

By Senator Myers

27-1614-98

1 A bill to be entitled
2 An act relating to public food service
3 establishment regulation; transferring certain
4 powers, duties, functions, and assets of the
5 Department of Business and Professional
6 Regulation with respect to regulating public
7 food service establishments to the Department
8 of Health; amending s. 20.165, F.S.; renaming
9 the Division of Hotels and Restaurants;
10 creating s. 381.0074, F.S.; providing for a
11 mobile food dispensing registry; prescribing
12 guidelines for temporary food service events;
13 creating s. 381.00742, F.S.; prescribing rights
14 of food service establishments; creating s.
15 381.00744, F.S.; providing for admission of,
16 and ejection of, undesirable guests; providing
17 rights and duties of operators and guests of
18 establishments; creating s. 381.00746, F.S.;
19 providing rules and guidelines with respect to
20 theft of property; providing penalties;
21 amending ss. 381.006, 381.0072, 381.0101,
22 399.01, 509.013, 159.27, 316.1955, 404.056,
23 500.12, 717.1355, 877.24, 509.032, 509.035,
24 509.072, 509.091, 509.092, 509.101, 509.141,
25 509.142, 509.151, 509.162, 509.191, 509.211,
26 509.2112, 509.215, 509.221, 509.241, 509.251,
27 509.261, 509.281, 509.291, 509.302, F.S., to
28 conform to the changes made by the act;
29 providing for the continued effect of rules;
30 providing for the continuation of judicial and
31 administrative proceedings; amending s.

1 386.205, F.S.; prohibiting smoking in public
2 food service establishments; transferring and
3 renumbering s. 509.213, F.S., relating to
4 emergency first aid; transferring and
5 renumbering s. 509.214, F.S., relating to
6 notification of automatic gratuity charge;
7 transferring and renumbering s. 509.232, F.S.,
8 relating to school carnivals and fairs;
9 transferring and renumbering s. 509.292, F.S.,
10 relating to misrepresenting food or food
11 products; repealing s. 386.203(1)(p), F. S.,
12 which provides for the inclusion of specified
13 restaurants in the definition of the term
14 "public place"; repealing s. 509.036, F.S.,
15 relating to food service inspector
16 standardization; repealing s. 509.039, F.S.,
17 relating to food service manager certification;
18 repealing s. 509.049, F.S., relating to food
19 service employee training; providing for
20 appointment of a transition advisory committee;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. All powers, duties, functions, records,
26 personnel, property, and unexpended balances of
27 appropriations, allocations, and other funds of the Department
28 of Business and Professional Regulation relating to the public
29 food service establishment portion of the Division of Hotels
30 and Restaurants described in part I of chapter 509, Florida
31 Statutes, are transferred to the Department of Health by a

1 type two transfer as defined in section 20.06, Florida
2 Statutes. The Department of Health may organize, classify, and
3 manage the positions transferred in a manner that will reduce
4 duplication, achieve maximum efficiency, and ensure
5 accountability.

6 Section 2. Subsection (2) of section 20.165, Florida
7 Statutes, is amended to read:

8 20.165 Department of Business and Professional
9 Regulation.--There is created a Department of Business and
10 Professional Regulation.

11 (2) The following divisions of the Department of
12 Business and Professional Regulation are established:

13 (a) Division of Administration.

14 (b) Division of Alcoholic Beverages and Tobacco.

15 (c) Division of Certified Public Accounting.

16 1. The director of the division shall be appointed by
17 the secretary of the department, subject to approval by a
18 majority of the Board of Accountancy.

19 2. The offices of the division shall be located in
20 Gainesville.

21 (d) Division of Florida Land Sales, Condominiums, and
22 Mobile Homes.

23 (e) Division of Public Lodging ~~Hotels and Restaurants.~~

24 (f) Division of Pari-mutuel Wagering.

25 (g) Division of Professions.

26 (h) Division of Real Estate.

27 1. The director of the division shall be appointed by
28 the secretary of the department, subject to approval by a
29 majority of the Florida Real Estate Commission.

30 2. The offices of the division shall be located in
31 Orlando.

1 (i) Division of Regulation.

2 (j) Division of Technology, Licensure, and Testing.

3 Section 3. Subsection (11) of section 381.006, Florida
4 Statutes, is amended to read:

5 381.006 Environmental health.--The department shall
6 conduct an environmental health program as part of fulfilling
7 the state's public health mission. The purpose of this program
8 is to detect and prevent disease caused by natural and manmade
9 factors in the environment. The environmental health program
10 shall include, but not be limited to:

11 (11) A food service protection function as provided in
12 this chapter ~~Mosquito and pest control functions as provided~~
13 ~~in chapters 388 and 482.~~

14 Section 4. Section 381.0072, Florida Statutes, is
15 amended to read:

16 381.0072 Food service protection.--It is ~~shall be~~ the
17 duty of the Department of Health ~~and Rehabilitative Services~~
18 to adopt and enforce sanitation rules consistent with law to
19 ensure the protection of the public from food-borne illness.
20 These rules shall provide the standards and requirements for
21 the storage, preparation, packaging, serving, vending, or
22 display of food in food service establishments as defined in
23 this section and which are not permitted or licensed under
24 chapter 500 ~~or chapter 509.~~

25 (1) DEFINITIONS.--As used in this section, the term:

26 (a) "Department" means the Department of Health ~~and~~
27 ~~Rehabilitative Services~~ or its representative county health
28 department.

29 (b) "Food service establishment" means any operation
30 facility, as described in this paragraph, that stores,
31 prepares, packages, serves, vends, or otherwise provides food

1 for human consumption ~~where food is prepared and intended for~~
2 ~~individual portion service, and includes the site at which~~
3 ~~individual portions are provided. The term includes any such~~
4 ~~facility regardless of whether consumption is on or off the~~
5 ~~premises and regardless of whether there is a charge for the~~
6 ~~food. The term includes detention facilities, child care~~
7 ~~facilities, schools, institutions, civic or fraternal~~
8 ~~organizations, and bars and lounges. The term does not~~
9 ~~include private homes where food is prepared or served for~~
10 ~~individual family consumption; nor does the term include~~
11 ~~churches, synagogues, or other not-for-profit religious~~
12 ~~organizations as long as these organizations serve only their~~
13 ~~members and guests and do not advertise food or drink for~~
14 ~~public consumption, nor does the term include or any operation~~
15 ~~facility or establishment permitted or licensed under chapter~~
16 ~~500 or chapter 509; nor does the term include operations~~
17 ~~exempted by rules adopted under paragraph (2)(a)any theater,~~
18 ~~if the primary use is as a theater and if patron service is~~
19 ~~limited to food items customarily served to the admittees of~~
20 ~~theaters.~~

21 (c) "Operator" means the owner, operator, keeper,
22 proprietor, lessee, manager, assistant manager, agent, or
23 employee of a food service establishment.

24 (2) DUTIES.--

25 (a) The department shall adopt rules consistent with
26 law prescribing minimum sanitation standards and manager
27 certification requirements as prescribed in this section ~~s.~~
28 ~~509.039~~, which shall be enforced in food service
29 establishments as defined in this section. The sanitation
30 standards must address, but are not limited to, the following:
31 construction, operation, and maintenance of establishments;

1 plan review; design, construction, installation, and
2 maintenance of food equipment; employee training, health,
3 hygiene, and work practices; food supplies, food preparation,
4 food storage and service; and sanitary facilities and
5 controls, including water supply and sewage disposal,
6 plumbing, toilet facilities, garbage and refuse, and vermin
7 control. Public and private schools, hospitals licensed under
8 chapter 395, nursing homes licensed under part II of chapter
9 400, child care facilities as defined in s. 402.301, and
10 residential facilities colocated with a nursing home or
11 hospital if all food is prepared in a central kitchen that
12 complies with nursing or hospital regulations shall be exempt
13 from the rules developed for manager certification. The
14 department shall administer a comprehensive inspection,
15 monitoring, and sampling program to ensure such standards are
16 maintained. The regulation and inspection of food service
17 establishments licensed under this section, with regard to
18 food safety protection standards and required training and
19 testing of food service establishment personnel, are preempted
20 to the state.~~With respect to food service establishments~~
21 ~~permitted or licensed under chapter 500 or chapter 509, the~~
22 ~~department shall assist the Division of Hotels and Restaurants~~
23 ~~of the Department of Business and Professional Regulation and~~
24 ~~the Department of Agriculture and Consumer Services with~~
25 ~~rulemaking by providing technical information.~~

26 (b) The department shall carry out all provisions of
27 this chapter and all other applicable laws and rules relating
28 to the inspection or regulation of food service establishments
29 as defined in this section, for the purpose of safeguarding
30 the public's health, safety, and welfare.

31

1 (c) The department shall inspect each food service
2 establishment as often as necessary to ensure compliance with
3 applicable laws and rules. The department shall have the right
4 of entry and access to these food service establishments at
5 any reasonable time.

6 ~~(d) The department or other appropriate regulatory~~
7 ~~entity may inspect theaters exempted in subsection (1) to~~
8 ~~ensure compliance with applicable laws and rules pertaining to~~
9 ~~minimum sanitation standards. A fee for inspection shall be~~
10 ~~prescribed by rule, but the aggregate amount charged per year~~
11 ~~per theater establishment shall not exceed \$300, regardless of~~
12 ~~the entity providing the inspection.~~

13 (3) LICENSES REQUIRED.--

14 (a) Licenses; annual renewals.--Each food service
15 establishment regulated under this section shall obtain a
16 license from the department annually. Food service
17 establishment licenses shall expire annually and shall not be
18 transferable from one place or individual to another. ~~However,~~
19 ~~those facilities licensed by the department's Office of~~
20 ~~Licensure and Certification, the Children and Families Program~~
21 ~~Office, or the Developmental Services Program Office are~~
22 ~~exempt from this subsection. It is shall be a misdemeanor of~~
23 ~~the second degree, punishable as provided in s. 381.0061, s.~~
24 ~~775.082, or s. 775.083, for such an establishment to operate~~
25 ~~without this license. The department may refuse a license, or~~
26 ~~a renewal thereof, to any establishment that is not~~
27 ~~constructed or maintained in accordance with law and with the~~
28 ~~rules of the department. Annual application for renewal shall~~
29 ~~not be required, provided the information of record was not~~
30 ~~changed.~~

1 (b) Application for license.--Each person who plans to
2 open a food service establishment not regulated under chapter
3 500 ~~or chapter 509~~ shall apply for and receive a license prior
4 to the commencement of operation.

5 (c) Display of license.--A food service establishment
6 that offers catering services must display its license number
7 on all advertising for catering services.

8 (4) LICENSE; INSPECTION; FEES.--

9 (a) The department is authorized to collect fees from
10 establishments licensed under this section ~~and from those~~
11 ~~facilities exempted from licensure under paragraph (3)(a).~~ It
12 is the intent of the Legislature that the total fees assessed
13 under this section be in an amount sufficient to meet the cost
14 of carrying out the provisions of this section, including the
15 cost of inspector standardization.

16 (b) The fee schedule for food service establishments
17 licensed under this section shall be prescribed by rule, but
18 the aggregate license fee per establishment shall not exceed
19 \$300.

20 (c) The license fees shall be prorated on a quarterly
21 basis. Annual licenses shall be renewed as prescribed by rule.

22 (d) The fact that a food service establishment is
23 operated in conjunction with a public lodging establishment
24 does not relieve the food service establishment of the
25 requirement that it be licensed separately as a food service
26 establishment.

27 (5) FINES; SUSPENSION OR REVOCATION OF LICENSES;
28 PROCEDURE.--

29 (a) The department may impose fines against the
30 establishment or operator regulated under this section for
31 violations of sanitary standards, in accordance with s.

1 381.0061. All amounts collected shall be deposited to the
2 credit of the County Health Department Trust Fund administered
3 by the department.

4 (b) The department may suspend or revoke the license
5 of any food service establishment licensed under this section
6 that has operated or is operating in violation of any of the
7 provisions of this section or the rules adopted under this
8 section. Such food service establishment shall remain closed
9 when its license is suspended or revoked.

10 (c) The department may suspend or revoke the license
11 of any food service establishment licensed under this section
12 when such establishment has been deemed by the department to
13 be an imminent danger to the public's health for failure to
14 meet sanitation standards or other applicable regulatory
15 standards.

16 (d) No license shall be suspended under this section
17 for a period of more than 12 months. At the end of such
18 period of suspension, the establishment may apply for
19 reinstatement or renewal of the license. A food service
20 establishment which has had its license revoked may not apply
21 for another license for that location prior to the date on
22 which the revoked license would have expired.

23
24 In addition to any other penalty that may be imposed for a
25 violation of this subsection, the operator of a food service
26 establishment may be required to attend and complete a
27 department-sponsored or approved food-safety course.

28 (6) IMMINENT DANGERS; STOP-SALE ORDERS.--

29 (a) In the course of epidemiological investigations or
30 for those establishments regulated under this chapter, the
31 department, to protect the public from food that is

1 unwholesome or otherwise unfit for human consumption, may
2 examine, sample, seize, and stop the sale or use of food to
3 determine its condition. The department may stop the sale and
4 supervise the proper destruction of food when the State Health
5 Officer or his or her designee determines that such food
6 represents a threat to the public health. If the operator of a
7 food service establishment licensed under this chapter has
8 received official notification from a health authority that a
9 food or food product from that establishment has potentially
10 contributed to any instance or outbreak of food-borne illness,
11 the food or food product must be maintained in safe storage in
12 the establishment until the responsible health authority has
13 examined, sampled, seized, or requested destruction of the
14 food or food product.

15 (b) The department may determine that a food service
16 establishment regulated under this section is an imminent
17 danger to the public health and require its immediate closure
18 when such establishment fails to comply with applicable
19 sanitary and safety standards or due to natural disasters and,
20 because of such failure, presents an imminent threat to the
21 public's health, safety, and welfare. The department may
22 accept inspection results from state and local building and
23 firesafety officials and other regulatory agencies as
24 justification for such actions. Any facility so deemed and
25 closed shall remain closed until allowed by the department or
26 by judicial order to reopen.

27 (c) Upon such determination, the department shall
28 issue a notice to show cause and an emergency order of
29 suspension. Such order shall be served upon the food service
30 establishment by the department, and the establishment shall
31 be closed. An operator who resists such closure is subject to

1 further administrative action by the department and is
2 punishable as provided in s. 381.0061. The department shall
3 provide an inspection within 24 hours following such closure
4 and shall review all relevant information to determine whether
5 the establishment has met the requirements to resume
6 operations.

7 (d) The department may attach a sign that states
8 "Closed to Protect Public Health and Safety" to such an
9 establishment and may require the licensee to immediately stop
10 service until notification to the contrary is provided by the
11 department.

12 (e) The department may further adopt rules for issuing
13 emergency orders after business hours and on weekends and
14 holidays in order to ensure the timely closure of an
15 establishment under this section.

16 (7) MISREPRESENTING FOOD OR FOOD PRODUCTS.--No
17 operator of any food service establishment regulated under
18 this section shall knowingly and willfully misrepresent the
19 identity of any food or food product to any of the patrons of
20 such establishment. Food used by food service establishments
21 shall be identified, labeled, and advertised in accordance
22 with the provisions of chapter 500.

23 (8) FOOD SERVICE MANAGER CERTIFICATION; FOOD SERVICE
24 EMPLOYEE TRAINING.--

25 (a) The department shall adopt, by rule, food safety
26 protection standards for the training and certification of all
27 food service managers who are responsible for the storage,
28 preparation, display, or serving of foods to the public in
29 establishments regulated under this section. These standards
30 are to be adopted by the department to ensure that, upon
31 successfully passing a test, a manager of a food service

1 establishment has demonstrated a knowledge of basic food
2 protection practices. These standards must also provide for a
3 certification program that authorizes private or public
4 agencies to conduct an approved test and certify the results
5 of those tests to the department. The fee for the test may
6 not exceed \$50. All managers employed by a food service
7 establishment must have passed this test and received a
8 certificate attesting thereto. Managers have a period of 90
9 days after employment to pass the required test.

10 (b) The department shall adopt, by rule, minimum food
11 safety protection standards for the training of all food
12 service employees who are responsible for the storage,
13 preparation, display, or serving of foods to the public in
14 establishments regulated under this section. These standards
15 shall not include an examination or certification. It shall
16 be the duty of the licensee of the food service establishment
17 to provide training in accordance with the described rule to
18 all employees under the licensee's supervision or control.
19 The licensee may designate a certified food service manager to
20 perform this function as an agent of the licensee.

21 (9) FOOD SERVICE ESTABLISHMENT RANKING.--The ranking
22 of food service establishments is preempted to the state;
23 however, any local ordinance establishing a ranking system in
24 existence before October 1, 1988, may remain in effect.

25 (10) FOOD SERVICES STANDARDS ADVISORY COUNCIL.--

26 (a) The Food Services Standards Advisory Council,
27 hereafter known as the "council," consisting of nine members,
28 is created to assist the department with the implementation of
29 this section, including food service inspector standardization
30 and food service manager certification. The council shall also
31 serve as the review board for the variance process described

1 in this section. The State Health Officer shall appoint the
2 members of the council, as follows:

3 1. The state epidemiologist or his or her designee.

4 2. Two county health department representatives.

5 3. Four food service industry representatives.

6 4. One consumer representative not affiliated with the
7 food service industry.

8 5. One representative of the State Health Office.

9 (b) Members shall be appointed for a 4-year term and
10 may be reappointed to one additional term.

11 (c) The council may elect one member to serve as
12 chairperson and one member to serve as vice chairperson. The
13 term of office for chairperson and vice chairperson shall be
14 for 2 years.

15 (d) The purpose of the council is to promote better
16 relations, understanding, and cooperation between the industry
17 and the department; to suggest improved means of protecting
18 the health of persons being served; to give the department the
19 benefit of its knowledge and experience concerning how
20 applicable laws and rules affect the industry; to promote and
21 coordinate educational and certification efforts aimed at
22 improving food protection and preventing food-borne illness;
23 and to review variance requests submitted to the department.

24 (e) The council shall meet at least quarterly, or upon
25 the call of the Secretary of Health, for the purpose of
26 reviewing food standards and making recommendations to the
27 department for rule or statutory amendments, and for reviewing
28 variance requests as described in subsection (11). The
29 department shall provide administrative and clerical support
30 services for the council.

31

1 (f) The members of the council shall serve without
2 compensation, but shall be entitled to receive reimbursement
3 for per diem and travel expenses pursuant to s. 112.061.

4 (11) FACILITY PLAN REVIEWS; VARIANCES.--

5 (a) The department may establish, by rule, the process
6 for and fees to support conducting facility plan reviews.

7 (b)1. The department may grant variances from
8 construction standards in hardship cases, which variances may
9 be less restrictive than the provisions specified in this
10 section or by rules adopted under this section. A variance may
11 not be granted pursuant to this section until the department
12 is satisfied that:

13 a. The variance shall not adversely affect the health
14 of the public.

15 b. No reasonable alternative exists for the required
16 construction.

17 c. The hardship was not caused intentionally by the
18 action of the applicant.

19 2. The Food Services Standards Advisory Council shall
20 review applications for variances and recommend agency action
21 at their quarterly meetings. The department shall make
22 arrangements to expedite emergency requests for variances, to
23 ensure that such requests are acted upon within 30 days of
24 receipt.

25 3. The department shall establish by rule a fee for
26 the cost of the variance process. Such fee may not exceed \$150
27 for routine variance requests and \$300 for emergency variance
28 requests.

29 (12) FOOD SERVICE INSPECTION REPORT.--The operator of
30 a food service establishment must maintain the latest food
31

1 service inspection report or a duplicate copy on the premises
2 and make the report available to the public upon request.

3 Section 5. Section 381.0074, Florida Statutes, is
4 created to read:

5 381.0074 Mobile food dispensing vehicle registry;
6 temporary food service events.--

7 (1) It is the duty of each operator of a food service
8 establishment that provides commissary services to maintain a
9 daily registry verifying that each mobile food dispensing
10 vehicle that receives such services is properly licensed by
11 the department. In order that such licensure may be readily
12 verified, each mobile food dispensing vehicle operator shall
13 permanently affix in a prominent place on the side of the
14 vehicle, in figures at least 2 inches high and in contrasting
15 colors from the background, the operator's food service
16 establishment license number. Before providing commissary
17 services, each food service establishment must verify that the
18 license number displayed on the vehicle matches the number on
19 the vehicle operator's food service establishment license.

20 (2) TEMPORARY FOOD SERVICE EVENTS.--

21 (a) The term "temporary food service event" means any
22 event of 30 days or less in duration at which food is
23 prepared, served, or sold to the public.

24 (b) The department shall administer a public
25 notification process for temporary food service events and
26 distribute educational materials that address safe food
27 storage, preparation, and service procedures.

28 1. Sponsors of temporary food service events shall
29 notify the department not less than 3 days prior to the
30 scheduled event of the type of food service proposed, the time
31 and location of the event, a complete list of food service

1 vendor owners and operators participating in each event, and
2 the current license numbers of all food service establishments
3 participating in each event. Notification may be completed
4 orally, by telephone, in person, or in writing. A food
5 service establishment or food service vendor may not use this
6 notification process to circumvent the license requirements of
7 this chapter.

8 2. The department shall keep a record of all
9 notifications received for proposed temporary food service
10 events and shall provide appropriate educational materials to
11 the event sponsors.

12 3.a. A food service establishment or other food vendor
13 must obtain a license from the department for each temporary
14 food service event in which it participates.

15 b. A food service establishment holding a current
16 license from the department may operate under the regulations
17 of such a license at temporary food service events of 3 days
18 or less in duration.

19 Section 6. Section 381.00742, Florida Statutes, is
20 created to read:

21 381.00742 Food service establishments; rights as
22 private enterprises; rules and notices.--

23 (1) Food service establishments are private
24 enterprises, and the operator has the right to refuse
25 accommodations or service to any person who is objectionable
26 or undesirable to the operator, but such refusal may not be
27 based upon race, creed, color, sex, physical disability, or
28 national origin. A person aggrieved by a violation of this
29 section or a violation of a rule adopted under this section
30 has a right of action pursuant to s. 760.11.

31

1 (2) Any operator of a food service establishment may
2 establish reasonable rules for the management of the
3 establishment and its guests and employees; and each guest or
4 employee sojourning, eating, or employed in the establishment
5 must conform to and abide by such rules so long as the guest
6 or employee remains in or at the establishment. Such rules
7 shall be deemed to be a special contract between the operator
8 and each guest or employee using the services or facilities of
9 the operator. Such rules shall control the liabilities,
10 responsibilities, and obligations of all parties. Any rules
11 established pursuant to this subsection must be printed in the
12 English language and posted in a prominent place within the
13 food service establishment. Such posting shall also include
14 notice that a current copy of this chapter is available in the
15 office for public review.

16 Section 7. Section 381.00744, Florida Statutes, is
17 created to read:

18 381.00744 Admission and ejection of undesirable
19 guests; process; conduct; defrauding; penalties; property.--

20 (1) The operator of any food service establishment may
21 remove or cause to be removed from such establishment, in the
22 manner provided in this section, any guest of the
23 establishment who, while on the premises of the establishment,
24 illegally possesses or deals in controlled substances as
25 defined in chapter 893 or is intoxicated, profane, lewd, or
26 brawling; who indulges in any language or conduct which
27 disturbs the peace and comfort of other guests or which
28 injures the reputation, dignity, or standing of the
29 establishment; who fails to make payment for food, beverages,
30 or services; or who, in the opinion of the operator, is a
31 person the continued entertainment of whom would be

1 detrimental to the establishment. The admission to, or the
2 removal from, such establishment may not be based upon race,
3 creed, color, sex, physical disability, or national origin.

4 (2) The operator of the food service establishment
5 shall notify such guest that the establishment no longer
6 desires to entertain the guest and shall request that such
7 guest immediately depart from the establishment. Such notice
8 may be given orally or in writing. If the notice is in
9 writing, it shall be as follows:

10 "You are hereby notified that this establishment no
11 longer desires to entertain you as its guest, and you are
12 requested to leave at once. To remain after receipt of this
13 notice is a misdemeanor under the laws of this state."

14
15 If such guest has paid in advance, the establishment shall, at
16 the time such notice is given, tender to such guest the unused
17 portion of the advance payment.

18 (3) Any guest who remains or attempts to remain in any
19 such establishment after being requested to leave is guilty of
20 a misdemeanor of the second degree, punishable as provided in
21 s. 775.082 or s. 775.083.

22 (4) If any person is illegally on the premises of any
23 food service establishment, the operator of such establishment
24 may call upon any law enforcement officer of this state for
25 assistance. It is the duty of such law enforcement officer,
26 upon the request of such operator, to place under arrest and
27 take into custody for violation of this section any guest who
28 violates subsection (3) in the presence of the officer. If a
29 warrant has been issued by the proper judicial officer for the
30 arrest of any violator of subsection (3), the officer shall
31 serve the warrant, arrest the person, and take the person into

1 custody. Upon arrest, with or without warrant, the guest will
2 be deemed to have given up any right to use or to have
3 abandoned such right of use of the premises, and the operator
4 of the establishment may then make such premises available to
5 other guests. However, the operator of the establishment
6 shall employ all reasonable and proper means to care for any
7 personal property that may be left on the premises by such
8 guest and shall refund any unused portion of moneys paid by
9 such guest for the use of such premises.

10 (5) The operator of a food service establishment may
11 refuse accommodations or service to any person whose conduct
12 on the premises of the establishment displays intoxication,
13 profanity, lewdness, or brawling; who indulges in language or
14 conduct such as to disturb the peace or comfort of other
15 guests; who engages in illegal or disorderly conduct; who
16 illegally possesses or deals in controlled substances as
17 defined in chapter 893; or whose conduct constitutes a
18 nuisance. Such refusal may not be based upon race, creed,
19 color, sex, physical disability, or national origin.

20 (6) An operator may take a person into custody and
21 detain that person in a reasonable manner and for a reasonable
22 time if the operator has probable cause to believe that the
23 person was engaging in disorderly conduct in violation of s.
24 877.03 on the premises of the licensed establishment and that
25 such conduct was creating a threat to the life or safety of
26 the person or others. The operator shall call a law
27 enforcement officer to the scene immediately after detaining a
28 person under this subsection.

29 (7) A law enforcement officer may arrest, either on or
30 off the premises of the licensed establishment and without a
31 warrant, any person the officer has probable cause to believe

1 violated s. 877.03 on the premises of a licensed establishment
2 and, in the course of such violation, created a threat to the
3 life or safety of the person or others.

4 (8) An operator or a law enforcement officer who
5 detains a person under subsection (6) or makes an arrest under
6 subsection (7) is not civilly or criminally liable for false
7 arrest, false imprisonment, or unlawful detention on the basis
8 of any action taken in compliance with subsection (6) or
9 subsection (7).

10 (9) A person who resists the reasonable efforts of an
11 operator or a law enforcement officer to detain or arrest that
12 person in accordance with this section is guilty of a
13 misdemeanor of the first degree, punishable as provided in s.
14 775.082 or s. 775.083, unless the person did not know or did
15 not have reason to know that the person seeking to make such
16 detention or arrest was the operator of the establishment or a
17 law enforcement officer.

18 (10) Any person who obtains food or other
19 accommodations having a value of less than \$300 at any food
20 service establishment with intent to defraud the operator
21 thereof is guilty of a misdemeanor of the second degree,
22 punishable as provided in s. 775.082 or s. 775.083; if such
23 food or other accommodations have a value of \$300 or more,
24 such person is guilty of a felony of the third degree,
25 punishable as provided in s. 775.082, s. 775.083, or s.
26 775.084.

27 (11) The operator of a food service establishment is
28 not under any obligation to accept for safekeeping any moneys,
29 securities, jewelry, precious stones, wearing apparel, goods,
30 or other property of any kind belonging to any guest, and, if
31 such are accepted for safekeeping, the operator is not liable

1 for the loss thereof unless such loss was the proximate result
2 of fault or negligence of the operator. However, the
3 liability of the operator shall be limited to \$1,000 for such
4 loss, if the food service establishment gave a receipt for the
5 property (stating the value) on a form which stated, in type
6 large enough to be clearly noticeable, that the food service
7 establishment was not liable for any loss exceeding \$1,000 and
8 was only liable for that amount if the loss was the proximate
9 result of fault or negligence of the operator.

10 (12) Any property with an identifiable owner which is
11 left in a food service establishment, other than property
12 belonging to a guest who has vacated the premises without
13 notice to the operator and with an outstanding account, which
14 property remains unclaimed after being held by the
15 establishment for 90 days after written notice to the guest or
16 owner of the property, shall become the property of the
17 establishment. Property without an identifiable owner which is
18 found in a food service establishment is subject to the
19 provisions of chapter 705.

20 Section 8. Section 381.00746, Florida Statutes, is
21 created to read:

22 381.00746 Rules of evidence in prosecutions; theft of
23 personal property; process; penalties.--

24 (1) In prosecutions under s. 381.00744, proof that
25 food or other accommodations were obtained by false pretense;
26 by false or fictitious show of property; by absconding without
27 paying or offering to pay for such food or accommodations; or
28 by surreptitiously removing or attempting to remove personal
29 belongings shall constitute prima facie evidence of fraudulent
30 intent. If the operator of the establishment has probable
31 cause to believe, and does believe, that any person has

1 obtained food or other accommodations at such establishment
2 with intent to defraud the operator thereof, the failure to
3 make payment upon demand therefor, there being no dispute as
4 to the amount owed, shall constitute prima facie evidence of
5 fraudulent intent in such prosecutions.

6 (2) Any law enforcement officer or operator of a food
7 service establishment who has probable cause to believe that
8 theft of personal property belonging to such establishment has
9 been committed by a person and that the officer or operator
10 can recover such property or the reasonable value thereof by
11 taking the person into custody may, for the purpose of
12 attempting to effect such recovery or for prosecution, take
13 such person into custody on the premises and detain such
14 person in a reasonable manner and for a reasonable period of
15 time. If the operator takes the person into custody, a law
16 enforcement officer shall be called to the scene immediately.
17 The taking into custody and detention by a law enforcement
18 officer or operator of a food service establishment, if done
19 in compliance with this subsection, does not render such law
20 enforcement officer or operator criminally or civilly liable
21 for false arrest, false imprisonment, or unlawful detention.

22 (3) Any law enforcement officer may arrest, either on
23 or off the premises and without warrant, any person if there
24 is probable cause to believe that person has committed theft
25 in a food service establishment.

26 (4) Any person who resists the reasonable effort of a
27 law enforcement officer or operator of a food service
28 establishment to recover property which the law enforcement
29 officer or operator had probable cause to believe had been
30 stolen from the food service establishment, and who is
31 subsequently found to be guilty of theft of the subject

1 property, is guilty of a misdemeanor of the first degree,
2 punishable as provided in s. 775.082 or s. 775.083, unless
3 such person did not know, or did not have reason to know, that
4 the person seeking to recover the property was a law
5 enforcement officer or the operator. For purposes of this
6 section, the charge of theft and the charge of resisting
7 apprehension may be tried concurrently.

8 (5) Theft of any property belonging to a guest of a
9 food service establishment, or of property belonging to such
10 establishment, by an employee of the establishment or by an
11 employee of a person, firm, or entity which has contracted to
12 provide services to the establishment constitutes a felony of
13 the third degree, punishable as provided in s. 775.082 or s.
14 775.083.

15 Section 9. Section 381.0101, Florida Statutes, is
16 amended to read:

17 381.0101 Environmental health professionals.--

18 (1) LEGISLATIVE INTENT.--Persons responsible for
19 providing technical and scientific evaluations of
20 environmental health and sanitary conditions in business
21 establishments and communities throughout the state may create
22 a danger to the public health if they are not skilled or
23 competent to perform such evaluations. The public relies on
24 the judgment of environmental health professionals employed by
25 both government agencies and industries to assure them that
26 environmental hazards are identified and removed before they
27 endanger the health or safety of the public. The purpose of
28 this section is to assure the public that persons specifically
29 responsible for performing environmental health and sanitary
30 evaluations have been certified by examination as competent to
31 perform such work.

- 1 (2) DEFINITIONS.--As used in this section:
- 2 (a) "Board" means the Environmental Health
3 Professionals Advisory Board.
- 4 (b) "Department" means the Department of Health.
- 5 (c) "Environmental health" means that segment of
6 public health work which deals with the examination of those
7 factors in the human environment which may impact adversely on
8 the health status of an individual or the public.
- 9 (d) "Environmental health professional" means a person
10 who is employed or assigned the responsibility for assessing
11 the environmental health or sanitary conditions within a
12 building, on an individual's property, or within the community
13 at large, and who has the knowledge, skills, and abilities to
14 carry out these tasks.
- 15 (e) "Certified" means a person who has displayed
16 competency to perform evaluations of environmental or sanitary
17 conditions through examination.
- 18 (f) "Registered sanitarian" or "R.S." means a person
19 who has been certified by either the National Environmental
20 Health Association or the Florida Environmental Health
21 Association as knowledgeable in the environmental health
22 profession.
- 23 (g) "Primary environmental health program" means those
24 programs determined by the department to be essential for
25 providing basic environmental and sanitary protection to the
26 public. At a minimum, these programs shall include food
27 hygiene evaluations and onsite sewage treatment and disposal
28 system evaluations.
- 29 (3) CERTIFICATION REQUIRED.--No person shall perform
30 environmental health or sanitary evaluations in any primary
31 program area of environmental health without being certified

1 by the department as competent to perform such evaluations.
2 ~~The requirements of this section shall not be mandatory for~~
3 ~~persons performing inspections of public food service~~
4 ~~establishments licensed under chapter 509.~~

5 (4) ENVIRONMENTAL HEALTH PROFESSIONALS ADVISORY
6 BOARD.--The State Health Officer shall appoint an advisory
7 board to assist the department in the adoption ~~promulgation~~ of
8 rules for certification, testing, establishing standards,
9 including establishing requirements for field standardizing of
10 environmental health professionals, and seeking enforcement
11 actions against certified professionals.

12 (a) The board shall be comprised of the Division
13 Director for Environmental Health or his or her designee, one
14 individual who will be certified under this section, one
15 individual not employed in a governmental capacity who will or
16 does employ a certified environmental health professional, one
17 individual whose business is or will be evaluated by a
18 certified environmental health professional, a citizen of the
19 state who neither employs nor is routinely evaluated by a
20 person certified under this section.

21 (b) The board shall advise the department as to the
22 minimum standards of competency and proficiency necessary to
23 obtain certification in a primary area of environmental health
24 practice.

25 1. The board shall recommend primary areas of
26 environmental health practice in which environmental health
27 professionals should be required to obtain certification.

28 2. The board shall recommend minimum standards of
29 practice which the department shall incorporate into rule.

30 3. The board shall evaluate and recommend to the
31 department existing registrations and certifications which

1 meet or exceed minimum department standards and should,
2 therefore, exempt holders of such certificates or
3 registrations from compliance with this section.

4 4. The board shall hear appeals of certificate
5 denials, revocation, or suspension and shall advise the
6 department as to the disposition of such an appeal.

7 5. The board shall meet as often as necessary, but no
8 less than semiannually, handle appeals to the department, and
9 conduct other duties of the board.

10 6. Members of the board shall receive no compensation
11 but shall be reimbursed for per diem and travel expenses in
12 accordance with s. 112.061.

13 (5) STANDARDS FOR CERTIFICATION.--The department shall
14 adopt rules that establish minimum standards of education,
15 training, or experience for those persons subject to this
16 section. The rules shall also address ethical standards of
17 practice for the profession.

18 (a) Persons employed as environmental health
19 professionals shall exhibit a knowledge of rules and
20 principles of environmental and public health law in Florida
21 through examination. No person shall conduct environmental
22 health evaluations in a primary program area unless he or she
23 is currently certified in that program area or works under the
24 direct supervision of a certified environmental health
25 professional.

26 1. All persons who begin employment in a primary
27 environmental health program on or after September 21, 1994,
28 must be certified in that program within 6 months after
29 employment.

30 2. Persons employed in a primary environmental health
31 program prior to September 21, 1994, shall be considered

1 certified while employed in that position and shall be
2 required to adhere to any professional standards established
3 by the department pursuant to paragraph (b); complete any
4 continuing education requirements imposed under paragraph (d);
5 and pay the certificate renewal fee imposed under subsection
6 (7).

7 3. Persons employed in a primary environmental health
8 program prior to September 21, 1994, who change positions or
9 program areas and transfer into another primary environmental
10 health program area on or after September 21, 1994, must be
11 certified in that program within 6 months after employment,
12 except that they will not be required to possess the college
13 degree required under paragraph (e).

14 4. Registered sanitarians shall be considered
15 certified and shall be required to adhere to any professional
16 standards established by the department pursuant to paragraph
17 (b).

18 (b) At a minimum, the department shall establish
19 standards for professionals in the areas of food hygiene and
20 onsite sewage treatment and disposal.

21 (c) Those persons conducting primary environmental
22 health evaluations shall be certified by examination to be
23 knowledgeable in any primary area of environmental health in
24 which they are routinely assigned duties.

25 (d) Persons who are certified shall renew their
26 certification biennially by completing not less than 24
27 contact hours of continuing education for each program area in
28 which they maintain certification.

29 (e) Applicants for certification shall have graduated
30 from an accredited 4-year college or university with major
31

1 coursework in environmental health, environmental science, or
2 a physical or biological science.

3 (6) EXEMPTIONS.--A person who conducts primary
4 environmental evaluation activities and maintains a current
5 registration or certification from another state agency which
6 examined the person's knowledge of the primary program area
7 and requires comparable continuing education to maintain the
8 certificate shall not be required to be certified by this
9 section. Examples of persons not subject to certification are
10 physicians, registered dietitians, certified laboratory
11 personnel, and nurses.

12 (7) FEES.--The department shall charge fees in amounts
13 necessary to meet the cost of providing certification. Fees
14 for certification shall be no less than \$25 nor more than \$300
15 and shall be set by rule. Application, examination, and
16 certification costs shall be included in this fee. Fees for
17 renewal of a certificate shall be no less than \$25 nor more
18 than \$150 per biennium.

19 (8) PENALTIES.--The department may deny, suspend, or
20 revoke a certificate or impose an administrative fine of up to
21 \$500 for each violation of this section or a rule adopted
22 under this section or may pursue any other enforcement action
23 authorized by law. Any person who has had a certificate
24 revoked may not conduct environmental health evaluations in a
25 primary program area for a minimum of 5 years from the date of
26 revocation.

27 Section 10. Subsection (4) of section 399.01, Florida
28 Statutes, is amended to read:

29 399.01 Definitions.--As used in this chapter, the
30 term:

31

1 (4) "Division" means the Division of Public Lodging
2 ~~Hotels and Restaurants~~ of the Department of Business and
3 Professional Regulation.

4 Section 11. Section 509.013, Florida Statutes, is
5 amended to read:

6 509.013 Definitions.--As used in this chapter, the
7 term:

8 (1) "Division" means the Division of Public Lodging
9 ~~Hotels and Restaurants~~ of the Department of Business and
10 Professional Regulation.

11 (2) "Operator" means the owner, licensee, proprietor,
12 lessee, manager, assistant manager, or appointed agent of a
13 public lodging establishment ~~or public food service~~
14 ~~establishment~~.

15 (3) "Guest" means any patron, customer, tenant,
16 lodger, boarder, or occupant of a public lodging establishment
17 ~~or public food service establishment~~.

18 (4)(a) "Public lodging establishment" means any unit,
19 group of units, dwelling, building, or group of buildings
20 within a single complex of buildings, which is rented to
21 guests more than three times in a calendar year for periods of
22 less than 30 days or 1 calendar month, whichever is less, or
23 which is advertised or held out to the public as a place
24 regularly rented to guests. License classifications of public
25 lodging establishments, and the definitions therefor, are set
26 out in s. 509.242. For the purpose of licensure, the term
27 does not include condominium common elements as defined in s.
28 718.103.

29 (b) The following are excluded from the definition in
30 paragraph (a):

31

1 1. Any dormitory or other living or sleeping facility
2 maintained by a public or private school, college, or
3 university for the use of students, faculty, or visitors;

4 2. Any hospital, nursing home, sanitarium, assisted
5 living facility, or other similar place;

6 3. Any place renting four rental units or less, unless
7 the rental units are advertised or held out to the public to
8 be places that are regularly rented to transients;

9 4. Any unit or group of units in a condominium,
10 cooperative, or timeshare plan and any individually or
11 collectively owned one-family, two-family, three-family, or
12 four-family dwelling house or dwelling unit that is rented for
13 periods of at least 30 days or 1 calendar month, whichever is
14 less, and that is not advertised or held out to the public as
15 a place regularly rented for periods of less than 1 calendar
16 month, provided that no more than four rental units within a
17 single complex of buildings are available for rent;

18 5. Any migrant labor camp or residential migrant
19 housing permitted by the Department of Health ~~and~~
20 ~~Rehabilitative Services~~; under ss. 381.008-381.00895; and

21 6. Any establishment inspected by the Department of
22 Health ~~and Rehabilitative Services~~ and regulated by chapter
23 513.

24 ~~(5)(a) "Public food service establishment" means any~~
25 ~~building, vehicle, place, or structure, or any room or~~
26 ~~division in a building, vehicle, place, or structure where~~
27 ~~food is prepared, served, or sold for immediate consumption on~~
28 ~~or in the vicinity of the premises; called for or taken out by~~
29 ~~customers; or prepared prior to being delivered to another~~
30 ~~location for consumption.~~

31

1 ~~(b) The following are excluded from the definition in~~
2 ~~paragraph (a):~~

3 ~~1. Any place maintained and operated by a public or~~
4 ~~private school, college, or university:~~

5 ~~a. For the use of students and faculty; or~~

6 ~~b. Temporarily to serve such events as fairs,~~
7 ~~carnivals, and athletic contests.~~

8 ~~2. Any eating place maintained and operated by a~~
9 ~~church or a religious, nonprofit fraternal, or nonprofit civic~~
10 ~~organization:~~

11 ~~a. For the use of members and associates; or~~

12 ~~b. Temporarily to serve such events as fairs,~~
13 ~~carnivals, or athletic contests.~~

14 ~~3. Any eating place located on an airplane, train,~~
15 ~~bus, or watercraft which is a common carrier.~~

16 ~~4. Any eating place maintained by a hospital, nursing~~
17 ~~home, sanitarium, assisted living facility, adult day care~~
18 ~~center, or other similar place that is regulated under s.~~
19 ~~381.0072.~~

20 ~~5. Any place of business issued a permit or inspected~~
21 ~~by the Department of Agriculture and Consumer Services under~~
22 ~~s. 500.12.~~

23 ~~6. Any place of business where the food available for~~
24 ~~consumption is limited to ice, beverages with or without~~
25 ~~garnishment, popcorn, or prepackaged items sold without~~
26 ~~additions or preparation.~~

27 ~~7. Any theater, if the primary use is as a theater and~~
28 ~~if patron service is limited to food items customarily served~~
29 ~~to the admittees of theaters.~~

30
31

1 ~~8. Any vending machine that dispenses any food or~~
2 ~~beverages other than potentially hazardous foods, as defined~~
3 ~~by division rule.~~

4 ~~9. Any vending machine that dispenses potentially~~
5 ~~hazardous food and which is located in a facility regulated~~
6 ~~under s. 381.0072.~~

7 ~~10. Any research and development test kitchen limited~~
8 ~~to the use of employees and which is not open to the general~~
9 ~~public.~~

10 (5)(6) "Director" means the Director of the Division
11 of Public Lodging Hotels and Restaurants of the Department of
12 Business and Professional Regulation.

13 (6)(7) "Single complex of buildings" means all
14 buildings or structures that are owned, managed, controlled,
15 or operated under one business name and are situated on the
16 same tract or plot of land that is not separated by a public
17 street or highway.

18 ~~(8) "Temporary food service event" means any event of~~
19 ~~30 days or less in duration where food is prepared, served, or~~
20 ~~sold to the general public.~~

21 (7)(9) "Theme park or entertainment complex" means a
22 complex comprised of at least 25 contiguous acres owned and
23 controlled by the same business entity and which contains
24 permanent exhibitions and a variety of recreational activities
25 and has a minimum of 1 million visitors annually.

26 (8)(10) "Transient establishment" means any public
27 lodging establishment that is rented or leased to guests by an
28 operator whose intention is that such guests' occupancy will
29 be temporary.

30 (9)(11) "Transient occupancy" means occupancy when it
31 is the intention of the parties that the occupancy will be

1 temporary. There is a rebuttable presumption that, when the
2 dwelling unit occupied is the sole residence of the guest, the
3 occupancy is nontransient. There is a rebuttable presumption
4 that, when the dwelling unit occupied is not the sole
5 residence of the guest, the occupancy is transient.

6 (10)~~(12)~~ "Transient" means a guest in transient
7 occupancy.

8 Section 12. Subsection (12) of section 159.27, Florida
9 Statutes, is amended to read:

10 159.27 Definitions.--The following words and terms,
11 unless the context clearly indicates a different meaning,
12 shall have the following meanings:

13 (12) "Public lodging or restaurant facility" means
14 property used for any public lodging establishment as defined
15 in s. 509.242 or ~~public~~ food service establishment as defined
16 in s. 381.0072 ~~s. 509.013(5)~~ if it is part of the complex of,
17 or necessary to, another facility qualifying under this part.

18 Section 13. Paragraphs (b) and (c) of subsection (5),
19 subsection (6), and paragraph (b) of subsection (9) of section
20 316.1955, Florida Statutes, are amended to read:

21 316.1955 Parking spaces for persons who have
22 disabilities.--

23 (5) Accessible perpendicular and diagonal accessible
24 parking spaces and loading zones must be designed and located
25 in conformance with the guidelines set forth in ADAAG ss.
26 4.1.2 and 4.6 and Appendix s. A4.6.3 "Universal Parking
27 Design."

28 (b) Each space must be located on the shortest safely
29 accessible route from the parking space to an accessible
30 entrance. If there are multiple entrances or multiple retail
31 stores, the parking spaces must be dispersed to provide

1 parking at the nearest accessible entrance. If a theme park
2 or an entertainment complex as defined in s. 509.013 ~~s.~~
3 ~~509.013(9)~~ provides parking in several lots or areas from
4 which access to the theme park or entertainment complex is
5 provided, a single lot or area may be designated for parking
6 by persons who have disabilities, if the lot or area is
7 located on the shortest safely accessible route to an
8 accessible entrance to the theme park or entertainment complex
9 or to transportation to such an accessible entrance.

10 (c) Each parking space must be no less than 12 feet
11 wide. Parking access aisles must be no less than 5 feet wide
12 and must be part of an accessible route to the building or
13 facility entrance. The parking access aisles are reserved for
14 the use of persons who have disabled parking permits, and
15 violators are subject to the same penalties that are imposed
16 for illegally parking in parking spaces that are designated
17 for persons who have disabilities. Two accessible parking
18 spaces may share a common access aisle. The access aisle must
19 be striped diagonally to designate it as a no-parking zone.
20 Any provision of this subsection to the contrary
21 notwithstanding, a theme park or an entertainment complex as
22 defined in s. 509.013 ~~s. 509.013(9)~~ in which are provided
23 continuous attendant services for directing individuals to
24 marked accessible parking spaces or designated lots for
25 parking by persons who have disabilities, may, in lieu of the
26 required parking space design, provide parking spaces that
27 comply with ss. 4.1 and 4.6 of the Americans with Disabilities
28 Act Accessibility Guidelines.

29 (6) Each such parking space must be prominently
30 outlined with blue paint, and must be repainted when
31 necessary, to be clearly distinguishable as a parking space

1 designated for persons who have disabilities and must be
2 posted with a permanent above-grade sign of a color and design
3 approved by the Department of Transportation, bearing the
4 international symbol of accessibility meeting the requirements
5 of ADAAG s. 4.30.7 and the caption "PARKING BY DISABLED PERMIT
6 ONLY." Such sign erected after October 1, 1996, must indicate
7 the penalty for illegal use of the space. Any provision of
8 this section to the contrary notwithstanding, in a theme park
9 or an entertainment complex as defined in s. 509.013 ~~s.~~
10 ~~509.013(9)~~ in which accessible parking is located in
11 designated lots or areas, the signage indicating the lot as
12 reserved for accessible parking may be located at the
13 entrances to the lot in lieu of a sign at each parking place.
14 This subsection does not relieve the owner of the
15 responsibility of complying with the signage requirements of
16 ADAAG s. 4.30.

17 (9)

18 (b) Notwithstanding paragraph (a), a theme park or an
19 entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~
20 which provides parking in designated areas for persons who
21 have disabilities may allow any vehicle that is transporting a
22 person who has a disability to remain parked in a space
23 reserved for persons who have disabilities throughout the
24 period the theme park is open to the public for that day.

25 Section 14. Subsection (6) of section 404.056, Florida
26 Statutes, is amended to read:

27 404.056 Environmental radiation standards and
28 programs; radon protection.--

29 (6) NOTIFICATION ON REAL ESTATE DOCUMENTS.--By January
30 1, 1989, notification shall be provided on at least one
31 document, form, or application executed at the time of, or

1 prior to, contract for sale and purchase of any building or
2 execution of a rental agreement for any building. Such
3 notification shall contain the following language:

4
5 "RADON GAS: Radon is a naturally occurring radioactive
6 gas that, when it has accumulated in a building in sufficient
7 quantities, may present health risks to persons who are
8 exposed to it over time. Levels of radon that exceed federal
9 and state guidelines have been found in buildings in Florida.
10 Additional information regarding radon and radon testing may
11 be obtained from your county health department."

12
13 The requirements of this subsection do not apply to any
14 residential transient occupancy, as described in s. 509.013 ~~s.~~
15 ~~509.013(11)~~, provided that such occupancy is 45 days or less
16 in duration.

17 Section 15. Subsection (5) of section 500.12, Florida
18 Statutes, is amended to read:

19 500.12 Food permits; building permits.--

20 (5) It is the intent of the Legislature to eliminate
21 duplication of regulatory inspections of food. Regulatory and
22 permitting authority over any food establishment is preempted
23 to the department, except as provided in chapters 370 and 372.

24 (a) Food establishments or retail food stores that
25 have ancillary food service activities shall be permitted and
26 inspected by the department.

27 (b) Food service establishments, as defined in s.
28 381.0072, that have ancillary, prepackaged retail food sales
29 shall be regulated by the Department of Health ~~and~~
30 ~~Rehabilitative Services~~.

31

1 ~~(c) Public food service establishments, as defined in~~
2 ~~s. 509.013, which have ancillary, prepackaged retail food~~
3 ~~sales shall be licensed and inspected by the Department of~~
4 ~~Business and Professional Regulation.~~

5 (c)(d) The department and the Department of Health
6 ~~Business and Professional Regulation~~ shall cooperate to assure
7 equivalency of inspection and enforcement and to share
8 information on those establishments identified in paragraphs
9 (a) and (b)(c) and to address any other areas of potential
10 duplication. The department and the Department of Health
11 ~~Business and Professional Regulation~~ are authorized to adopt
12 rules to enforce statutory requirements under their purview
13 regarding foods.

14 Section 16. Section 717.1355, Florida Statutes, is
15 amended to read:

16 717.1355 Theme park and entertainment complex
17 tickets.--This chapter does not apply to any tickets for
18 admission to a theme park or entertainment complex as defined
19 in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent
20 exhibition or recreational activity within such theme park or
21 entertainment complex.

22 Section 17. Subsection (8) of section 877.24, Florida
23 Statutes, is amended to read:

24 877.24 Nonapplication of s. 877.22.--Section 877.22
25 does not apply to a minor who is:

26 (8) Attending an organized event held at and sponsored
27 by a theme park or entertainment complex as defined in s.
28 509.013 ~~s. 509.013(9)~~.

29 Section 18. Section 509.032, Florida Statutes, is
30 amended to read:

31 509.032 Duties.--

1 (1) GENERAL.--The division shall carry out all of the
2 provisions of this chapter and all other applicable laws and
3 rules relating to the inspection or regulation of public
4 lodging establishments ~~and public food service establishments~~
5 for the purpose of safeguarding the public health, safety, and
6 welfare. The division shall be responsible for ascertaining
7 that an operator licensed under this chapter does not engage
8 in any misleading advertising or unethical practices.

9 (2) INSPECTION OF PREMISES.--

10 (a) The division has responsibility and jurisdiction
11 for all inspections required by this chapter. The division
12 has responsibility for quality assurance. Each licensed
13 establishment shall be inspected at least biannually and at
14 such other times as the division determines is necessary to
15 ensure the public's health, safety, and welfare. The division
16 shall establish a system to determine inspection frequency.
17 Public lodging units classified as resort condominiums or
18 resort dwellings are not subject to this requirement, but
19 shall be made available to the division upon request. If,
20 during the inspection of a public lodging establishment
21 classified for renting to transient or nontransient tenants,
22 an inspector identifies disabled adults or elderly persons who
23 appear to be victims of neglect, as defined in s. 415.102, or,
24 in the case of a building that is not equipped with automatic
25 sprinkler systems, tenants or clients who may be unable to
26 self-preserve in an emergency, the division shall convene
27 meetings with the following agencies as appropriate to the
28 individual situation: the Department of Health, the Department
29 of Children and Family ~~and Rehabilitative~~ Services, the
30 Department of Elderly Affairs, the area agency on aging, the
31 local fire marshal, the landlord and affected tenants and

1 clients, and other relevant organizations, to develop a plan
2 which improves the prospects for safety of affected residents
3 and, if necessary, identifies alternative living arrangements
4 such as facilities licensed under part II or part III of
5 chapter 400.

6 (b) For purposes of performing required inspections
7 and the enforcement of this chapter, the division has the
8 right of entry and access to public lodging establishments and
9 ~~public food service establishments~~ at any reasonable time.

10 ~~(c) Public food service establishment inspections~~
11 ~~shall be conducted to enforce provisions of this part and to~~
12 ~~educate, inform, and promote cooperation between the division~~
13 ~~and the establishment.~~

14 ~~(d) The division shall adopt and enforce sanitation~~
15 ~~rules consistent with law to ensure the protection of the~~
16 ~~public from food-borne illness in those establishments~~
17 ~~licensed under this chapter. These rules shall provide the~~
18 ~~standards and requirements for obtaining, storing, preparing,~~
19 ~~processing, serving, or displaying food in public food service~~
20 ~~establishments, approving public food service establishment~~
21 ~~facility plans, conducting necessary public food service~~
22 ~~establishment inspections, cooperating and coordinating with~~
23 ~~the Department of Health and Rehabilitative Services in~~
24 ~~epidemiological investigations, and initiating enforcement~~
25 ~~actions, and for other such responsibilities deemed necessary~~
26 ~~by the division.~~

27 (c)1.~~(e)1.~~ Relating to facility plan approvals, the
28 division may establish, by rule, fees for conducting plan
29 reviews and may grant variances from construction standards in
30 hardship cases, which variances may be less restrictive than
31 the provisions specified in this section or the rules adopted

1 under this section. A variance may not be granted pursuant to
2 this section until the division is satisfied that:

3 a. The variance shall not adversely affect the health
4 of the public.

5 b. No reasonable alternative to the required
6 construction exists.

7 c. The hardship was not caused intentionally by the
8 action of the applicant.

9 2. The division's advisory council shall review
10 applications for variances and recommend agency action. The
11 division shall make arrangements to expedite emergency
12 requests for variances, to ensure that such requests are acted
13 upon within 30 days of receipt.

14 3. The division shall establish, by rule, a fee for
15 the cost of the variance process. Such fee shall not exceed
16 \$150 for routine variance requests and \$300 for emergency
17 variance requests.

18 (d)~~(f)~~ In conducting inspections of establishments
19 licensed under this chapter, the division shall determine if
20 each coin-operated amusement machine that is operated on the
21 premises of a licensed establishment is properly registered
22 with the Department of Revenue. Each month the division shall
23 report to the Department of Revenue the sales tax registration
24 number of the operator of any licensed establishment that has
25 on location a coin-operated amusement machine and that does
26 not have an identifying certificate conspicuously displayed as
27 required by s. 212.05(1)(j).

28 (3) SANITARY STANDARDS; EMERGENCIES; ~~TEMPORARY FOOD~~
29 ~~SERVICE EVENTS~~.--The division shall:

30 (a) Prescribe sanitary standards which shall be
31 enforced in public lodging ~~food service~~ establishments.

1 (b) Inspect public lodging establishments periodically
2 ~~and and public food service establishments~~ whenever necessary
3 to respond to an emergency or epidemiological condition.

4 (c) ~~Administer a public notification process for~~
5 ~~temporary food service events and distribute educational~~
6 ~~materials that address safe food storage, preparation, and~~
7 ~~service procedures.~~

8 1. ~~Sponsors of temporary food service events shall~~
9 ~~notify the division not less than 3 days prior to the~~
10 ~~scheduled event of the type of food service proposed, the time~~
11 ~~and location of the event, a complete list of food service~~
12 ~~vendor owners and operators participating in each event, and~~
13 ~~the current license numbers of all public food service~~
14 ~~establishments participating in each event. Notification may~~
15 ~~be completed orally, by telephone, in person, or in writing.~~
16 ~~A public food service establishment or food service vendor may~~
17 ~~not use this notification process to circumvent the license~~
18 ~~requirements of this chapter.~~

19 2. ~~The division shall keep a record of all~~
20 ~~notifications received for proposed temporary food service~~
21 ~~events and shall provide appropriate educational materials to~~
22 ~~the event sponsors.~~

23 3.a. ~~A public food service establishment or other food~~
24 ~~vendor must obtain a license from the division for each~~
25 ~~temporary food service event in which it participates.~~

26 b. ~~Public food service establishments holding current~~
27 ~~licenses from the division may operate under the regulations~~
28 ~~of such a license at temporary food service events of 3 days~~
29 ~~or less in duration.~~

30 (4) ~~STOP-SALE ORDERS.--The division may stop the sale,~~
31 ~~and supervise the proper destruction, of any food or food~~

1 ~~product when the director or the director's designee~~
2 ~~determines that such food or food product represents a threat~~
3 ~~to the public safety or welfare. If the operator of a public~~
4 ~~food service establishment licensed under this chapter has~~
5 ~~received official notification from a health authority that a~~
6 ~~food or food product from that establishment has potentially~~
7 ~~contributed to any instance or outbreak of food-borne illness,~~
8 ~~the food or food product must be maintained in safe storage in~~
9 ~~the establishment until the responsible health authority has~~
10 ~~examined, sampled, seized, or requested destruction of the~~
11 ~~food or food product.~~

12 (4)~~(5)~~ REPORTS REQUIRED.--The division shall send the
13 Governor a written report at the end of each fiscal year,
14 which report shall state, but not be limited to, the total
15 number of inspections conducted by the division to ensure the
16 enforcement of sanitary standards, the total number of
17 inspections conducted in response to emergency or
18 epidemiological conditions, the number of violations of each
19 sanitary standard, and any recommendations for improved
20 inspection procedures. The division shall also keep accurate
21 account of all expenses arising out of the performance of its
22 duties and all fees collected under this chapter.

23 (5)~~(6)~~ RULEMAKING AUTHORITY.--The division shall adopt
24 such rules as are necessary to carry out the provisions of
25 this chapter.

26 (6)~~(7)~~ PREEMPTION AUTHORITY.--The regulation and
27 inspection of public lodging establishments ~~and public food~~
28 ~~service establishments and the regulation of food safety~~
29 ~~protection standards for required training and testing of food~~
30 ~~service establishment personnel~~ are preempted to the state.

31

1 Section 19. Section 509.035, Florida Statutes, is
2 amended to read:

3 509.035 Immediate closure due to severe public health
4 or safety threat.--The division shall, upon proper finding,
5 immediately issue an order to close an establishment licensed
6 under this chapter in the instance of a severe and immediate
7 public health or safety or welfare threat as follows:

8 (1)(a) The director shall declare a public health or
9 safety threat upon a proper finding ~~by the State Health~~
10 ~~Officer~~ that the continued operation of a licensed public
11 lodging establishment presents a severe and immediate threat
12 to the public health or safety.

13 (b) The director shall declare a threat to the public
14 safety or welfare upon a proper finding by the director that
15 the continued operation of a licensed public lodging
16 establishment presents a severe and immediate threat to the
17 public safety or welfare.

18 (2) Upon such determination, the division shall issue
19 a notice to show cause and an emergency order of suspension.
20 Such order shall be served upon the public lodging
21 establishment by the division or its agent, and the
22 establishment shall be closed. An operator who resists such
23 closure is subject to further administrative action by the
24 division and is punishable as provided in s. 509.281. The
25 division shall provide an inspection within 24 hours following
26 such closure and shall review all relevant information to
27 determine whether the facility has met the requirements to
28 resume operations.

29 (3) The division may attach a sign which states
30 "Closed to Protect Public Health and Safety" to such an
31 establishment and may require the licensee to immediately stop

1 service until notification to the contrary is provided by the
2 director.

3 (4) The division may further adopt rules for issuing
4 emergency orders after business hours and on weekends and
5 holidays in order to ensure the timely closure of an
6 establishment under this section.

7 Section 20. Section 509.072, Florida Statutes, is
8 amended to read:

9 509.072 Public Lodging ~~Hotel and Restaurant~~ Trust
10 Fund; collection and disposition of moneys received.--

11 (1) There is created a Public Lodging ~~Hotel and~~
12 ~~Restaurant~~ Trust Fund to be used for the administration and
13 operation of the division and the carrying out of all laws and
14 rules under the jurisdiction of the division pertaining to the
15 construction, maintenance, and operation of public lodging
16 establishments ~~and public food service establishments~~,
17 including the inspection of elevators as required under
18 chapter 399. All funds collected by the division and the
19 amounts paid for licenses and fees shall be deposited in the
20 State Treasury into the Public Lodging ~~Hotel and Restaurant~~
21 Trust Fund.

22 (2) Fees collected under s. 509.302(3) and deposited
23 into the trust fund must be used solely for the purpose of
24 funding the Hospitality Education Program, except for any
25 trust fund service charge imposed by s. 215.20, and may not be
26 used to pay for any expense of the division not directly
27 attributable to the Hospitality Education Program. These
28 funds may not be deposited or transferred into any other trust
29 fund administered by the Department of Business and
30 Professional Regulation or any of its divisions. For audit
31 purposes, fees collected under s. 509.302(3) and all charges

1 against those fees must be maintained by the department as a
2 separate ledger.

3 Section 21. Section 509.091, Florida Statutes, is
4 amended to read:

5 509.091 Notices; form and service.--Each notice served
6 by the division pursuant to this chapter must be in writing
7 and must be delivered personally by an agent of the division
8 or by registered letter to the operator of the public lodging
9 establishment ~~or public food service establishment~~. If the
10 operator refuses to accept service or evades service or the
11 agent is otherwise unable to effect service after due
12 diligence, the division may post such notice in a conspicuous
13 place at the establishment.

14 Section 22. Section 509.092, Florida Statutes, is
15 amended to read:

16 509.092 Public lodging establishments ~~and public food~~
17 ~~service establishments~~; rights as private enterprises.--Public
18 lodging establishments ~~and public food service establishments~~
19 are private enterprises, and the operator has the right to
20 refuse accommodations or service to any person who is
21 objectionable or undesirable to the operator, but such refusal
22 may not be based upon race, creed, color, sex, physical
23 disability, or national origin. A person aggrieved by a
24 violation of this section or a violation of a rule adopted
25 under this section has a right of action pursuant to s.
26 760.11.

27 Section 23. Section 509.101, Florida Statutes, is
28 amended to read:

29 509.101 Establishment rules; posting of notice; ~~food~~
30 ~~service inspection report~~; maintenance of guest register
31 ~~mobile food dispensing vehicle registry~~--

1 (1) Any operator of a public lodging establishment ~~or~~
2 ~~a public food service establishment~~ may establish reasonable
3 rules and regulations for the management of the establishment
4 and its guests and employees; and each guest or employee
5 staying, sojourning, eating, or employed in the establishment
6 shall conform to and abide by such rules and regulations so
7 long as the guest or employee remains in or at the
8 establishment. Such rules and regulations shall be deemed to
9 be a special contract between the operator and each guest or
10 employee using the services or facilities of the operator.
11 Such rules and regulations shall control the liabilities,
12 responsibilities, and obligations of all parties. Any rules
13 or regulations established pursuant to this section shall be
14 printed in the English language and posted in a prominent
15 place within such public lodging establishment ~~or public food~~
16 ~~service establishment~~. Such posting shall also include notice
17 that a current copy of this chapter is available in the office
18 for public review. ~~In addition, any operator of a public food~~
19 ~~service establishment shall maintain the latest food service~~
20 ~~inspection report or a duplicate copy on premises and shall~~
21 ~~make it available to the public upon request.~~

22 (2) It is the duty of each operator of a transient
23 establishment to maintain at all times a register, signed by
24 or for guests who occupy rental units within the
25 establishment, showing the dates upon which the rental units
26 were occupied by such guests and the rates charged for their
27 occupancy. This register shall be maintained in chronological
28 order and available for inspection by the division at any
29 time. Operators need not make available registers which are
30 more than 2 years old. Each operator shall maintain at all
31 times a current copy of this chapter in the office of the

1 licensed establishment which shall be made available to the
2 public upon request.

3 ~~(3) It is the duty of each operator of a public food~~
4 ~~service establishment that provides commissary services to~~
5 ~~maintain a daily registry verifying that each mobile food~~
6 ~~dispensing vehicle that receives such services is properly~~
7 ~~licensed by the division. In order that such licensure may be~~
8 ~~readily verified, each mobile food dispensing vehicle operator~~
9 ~~shall permanently affix in a prominent place on the side of~~
10 ~~the vehicle, in figures at least 2 inches high and in~~
11 ~~contrasting colors from the background, the operator's public~~
12 ~~food service establishment license number. Prior to providing~~
13 ~~commissary services, each public food service establishment~~
14 ~~must verify that the license number displayed on the vehicle~~
15 ~~matches the number on the vehicle operator's public food~~
16 ~~service establishment license.~~

17 Section 24. Section 509.141, Florida Statutes, is
18 amended to read:

19 509.141 Refusal of admission and ejection of
20 undesirable guests; notice; procedure; penalties for refusal
21 to leave.--

22 (1) The operator of any public lodging establishment
23 ~~or public food service establishment~~ may remove or cause to be
24 removed from such establishment, in the manner hereinafter
25 provided in this section, any guest of the establishment who,
26 while on the premises of the establishment, illegally
27 possesses or deals in controlled substances as defined in
28 chapter 893 or is intoxicated, profane, lewd, or brawling; who
29 indulges in any language or conduct which disturbs the peace
30 and comfort of other guests or which injures the reputation,
31 dignity, or standing of the establishment; who, in the case of

1 a public lodging establishment, fails to make payment of rent
2 at the agreed-upon rental rate by the agreed-upon checkout
3 time; who, in the case of a public lodging establishment,
4 fails to check out by the time agreed upon in writing by the
5 guest and public lodging establishment at check-in unless an
6 extension of time is agreed to by the public lodging
7 establishment and guest prior to checkout; who, ~~in the case of~~
8 ~~a public food service establishment~~, fails to make payment for
9 food, beverages, or services; or who, in the opinion of the
10 operator, is a person the continued entertainment of whom
11 would be detrimental to such establishment. The admission to,
12 or the removal from, such establishment shall not be based
13 upon race, creed, color, sex, physical disability, or national
14 origin.

15 (2) The operator of any public lodging establishment
16 ~~or public food service establishment~~ shall notify such guest
17 that the establishment no longer desires to entertain the
18 guest and shall request that such guest immediately depart
19 from the establishment. Such notice may be given orally or in
20 writing. If the notice is in writing, it shall be as follows:

21 "You are hereby notified that this establishment no
22 longer desires to entertain you as its guest, and you are
23 requested to leave at once. To remain after receipt of this
24 notice is a misdemeanor under the laws of this state."
25

26 If such guest has paid in advance, the establishment shall, at
27 the time such notice is given, tender to such guest the unused
28 portion of the advance payment; however, the establishment may
29 withhold payment for each full day that the guest has been
30 entertained at the establishment for any portion of the
31 24-hour period of such day.

1 (3) Any guest who remains or attempts to remain in any
2 such establishment after being requested to leave is guilty of
3 a misdemeanor of the second degree, punishable as provided in
4 s. 775.082 or s. 775.083.

5 (4) If any person is illegally on the premises of any
6 public lodging establishment ~~or public food service~~
7 ~~establishment~~, the operator of such establishment may call
8 upon any law enforcement officer of this state for assistance.
9 It is the duty of such law enforcement officer, upon the
10 request of such operator, to place under arrest and take into
11 custody for violation of this section any guest who violates
12 subsection (3) in the presence of the officer. If a warrant
13 has been issued by the proper judicial officer for the arrest
14 of any violator of subsection (3), the officer shall serve the
15 warrant, arrest the person, and take the person into custody.
16 Upon arrest, with or without warrant, the guest will be deemed
17 to have given up any right to occupancy or to have abandoned
18 such right of occupancy of the premises, and the operator of
19 the establishment may then make such premises available to
20 other guests. However, the operator of the establishment
21 shall employ all reasonable and proper means to care for any
22 personal property which may be left on the premises by such
23 guest and shall refund any unused portion of moneys paid by
24 such guest for the occupancy of such premises.

25 Section 25. Section 509.142, Florida Statutes, is
26 amended to read:

27 509.142 Conduct on premises; refusal of service.--The
28 operator of a public lodging establishment ~~or public food~~
29 ~~service establishment~~ may refuse accommodations or service to
30 any person whose conduct on the premises of the establishment
31 displays intoxication, profanity, lewdness, or brawling; who

1 indulges in language or conduct such as to disturb the peace
2 or comfort of other guests; who engages in illegal or
3 disorderly conduct; who illegally possesses or deals in
4 controlled substances as defined in chapter 893; or whose
5 conduct constitutes a nuisance. Such refusal may not be based
6 upon race, creed, color, sex, physical disability, or national
7 origin.

8 Section 26. Subsection (1) of section 509.151, Florida
9 Statutes, is amended to read:

10 509.151 Obtaining food or lodging with intent to
11 defraud; penalty.--

12 (1) Any person who obtains food, lodging, or other
13 accommodations having a value of less than \$300 at any ~~public~~
14 ~~food service establishment, or at any~~ transient establishment,
15 with intent to defraud the operator thereof, is guilty of a
16 misdemeanor of the second degree, punishable as provided in s.
17 775.082 or s. 775.083; if such food, lodging, or other
18 accommodations have a value of \$300 or more, such person is
19 guilty of a felony of the third degree, punishable as provided
20 in s. 775.082, s. 775.083, or s. 775.084.

21 Section 27. Subsections (1), (2), and (3) of section
22 509.162, Florida Statutes, are amended to read:

23 509.162 Theft of personal property; detaining and
24 arrest of violator; theft by employee.--

25 (1) Any law enforcement officer or operator of a
26 public lodging establishment ~~or public food service~~
27 ~~establishment~~ who has probable cause to believe that theft of
28 personal property belonging to such establishment has been
29 committed by a person and that the officer or operator can
30 recover such property or the reasonable value thereof by
31 taking the person into custody may, for the purpose of

1 attempting to effect such recovery or for prosecution, take
2 such person into custody on the premises and detain such
3 person in a reasonable manner and for a reasonable period of
4 time. If the operator takes the person into custody, a law
5 enforcement officer shall be called to the scene immediately.
6 The taking into custody and detention by a law enforcement
7 officer or operator of a public lodging establishment ~~or~~
8 ~~public food service establishment~~, if done in compliance with
9 this subsection, does not render such law enforcement officer
10 or operator criminally or civilly liable for false arrest,
11 false imprisonment, or unlawful detention.

12 (2) Any law enforcement officer may arrest, either on
13 or off the premises and without warrant, any person if there
14 is probable cause to believe that person has committed theft
15 in a public lodging establishment ~~or in a public food service~~
16 ~~establishment~~.

17 (3) Any person who resists the reasonable effort of a
18 law enforcement officer or operator of a public lodging
19 establishment ~~or public food service establishment~~ to recover
20 property which the law enforcement officer or operator had
21 probable cause to believe had been stolen from the public
22 lodging establishment ~~or public food service establishment~~,
23 and who is subsequently found to be guilty of theft of the
24 subject property, is guilty of a misdemeanor of the first
25 degree, punishable as provided in s. 775.082 or s. 775.083,
26 unless such person did not know, or did not have reason to
27 know, that the person seeking to recover the property was a
28 law enforcement officer or the operator. For purposes of this
29 section, the charge of theft and the charge of resisting
30 apprehension may be tried concurrently.

31

1 Section 28. Section 509.191, Florida Statutes, is
2 amended to read:

3 509.191 Unclaimed property.--Any property with an
4 identifiable owner which is left in a public lodging
5 establishment ~~or public food service establishment~~, other than
6 property belonging to a guest who has vacated the premises
7 without notice to the operator and with an outstanding
8 account, which property remains unclaimed after being held by
9 the establishment for 90 days after written notice to the
10 guest or owner of the property, shall become the property of
11 the establishment. Property without an identifiable owner
12 which is found in a public lodging establishment ~~or public~~
13 ~~food service establishment~~ is subject to the provisions of
14 chapter 705.

15 Section 29. Subsections (2) and (3) of section
16 509.211, Florida Statutes, are amended to read:

17 509.211 Safety regulations.--

18 (2) The division, or its agent, shall immediately
19 notify the local firesafety authority or the State Fire
20 Marshal of any major violation of a rule adopted under chapter
21 633 which relates to public lodging establishments ~~or public~~
22 ~~food service establishments~~. The division may impose
23 administrative sanctions for violations of these rules
24 pursuant to s. 509.261 or may refer such violations to the
25 local firesafety authorities for enforcement.

26 (3)(a) It is unlawful for any person to use within any
27 public lodging establishment ~~or public food service~~
28 ~~establishment~~ any fuel-burning wick-type equipment for space
29 heating unless such equipment is vented so as to prevent the
30 accumulation of toxic or injurious gases or liquids.

31

1 (b) Any person who violates the provisions of
2 paragraph (a) is guilty of a misdemeanor of the second degree,
3 punishable as provided in s. 775.082 or s. 775.083.

4 Section 30. Section 509.2112, Florida Statutes, is
5 amended to read:

6 509.2112 Public lodging establishments three stories
7 or more in height; inspection rules.--The Division of Public
8 Lodging ~~Hotels and Restaurants~~ of the Department of Business
9 and Professional Regulation is directed to provide rules to
10 require that:

11 (1) Every public lodging establishment that is three
12 stories or more in height in the state file a certificate
13 stating that any and all balconies, platforms, stairways, and
14 railways have been inspected by a person competent to conduct
15 such inspections and are safe, secure, and free of defects.

16 (2) The information required under subsection (1) be
17 filed commencing January 1, 1991, and every 3 years
18 thereafter, with the Division of Public Lodging ~~Hotels and~~
19 ~~Restaurants~~ and the applicable county or municipal authority
20 responsible for building and zoning permits.

21 (3) If a public lodging establishment that is three or
22 more stories in height fails to file the information required
23 in subsection (1), the Division of Public Lodging ~~Hotels and~~
24 ~~Restaurants~~ shall impose administrative sanctions pursuant to
25 s. 509.261.

26 Section 31. Subsection (6) of section 509.215, Florida
27 Statutes, is amended to read:

28 509.215 Firesafety.--

29 (6)(a) Special exception to the provisions of this
30 section shall be made for a public lodging establishment
31 structure that is individually listed in the National Register

1 of Historic Places pursuant to the National Historic
2 Preservation Act of 1966, as amended; or is a contributing
3 property to a National Register-listed district; or is
4 designated as a historic property, or as a contributing
5 property to a historic district under the terms of a local
6 preservation ordinance.

7 (b) For such structures, provisions shall be made for
8 a system of fire protection and lifesafety support that would
9 meet the intent of the NFPA standards and be acceptable to,
10 and approved by, a task force composed of the director of the
11 Division of Public Lodging ~~Hotels and Restaurants~~, the
12 director of the Division of State Fire Marshal, and the State
13 Historic Preservation Officer. When recommending alternative
14 systems, the task force shall consider systems which would not
15 disturb, destroy, or alter the integrity of such historic
16 structures. The director of the Division of State Fire Marshal
17 shall be designated chairperson of the task force and shall
18 record the minutes of each task force meeting, which shall be
19 called in a timely manner to review requests for special
20 provision considerations under this subsection.

21 (c) The task force shall, no later than November 1,
22 1996, report to the President of the Senate and the Speaker of
23 the House of Representatives any legislative recommendations
24 for providing a standard system of fire protection and
25 lifesafety support alternatives for historic public lodging
26 establishments, including bed and breakfast inns, that would
27 meet the intent of the NFPA standards. In making its report
28 the task force shall consider which, if any, bed and breakfast
29 inn operations may be exempted from the firesafety
30 requirements of this section.

31

1 Section 32. Subsections (1), (2), and (5) of section
2 509.221, Florida Statutes, are amended to read:

3 509.221 Sanitary regulations.--

4 (1) Each public lodging establishment ~~and each public~~
5 ~~food service establishment~~ shall be supplied with potable
6 water and shall provide adequate sanitary facilities for the
7 accommodation of its employees and guests. Such facilities may
8 include, but are not limited to, showers, handwash basins,
9 toilets, and bidets. Such sanitary facilities shall be
10 connected to approved plumbing. Such plumbing shall be sized,
11 installed, and maintained in accordance with applicable state
12 and local plumbing codes. Wastewater or sewage shall be
13 properly treated onsite or discharged into an approved sewage
14 collection and treatment system.

15 (2)(a) Each public lodging establishment ~~and each~~
16 ~~public food service establishment~~ shall maintain not less than
17 one public bathroom for each sex, properly designated, unless
18 otherwise provided by rule. The division shall establish by
19 rule categories of establishments not subject to the bathroom
20 requirement of this paragraph. Such rules may not alter the
21 exemption provided for theme parks in paragraph (b).

22 (b) Within a theme park or entertainment complex as
23 defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not
24 required to be in the same building as the public food service
25 establishment, so long as they are reasonably accessible.

26 (c) Each transient establishment that does not provide
27 private or connecting bathrooms shall maintain one public
28 bathroom on each floor for every 15 guests, or major fraction
29 of that number, rooming on that floor.

30 (5) Each transient establishment ~~and each public food~~
31 ~~service establishment~~ shall provide in the main public

1 bathroom soap and clean towels or other approved hand-drying
2 devices and each public lodging establishment shall furnish
3 each guest with two clean individual towels so that two guests
4 will not be required to use the same towel unless it has first
5 been laundered.

6 Section 33. Section 509.241, Florida Statutes, is
7 amended to read:

8 509.241 Licenses required; exceptions.--

9 (1) LICENSES; ANNUAL RENEWALS.--Each public lodging
10 establishment must ~~and public food service establishment shall~~
11 obtain a license from the division. Such license may not be
12 transferred from one place or individual to another. It shall
13 be a misdemeanor of the second degree, punishable as provided
14 in s. 775.082 or s. 775.083, for such an establishment to
15 operate without a license. Local law enforcement shall provide
16 immediate assistance in pursuing an illegally operating
17 establishment. The division may refuse a license, or a
18 renewal thereof, to any establishment that is not constructed
19 and maintained in accordance with law and with the rules of
20 the division. The division may refuse to issue a license, or
21 a renewal thereof, to any establishment an operator of which,
22 within the preceding 5 years, has been adjudicated guilty of,
23 or has forfeited a bond when charged with, any crime
24 reflecting on professional character, including soliciting for
25 prostitution, pandering, letting premises for prostitution,
26 keeping a disorderly place, or illegally dealing in controlled
27 substances as defined in chapter 893, whether in this state or
28 in any other jurisdiction within the United States, or has had
29 a license denied, revoked, or suspended pursuant to s.
30 400.414. Licenses shall be renewed annually, and the division
31 shall adopt a rule establishing a staggered schedule for

1 license renewals. If any license expires while administrative
2 charges are pending against the license, the proceedings
3 against the license shall continue to conclusion as if the
4 license were still in effect.

5 (2) APPLICATION FOR LICENSE.--Each person who plans to
6 open a public lodging establishment must ~~or a public food~~
7 ~~service establishment shall~~ apply for and receive a license
8 from the division prior to the commencement of operation. A
9 condominium association, as defined in s. 718.103, which does
10 not own any units classified as resort condominiums under s.
11 509.242(1)(c) shall not be required to apply for or receive a
12 public lodging establishment license.

13 (3) DISPLAY OF LICENSE.--Any license issued by the
14 division shall be conspicuously displayed in the office or
15 lobby of the licensed establishment. ~~Public food service~~
16 ~~establishments which offer catering services shall display~~
17 ~~their license number on all advertising for catering services.~~

18 Section 34. Section 509.251, Florida Statutes, is
19 amended to read:

20 509.251 License fees.--

21 (1) The division shall adopt, by rule, a schedule of
22 fees to be paid by each public lodging establishment as a
23 prerequisite to issuance or renewal of a license. Such fees
24 shall be based on the number of rental units in the
25 establishment but shall not exceed \$1,000. Resort condominium
26 units within separate buildings or at separate locations but
27 managed by one licensed agent may be combined in a single
28 license application, and the division shall charge a license
29 fee as if all units in the application are in a single
30 licensed establishment. Resort dwelling units may be licensed
31 in the same manner as condominium units. The fee schedule

1 shall require an establishment which applies for an initial
2 license to pay the full license fee if application is made
3 during the annual renewal period or more than 6 months prior
4 to the next such renewal period and one-half of the fee if
5 application is made 6 months or less prior to such period.
6 The fee schedule shall include fees collected for the purpose
7 of funding the Hospitality Education Program, pursuant to s.
8 509.302, which are payable in full for each application
9 regardless of when the application is submitted.

10 (a) Upon making initial application or an application
11 for change of ownership, the applicant shall pay to the
12 division a fee as prescribed by rule, not to exceed \$50, in
13 addition to any other fees required by law, which shall cover
14 all costs associated with initiating regulation of the
15 establishment.

16 (b) A license renewal filed with the division within
17 30 days after the expiration date shall be accompanied by a
18 delinquent fee as prescribed by rule, not to exceed \$50, in
19 addition to the renewal fee and any other fees required by
20 law. A license renewal filed with the division more than 30
21 but not more than 60 days after the expiration date shall be
22 accompanied by a delinquent fee as prescribed by rule, not to
23 exceed \$100, in addition to the renewal fee and any other fees
24 required by law.

25 ~~(2) The division shall adopt, by rule, a schedule of~~
26 ~~fees to be paid by each public food service establishment as a~~
27 ~~prerequisite to issuance or renewal of a license. The fee~~
28 ~~schedule shall prescribe a basic fee and additional fees based~~
29 ~~on seating capacity and services offered. The aggregate fee~~
30 ~~per establishment charged any public food service~~
31 ~~establishment may not exceed \$400. The fee schedule shall~~

1 ~~require an establishment which applies for an initial license~~
2 ~~to pay the full license fee if application is made during the~~
3 ~~annual renewal period or more than 6 months prior to the next~~
4 ~~such renewal period and one-half of the fee if application is~~
5 ~~made 6 months or less prior to such period. The fee schedule~~
6 ~~shall include fees collected for the purpose of funding the~~
7 ~~Hospitality Education Program, pursuant to s. 509.302, which~~
8 ~~are payable in full for each application regardless of when~~
9 ~~the application is submitted.~~

10 ~~(a) Upon making initial application or an application~~
11 ~~for change of ownership, the applicant shall pay to the~~
12 ~~division a fee as prescribed by rule, not to exceed \$50, in~~
13 ~~addition to any other fees required by law, which shall cover~~
14 ~~all costs associated with initiating regulation of the~~
15 ~~establishment.~~

16 ~~(b) A license renewal filed with the division within~~
17 ~~30 days after the expiration date shall be accompanied by a~~
18 ~~delinquent fee as prescribed by rule, not to exceed \$50, in~~
19 ~~addition to the renewal fee and any other fees required by~~
20 ~~law. A license renewal filed with the division more than 30~~
21 ~~but not more than 60 days after the expiration date shall be~~
22 ~~accompanied by a delinquent fee as prescribed by rule, not to~~
23 ~~exceed \$100, in addition to the renewal fee and any other fees~~
24 ~~required by law.~~

25 ~~(2)(3)~~ The fact that a public food service
26 establishment is operated in conjunction with a public lodging
27 establishment does not relieve the public food service
28 establishment of the requirement that it be separately
29 licensed as a public food service establishment.

30 ~~(4) The actual costs associated with each~~
31 ~~epidemiological investigation conducted by the Department of~~

1 ~~Health and Rehabilitative Services in public food service~~
2 ~~establishments licensed pursuant to this chapter shall be~~
3 ~~accounted for and submitted to the division annually. The~~
4 ~~division shall journal transfer the total of all such amounts~~
5 ~~from the Hotel and Restaurant Trust Fund to the Department of~~
6 ~~Health and Rehabilitative Services annually; however, the~~
7 ~~total amount of such transfer may not exceed an amount equal~~
8 ~~to 5 percent of the annual public food service establishment~~
9 ~~licensure fees received by the division.~~

10 Section 35. Section 509.261, Florida Statutes, is
11 amended to read:

12 509.261 Revocation or suspension of licenses; fines;
13 procedure.--

14 (1) Any public lodging establishment ~~or public food~~
15 ~~service establishment~~ that has operated or is operating in
16 violation of this chapter or the rules of the division,
17 operating without a license, or operating with a suspended or
18 revoked license may be subject by the division to:

19 (a) Fines not to exceed \$1,000 per offense;

20 (b) Mandatory attendance, at personal expense, at an
21 educational program sponsored by the Hospitality Education
22 Program; and

23 (c) The suspension, revocation, or refusal of a
24 license issued pursuant to this chapter.

25 (2) For the purposes of this section, the division may
26 regard as a separate offense each day or portion of a day on
27 which an establishment is operated in violation of a "critical
28 law or rule," as that term is defined by rule.

29 (3) The division shall post a prominent
30 closed-for-operation sign on any public lodging establishment
31 ~~or public food service establishment~~, the license of which has

1 | been suspended or revoked. The division shall also post such
2 | sign on any establishment judicially or administratively
3 | determined to be operating without a license. It is a
4 | misdemeanor of the second degree, punishable as provided in s.
5 | 775.082 or s. 775.083, for any person to deface or remove such
6 | closed-for-operation sign or for any public lodging
7 | establishment ~~or public food service establishment~~ to open for
8 | operation without a license or to open for operation while its
9 | license is suspended or revoked. The division may impose
10 | administrative sanctions for violations of this section.

11 | (4) All funds received by the division as satisfaction
12 | for administrative fines shall be paid into the State Treasury
13 | to the credit of the Public Lodging Hotel and Restaurant Trust
14 | Fund and may not subsequently be used for payment to any
15 | entity performing required inspections under contract with the
16 | division.

17 | (5)(a) A license may not be suspended under this
18 | section for a period of more than 12 months. At the end of
19 | such period of suspension, the establishment may apply for
20 | reinstatement or renewal of the license. A public lodging
21 | establishment ~~or public food service establishment~~, the
22 | license of which is revoked, may not apply for another license
23 | for that location prior to the date on which the revoked
24 | license would have expired.

25 | (b) The division may fine, suspend, or revoke the
26 | license of any public lodging establishment ~~or public food~~
27 | ~~service establishment~~ if the operator knowingly lets, leases,
28 | or gives space for unlawful gambling purposes or permits
29 | unlawful gambling in such establishment or in or upon any
30 | premises which are used in connection with, and are under the
31 | same charge, control, or management as, such establishment.

1 (6) The division may fine, suspend, or revoke the
2 license of any public lodging establishment ~~or public food~~
3 ~~service establishment~~ when:

4 (a) Any person with a direct financial interest in the
5 licensed establishment, within the preceding 5 years in this
6 state, any other state, or the United States, has been
7 adjudicated guilty of or forfeited a bond when charged with
8 soliciting for prostitution, pandering, letting premises for
9 prostitution, keeping a disorderly place, illegally dealing in
10 controlled substances as defined in chapter 893, or any other
11 crime reflecting on professional character.

12 (b) Such establishment has been deemed an imminent
13 danger to the public health and safety by the division or
14 local health authority for failure to meet sanitation
15 standards or the premises have been determined by the division
16 or local authority to be unsafe or unfit for human occupancy.

17 (7) A person is not entitled to the issuance of a
18 license for any public lodging establishment ~~or public food~~
19 ~~service establishment~~ except in the discretion of the director
20 when the division has notified the current licenseholder for
21 such premises that administrative proceedings have been or
22 will be brought against such current licensee for violation of
23 any provision of this chapter or rule of the division.

24 Section 36. Subsection (1) of section 509.281, Florida
25 Statutes, is amended to read:

26 509.281 Prosecution for violation; duty of state
27 attorney; penalties.--

28 (1) The division or an agent of the division, upon
29 ascertaining by inspection that any public lodging
30 establishment ~~or public food service establishment~~ is being
31 operated contrary to the provisions of this chapter, shall

1 make complaint and cause the arrest of the violator, and the
2 state attorney, upon request of the division or agent, shall
3 prepare all necessary papers and conduct the prosecution. The
4 division shall proceed in the courts by mandamus or injunction
5 whenever such proceedings may be necessary to the proper
6 enforcement of the provisions of this chapter, of the rules
7 adopted pursuant hereto, or of orders of the division.

8 Section 37. Subsection (1) of section 509.291, Florida
9 Statutes, is amended to read:

10 509.291 Advisory council.--

11 (1) There is created an 18-member advisory council.

12 (a) The Secretary of Business and Professional
13 Regulation shall appoint 11 voting members to the advisory
14 council. Each member appointed by the secretary must be an
15 operator of an establishment licensed under this chapter and
16 shall represent the industries regulated by the division,
17 except that one member appointed by the secretary must be a
18 layperson and shall represent the general public. Such members
19 of the council shall serve staggered terms of 4 years.

20 (b) The division, the Department of Health ~~and~~
21 ~~Rehabilitative Services~~, the Florida Hotel and Motel
22 Association, the Florida Restaurant Association, the Florida
23 Apartment Association, and the Florida Association of Realtors
24 shall each designate one representative to serve as a voting
25 member of the council, and one member appointed by the
26 secretary must be appointed to represent nontransient public
27 lodging establishments. In addition, one hospitality
28 administration educator from an institution of higher
29 education affiliated with the Hospitality Education Program
30 pursuant to s. 509.302(2) shall serve for a term of 2 years as
31 a voting member of the council. This single representative

1 shall be designated on a rotating basis by the institution or
2 institutions of higher education affiliated with this program
3 pursuant to s. 509.302(2).

4 (c) Any member who fails to attend three consecutive
5 council meetings without good cause may be removed from the
6 council by the secretary.

7 Section 38. Subsections (1), (3), and (7) of section
8 509.302, Florida Statutes, are amended to read:

9 509.302 Director of education, personnel, employment
10 duties, compensation.--

11 (1) The director shall, with the advice of the
12 advisory council, employ a director of education for the
13 public lodging ~~and food service~~ industry.

14 (3) All public lodging establishments ~~and all public~~
15 ~~food service establishments~~ licensed under this chapter shall
16 pay an annual fee of no more than \$6 which shall be included
17 in the annual license fee and which shall be used for the sole
18 purpose of funding the Hospitality Education Program.

19 (7) The director of education, with the approval of
20 the director and with the consent of the advisory council, may
21 designate funds, not to exceed \$150,000 annually, to support
22 school-to-career transition programs available through
23 statewide organizations in the hospitality services field.
24 Such programs shall be designed to prepare students for
25 progressive careers in the hospitality industry. The director
26 of education, with the approval of the director and with the
27 consent of the advisory council, may also designate funds, not
28 to exceed ~~\$50,000~~ annually, to support ~~food safety training~~
29 ~~programs available through statewide organizations in the~~
30 ~~hospitality services field, and not to exceed \$50,000~~
31 annually, to support nontransient public lodging training

1 programs available through statewide organizations in the
2 public lodging services field.

3 (a) The director of education shall have supervision
4 over the administration of the programs set forth in this
5 subsection and shall report the status of the programs at all
6 meetings of the advisory council and at such other times as
7 are prescribed by the advisory council.

8 (b) The division shall adopt rules providing the
9 criteria for program approval and the procedures for
10 processing program applications. The criteria and procedures
11 shall be approved by the advisory council.

12 Section 39. Paragraph (a) of subsection (2) and
13 subsection (4) of section 386.205, Florida Statutes, are
14 amended to read:

15 386.205 Designation of smoking areas.--

16 (2)(a) A smoking area may not be designated in an
17 elevator, school bus, public means of mass transportation
18 subject only to state smoking regulation, restroom, hospital,
19 doctor's or dentist's waiting room, jury deliberation room,
20 county health department, day care center, school or other
21 educational facility, ~~or~~ any common area as defined in s.
22 386.203, or any public food service establishment as defined
23 in s. 509.013. However, a patient's room in a hospital,
24 nursing home, or other health care facility may be designated
25 as a smoking area if such designation is ordered by the
26 attending physician and agreed to by all patients assigned to
27 that room.

28 (4) No more than one-half of the total square footage
29 in any public place within a single enclosed indoor area used
30 for a common purpose shall be reserved and designated as a
31 smoking area. ~~This square footage limitation does not apply to~~

1 ~~restaurants as defined in s. 386.203(1)(p). However, such a~~
2 ~~restaurant must ensure that no more than 65 percent of the~~
3 ~~seats existing in its dining room at any time are located in~~
4 ~~an area designated as a smoking area.~~

5 Section 40. The administrative rules of the agencies
6 involved in this reorganization that are in effect immediately
7 prior to the effective date of this act shall remain in effect
8 until specifically changed in the manner provided by law.

9 Section 41. This act shall not affect the validity of
10 any judicial or administrative proceeding pending on the
11 effective date of this act, and any agency to which are
12 transferred the powers, duties, and functions relating to the
13 pending proceeding shall be substituted as a party in interest
14 for that proceeding.

15 Section 42. Sections 509.213, 509.214, 509.232, and
16 509.292, Florida Statutes, are transferred and renumbered,
17 respectively, as sections 381.0075, 381.0076, 381.0077, and
18 381.0078, Florida Statutes.

19 Section 43. Paragraph (p) of subsection (1) of section
20 386.203 and sections 509.036, 509.039, and 509.049, Florida
21 Statutes, are repealed.

22 Section 44. Effective July 1, 1998, the Secretary of
23 Health and the Secretary of Business and Professional
24 Regulation shall each appoint three staff members to a
25 restaurant program transition advisory committee. The members
26 of the committee must represent staff of the respective
27 department, including representatives from the headquarter's
28 level and local field staff, who are involved in the
29 transferred functions. In addition, the two secretaries shall
30 jointly appoint one person to represent the restaurant
31 industry on the committee. The Secretary of Health shall

1 designate a member of the committee to serve as committee
2 chair. The purpose of the committee is to prepare for the
3 transfer of regulatory responsibilities relating to
4 restaurants from the Department of Business and Professional
5 Regulation to the Department of Health. The committee shall
6 be located, for administrative purposes, in the Department of
7 Health.

8 (1) By September 15, 1998, the committee shall
9 prescribe a schedule of transition activities and functions
10 with respect to the transfer of responsibilities. The
11 schedule must, at a minimum, address: office space,
12 information support systems, cash ownership and transfer,
13 administrative support functions, inventory and transfer of
14 equipment and supplies, expenditure transfers, budget
15 authority and positions, and certifications forward.

16 (2) The committee shall review current regulatory
17 activities and make recommendations regarding consolidation of
18 duplicative regulatory functions, elimination of overlap, and
19 any needed modifications in organizational structure. The
20 committee shall report its findings, including recommendations
21 for changes in state policy, rules, and statutes that will
22 improve restaurant regulatory functions by the Department of
23 Health, to the Secretary of Health, the Governor, the
24 President of the Senate, and the Speaker of the House of
25 Representatives by November 30, 1999.

26 Section 45. Except as otherwise provided in this act
27 and except for this section, which shall take effect upon
28 becoming a law, this act shall take effect January 1, 1999.

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SENATE SUMMARY

Transfers certain powers, duties, and functions of the Department of Business and Professional Regulation relating to public food service establishments to the Department of Health. Prohibits smoking in public food service establishments. (See bill for details.)