933).

72. *E.g.*, OHIO REV. CODE ANN. §2911.14 (Page 1954); WYO. STAT. ANN. §33-251 (1957). See *Ops. ATT'Y GEN. OHIO*, No. 2951 (1931), where it is stated that such failure to post would not be a defense to a prosecution. *But see Ops. ATT'Y GEN. NEW MEXICO*, No. 4999 (1947-1948).

73. See *Ely v. Charellen Corp.*, 120 F.2d 984 (5th Cir. 1941), where mere failure to post a copy of Fla. Laws 1933, ch. 16042, §40, which provides that a hotel owner is not liable for loss of guest's jewelry not deposited with the hotel, was held not a ground to impose liability upon such hotel. This indicates a judicial de-emphasis on the importance of posting in Florida.

74. Idaho Sess. Laws 1903, at 410, repealed by Idaho Sess. Laws 1951, ch. 112, §13.

very recently, in New Mexico.⁷⁵

Other Weaknesses in Present Legislation

Statutes, such as the recently enacted "Skipper Law" of Texas,⁷⁶ that apply only to persons obtaining board or lodging by various means of deception are exceedingly difficult to enforce in that they require proof that the fraudulent representation be made at the time the food, lodging, or other accommodations were obtained.⁷⁷ Florida Statutes, section 509.151 avoids this difficulty by merely referring to obtaining such accommodations with a fraudulent intent, with no reference to the time or means by which such intent was evidenced. This determination is instead made a part of the establishment of a *prima facie* case and evidence of fraudulent intent.

At least two states in requiring a demand for payment specify a period of time to allow payment before the demand and refusal to pay may be used to establish *prima facie* evidence of fraudulent intent. Louisiana allows five days;⁷⁸ South Dakota allows ten.⁷⁹ A requirement of delay following a demand for payment appears unwarranted and unnecessary, and would certainly work to the advantage of the professional skipper who, in most instances, will have departed long before expiration of the statutory period.

There appears to be a general reluctance to include "regular boarders" within the scope of innkeeper statutes. Illinois, for example, specifically excepts regular boarders from its statute.⁸⁰ Such exclusion seems unnecessary, since the fact that a person is a regular boarder would generally negate a fraudulent intent.⁸¹ The New York courts, when faced with this question, have refused to convict when a guest has paid regularly for six months and then fails to pay,⁸² when a regular boarder openly leaves a hotel and openly takes his baggage,⁸³ and when a guest merely leaves to obtain money to pay a bill, absent any

75. N.M. Laws 1899, ch. 36, §1, repealed by N.M. Laws 1963, ch. 303, §30-1.

76. Texas Laws 1963, ch. 476, at 1193.

77. Whatley, *Analysis of Texas House Bill No. 514 "Skipper Law,"* released by Texas Hotel & Motel Ass'n, 1963.

78. LA. REV. STAT. §21:22 (1950).

79. S.D. CODE §13.4206 (1939).

80. ILL. REV. STAT., ch. 71, §32 (1961).

81. See *McLemore v. State*, 55 Okla. Crim. 155, 27 P.2d 172 (1933), where the defendant who obtained lodging from a rooming house operator on credit was held not guilty of obtaining lodging with intent to defraud, notwithstanding his subsequent failure to make payment. The court particularly noted that the defendant was not a transient, and that he resided at the boarding house.

82. *People v. Astor*, 269 App. Div. 250, 55 N.Y.S.2d 283 (Sup. Ct. 1945).

83. *People v. Klas*, 79 Misc. 452, 141 N.Y. Supp. 212 (Ct. Spec. Sess. 1913).

suspicious circumstances.⁸⁴ A statutory exclusion of regular boarders appears unwise because skippers frequently manage to stay for weeks or months at one establishment before arousing the suspicions of the innkeeper.⁸⁵

Regarding the removal of baggage, most provisions, including those of Florida, merely specify "surreptitious" removal. An additional provision covering removal by force, menace, or threats⁸⁶ is desirable to avoid the defensive claim by the skipper that his removal was not surreptitious.

Other desirable statutory provisions not present in the Florida statute or in those of the majority of states, include payment by negotiable paper on which payment is refused⁸⁷ and use of a fictitious name,⁸⁸ as constituting *prima facie* evidence of the intent to defraud. Other states⁸⁹ make the act of false registration a separate offense. It is further suggested that all statutory provisions, which refer to the acts of failure to pay on demand and absconding without paying as *prima facie* evidence of fraudulent intent,⁹⁰ should include the words "in full"⁹¹ after the word "payment" wherever it appears. This would prevent a failure of proof when the skipper leaves a token or comparatively insignificant amount behind to avoid prosecution.

Prosecutions for defrauding an innkeeper have failed for reasons other than the inadequacy of legislation. For example, defendants have been acquitted because of averments that the false representations were made when the defendant was leaving;⁹² statements on the stand by the innkeeper that he was not deceived by the false representations, thus negating any reliance on the fraud;⁹³ or improper instructions, such as the statement that the refusal to pay, if believed by the jury, was proof of guilt instead of *prima facie* evidence of intent subject to explanation and rebuttal.⁹⁴

84. *People v. Nicholson*, 25 Misc. 266, 55 N.Y. Supp. 447 (Ct. Spec. Sess. 1898).

85. Interview, *supra* note 3.

86. See CAL. PEN. CODE §537.

87. *E.g.*, ALA. CODE tit. 24, §19 (Supp. 1961); OHIO REV. CODE ANN. §2911.14 (Page 1954); WASH. REV. CODE §19.48.110 (1957).

88. *E.g.*, KAN. GEN. STAT. ANN. §36-207 (1949); MO. REV. STAT. §419.080 (1959); OKLA. STAT. tit. 21, §1503 (1961).

89. DEL. CODE ANN. tit. 11, §601 (1953).

90. FLA. STAT. §§509.151, .152 (1963).

91. See MD. ANN. CODE art. 27, §§161, 162 (1957).

92. *Garrett v. State*, 125 Tex. Crim. 351, 68 S.W.2d 507 (1934).

93. *Chauncey v. State*, 130 Ala. 71, 30 So. 403 (1901).

94. *Commonwealth v. Berryman*, 72 Pa. Super. 479 (1919).

CONCLUSION

A survey of present innkeeper legislation reveals a general lack of uniformity and numerous weaknesses. Even the broader and more comprehensive statutes omit necessary provisions found in some of the shorter ones. To alleviate the unique problems of the innkeeper in dealing with fraudulent guests, the following principles are suggested as guidelines for the drafting of future legislation:

(1) The enumeration of the type of establishments should specifically include all businesses that primarily provide food or accommodations for transient guests.

(2) The classification and extent of the penalty should vary with the amount of the fraud, with a more severe penalty provided for second offenders.

(3) There should be a clause or separate statute enumerating specific acts as prima facie evidence of an intent to defraud. In addition to the provisions of Florida Statutes, section 509.161, the following acts should be presumptive of fraudulent intent, providing there are not other conflicting statutory provisions of the particular state:

(a) The giving of a false or fictitious name.

(b) Payment by negotiable paper on which payment was refused.

(c) Failure to pay in full on demand.

(d) Removal of baggage by force or threats.

(e) Surreptitiously causing baggage to be removed.

(4) The innkeeper and the peace officer should have a right of detention when they have probable cause to believe, and do believe, that the statute is being violated. However, the innkeeper's right of detention should be limited to a specific period of time, with authorization for the use of reasonable non-deadly force.

(5) Both the innkeeper and the peace officer should be immunized against civil and criminal liability for false arrest when there is probable cause for detention.

(6) Detention by the innkeeper should be limited to the premises.

(7) Detention should be allowed when there is probable cause to believe, and actual belief, that personal property has been or is being taken from the premises.

(8) Dismissal of the action should be encouraged upon payment in full of the amount owed; providing that such payment is made prior to arraignment.

(9) The right to accept compromise offers should be specifically authorized to avoid prosecution for compounding crime.

(10) The innkeeper should be specifically immunized against prosecution for extortion based on offers not to prosecute or offers to compromise, providing that such offers are not couched in a threatening manner.

(11) The enumeration of those persons allowed to act under the statute should be broad enough to include, in addition to the owner or keeper, all persons properly in authority in the absence of the owner or keeper. Special care must be taken to avoid ambiguities such as the term "other agents," while at the same time the other extreme of too much specificity must be avoided to meet the need for flexibility.

This list is not intended to be complete; nor is it a panacea for the problems of the innkeeper in this field. Rather, it is hoped that these suggestions will be considered in drafting the stronger and more comprehensive legislation needed to meet the unique business situation of the innkeeper.

The major problem confronting the legislator involves a balancing of interests. On the one hand is the need to protect the innocent person from unnecessary detention by the over-zealous innkeeper. On the other hand is the need of the innkeeper for a limited right of detention, unrestrained by a fear of civil or criminal liability for false arrest. The likelihood that the privilege of detention will be abused in a business that depends so heavily upon "good will" should be realistically balanced against the "imaginary horrors" that weaken the needed legislation and serve largely to protect the fraudulent guest.

GERALD F. RICHMAN

APPENDIX

FLA. STAT. ch. 509 (1963): HOTEL AND RESTAURANT COMMISSION.

Section 509.151 Obtaining lodging with intent to defraud; penalty.

Any person who shall obtain food, lodging or other accommodations at any hotel, motel, apartment house, rooming house, inn, boarding house, trailer park or restaurant, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment in the county jail not to exceed 3 months or by fine not exceeding \$100.00; provided, that if any owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of such establishment has probable cause to believe, and does believe, that any person has obtained food, lodging or other accommodations at such establishment with intent to defraud the owner or keeper thereof, and upon demand for payment being made, and there being no dispute as to the amount owed, failure to make payment shall constitute prima facie evidence of intent to defraud; provided, further, that the provisions of this section shall not apply where there has been an agreement in writing for delay in payments.

Section 509.161 Rules of evidence in prosecutions.

In prosecutions under §509.151, proof that lodging, food or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or by absconding without paying or offering to pay for such food, lodging or accommodations, or by surreptitiously removing or attempting to remove baggage, or if any owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of such establishment has probable cause to believe, and does believe, that any person has obtained food, lodging or other accommodations at such establishment with intent to defraud the owner or keeper thereof upon failure to make payment upon demand being made therefor, and there being no dispute as to the amount owed, shall constitute prima facie evidence of the fraudulent intent mentioned in this chapter.

Section 509.162 Obtaining lodging or food with intent to defraud; detaining of violator and arrest by police officer.

Any peace officer or owner or keeper, including manager or assistant manager, in the absence of the owner or keeper, of any hotel, apartment house, tourist camp, motel, rooming house, trailer court or restaurant, who has probable cause to believe, and does believe:

(1) That any person has obtained food, lodging or other accommodations at such establishments with intent to defraud the owner or keeper thereof, as referred to in §509.161, or

(2) That any person has taken personal property belonging to said establishments illegally from the premises, may take such person into custody on the premises and detain him for such reasonable period of time as may be necessary to take him before the nearest magistrate.