

1 A bill to be entitled
2 An act relating to public lodging and public food service
3 establishments; amending s. 509.013, F.S.; revising and
4 adding definitions; amending s. 509.032, F.S.; eliminating
5 the requirement for the Division of Hotels and Restaurants
6 to assist the State Fire Marshal in updating the Florida
7 Fire Prevention Code; eliminating the requirement for the
8 division to enforce the Florida Fire Prevention Code in
9 conducting its inspections; revising state preemption
10 authority; amending s. 509.039, F.S.; removing a time
11 limit for obtaining food service manager certification
12 after employment; amending s. 509.101, F.S.; deleting the
13 requirement that a transient establishment maintain a copy
14 of ch. 509, F.S., on its premises; repealing s. 509.201,
15 F.S., relating to public lodging establishment room rate
16 posting and filing requirements, room rate advertisement
17 requirements, and related exemptions and penalties;
18 amending s. 509.211, F.S.; deleting requirement for
19 division notification of local firesafety officials or the
20 State Fire Marshal of violations of rules under ch. 633,
21 F.S.; amending s. 509.221, F.S.; providing that certain
22 sanitary regulations for a public lodging establishment
23 for its guests and employees and for a public food service
24 establishment for its employees be in compliance with the
25 Florida Building Code as approved by the local authority
26 having jurisdiction; providing for wastewater disposal
27 procedures for public food service establishments;
28 requiring public lodging establishment and public food

29 service establishment public restroom requirements to be
 30 in accordance with the Florida Building Code as approved
 31 by the local authority having jurisdiction; amending s.
 32 509.242, F.S.; clarifying public lodging establishment
 33 classifications; amending s. 509.261, F.S.; authorizing
 34 the division to levy sanctions for failing to comply with
 35 final orders of the division; authorizing the division to
 36 require payment of outstanding fines before renewing or
 37 issuing a license; providing an effective date.

38

39 Be It Enacted by the Legislature of the State of Florida:

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41 Section 1. Subsections (4) and (12) of section 509.013,
 42 Florida Statutes, are amended, and subsections (14) through (16)
 43 are added to that section, to read:

44 509.013 Definitions.--As used in this chapter, the term:

45 (4) (a) "Public lodging establishment" includes a transient
 46 public lodging establishment as defined in subparagraph 1. and a
 47 nontransient public lodging establishment as defined in
 48 subparagraph 2. ~~means any unit, group of units, dwelling,~~
 49 ~~building, or group of buildings within a single complex of~~
 50 ~~buildings, which is rented to guests more than three times in a~~
 51 ~~calendar year for periods of less than 30 days or 1 calendar~~
 52 ~~month, whichever is less, or which is advertised or held out to~~
 53 ~~the public as a place regularly rented to guests.~~

54 1. "Transient public lodging establishment" means any
 55 unit, group of units, dwelling, building, or group of buildings
 56 within a single complex of buildings which is rented to guests

57 more than three times in a calendar year for periods of less
 58 than 30 days or 1 calendar month, whichever is less, or which is
 59 advertised or held out to the public as a place regularly rented
 60 to guests.

61 2. "Nontransient public lodging establishment" means any
 62 unit, group of units, dwelling, building, or group of buildings
 63 within a single complex of buildings which is rented to guests
 64 for periods of at least 30 days or 1 calendar month, whichever
 65 is less, or which is advertised or held out to the public as a
 66 place regularly rented to guests for periods of at least 30 days
 67 or 1 calendar month.

68
 69 License classifications of public lodging establishments, and
 70 the definitions therefor, are set out in s. 509.242. For the
 71 purpose of licensure, the term does not include condominium
 72 common elements as defined in s. 718.103.

73 (b) The following are excluded from the definitions
 74 ~~definition~~ in paragraph (a):

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

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

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

83 4. Any unit or group of units in a condominium,
 84 cooperative, or timeshare plan and any individually or

85 collectively owned one-family, two-family, three-family, or
 86 four-family dwelling house or dwelling unit that is rented for
 87 periods of at least 30 days or 1 calendar month, whichever is
 88 less, and that is not advertised or held out to the public as a
 89 place regularly rented for periods of less than 1 calendar
 90 month, provided that no more than four rental units within a
 91 single complex of buildings are available for rent;

92 5. Any migrant labor camp or residential migrant housing
 93 permitted by the Department of Health; under ss. 381.008-
 94 381.00895; and

95 6. Any establishment inspected by the Department of Health
 96 and regulated by chapter 513.

97 (12) "Transient occupancy" means occupancy when it is the
 98 intention of the parties that the occupancy will be temporary.
 99 ~~There is a rebuttable presumption that, when the dwelling unit~~
 100 ~~occupied is the sole residence of the guest, the occupancy is~~
 101 ~~nontransient.~~ There is a rebuttable presumption that, when the
 102 dwelling unit occupied is not the sole residence of the guest,
 103 the occupancy is transient.

104 (14) "Nontransient establishment" means any public lodging
 105 establishment that is rented or leased to guests by an operator
 106 whose intention is that the dwelling unit occupied will be the
 107 sole residence of the guest.

108 (15) "Nontransient occupancy" means occupancy when it is
 109 the intention of the parties that the occupancy will not be
 110 temporary. There is a rebuttable presumption that when the
 111 dwelling unit occupied is the sole residence of the guest, the
 112 occupancy is nontransient.

113 (16) "Nontransient" means a guest in nontransient
 114 occupancy.

115 Section 2. Paragraph (d) of subsection (2) and subsection
 116 (7) of section 509.032, Florida Statutes, are amended to read:
 117 509.032 Duties.--

118 (2) INSPECTION OF PREMISES.--

119 (d) The division shall adopt and enforce sanitation rules
 120 consistent with law to ensure the protection of the public from
 121 food-borne illness in those establishments licensed under this
 122 chapter. These rules shall provide the standards and
 123 requirements for obtaining, storing, preparing, processing,
 124 serving, or displaying food in public food service
 125 establishments, approving public food service establishment
 126 facility plans, conducting necessary public food service
 127 establishment inspections for compliance with sanitation
 128 regulations, cooperating and coordinating with the Department of
 129 Health in epidemiological investigations, and initiating
 130 enforcement actions, and for other such responsibilities deemed
 131 necessary by the division. The division may not establish by
 132 rule any regulation governing the design, construction,
 133 erection, alteration, modification, repair, or demolition of any
 134 public lodging or public food service establishment. It is the
 135 intent of the Legislature to preempt that function to the
 136 Florida Building Commission and the State Fire Marshal through
 137 adoption and maintenance of the Florida Building Code and the
 138 Florida Fire Prevention Code. The division shall provide
 139 technical assistance to the commission ~~and the State Fire~~
 140 ~~Marshal~~ in updating the construction standards of the Florida

141 Building Code ~~and the Florida Fire Prevention Code~~ which govern
 142 public lodging and public food service establishments. Further,
 143 the division shall enforce the provisions of the Florida
 144 Building Code ~~and the Florida Fire Prevention Code~~ which apply
 145 to public lodging and public food service establishments in
 146 conducting any inspections authorized by this part.

147 (7) PREEMPTION AUTHORITY.--The regulation of public
 148 lodging establishments and public food service establishments,
 149 including, but not limited to, the inspection of public lodging
 150 establishments and public food service establishments for
 151 compliance with the sanitation standards adopted under this
 152 section, and the regulation of food safety protection standards
 153 for required training and testing of food service establishment
 154 personnel are preempted to the state. This subsection does not
 155 preempt the authority of a local government or local enforcement
 156 district to conduct inspections of public lodging and public
 157 food service establishments for compliance with the Florida
 158 Building Code and the Florida Fire Prevention Code, pursuant to
 159 ss. 553.80 and 633.022.

160 Section 3. Section 509.039, Florida Statutes, is amended
 161 to read:

162 509.039 Food service manager certification.--It is the
 163 duty of the division to adopt, by rule, food safety protection
 164 standards for the training and certification of all food service
 165 managers who are responsible for the storage, preparation,
 166 display, or serving of foods to the public in establishments
 167 regulated under this chapter. The standards adopted by the
 168 division shall be consistent with the Standards for

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169 Accreditation of Food Protection Manager Certification Programs
170 adopted by the Conference for Food Protection. These standards
171 are to be adopted by the division to ensure that, upon
172 successfully passing a test, approved by the Conference for Food
173 Protection, a manager of a food service establishment shall have
174 demonstrated a knowledge of basic food protection practices. The
175 division may contract with an organization offering a training
176 and certification program that complies with division standards
177 and results in a certification recognized by the Conference for
178 Food Protection to conduct an approved test and certify all test
179 results to the division. Other organizations offering programs
180 that meet the same requirements may also conduct approved tests
181 and certify all test results to the division. The division may
182 charge the organization it contracts with a fee of not more than
183 \$5 per certified test to cover the administrative costs of the
184 division for the food service manager training and certification
185 program. All managers employed by a food service establishment
186 must have passed an approved test and received a certificate
187 attesting thereto. ~~Managers have a period of 90 days after~~
188 ~~employment to pass the required test.~~ The ranking of food
189 service establishments is also preempted to the state; provided,
190 however, that any local ordinances establishing a ranking system
191 in existence prior to October 1, 1988, may remain in effect.

192 Section 4. Subsections (1) and (2) of section 509.101,
193 Florida Statutes, is amended to read:

194 509.101 Establishment rules; posting of notice; food
195 service inspection report; maintenance of guest register; mobile
196 food dispensing vehicle registry.--

197 (1) Any operator of a public lodging establishment or a
198 public food service establishment may establish reasonable rules
199 and regulations for the management of the establishment and its
200 guests and employees; and each guest or employee staying,
201 sojourning, eating, or employed in the establishment shall
202 conform to and abide by such rules and regulations so long as
203 the guest or employee remains in or at the establishment. Such
204 rules and regulations shall be deemed to be a special contract
205 between the operator and each guest or employee using the
206 services or facilities of the operator. Such rules and
207 regulations shall control the liabilities, responsibilities, and
208 obligations of all parties. Any rules or regulations established
209 pursuant to this section shall be printed in the English
210 language and posted in a prominent place within such public
211 lodging establishment or public food service establishment. ~~Such~~
212 ~~posting shall also include notice that a current copy of this~~
213 ~~chapter is available in the office for public review.~~ In
214 addition, any operator of a public food service establishment
215 shall maintain the latest food service inspection report or a
216 duplicate copy on premises and shall make it available to the
217 public upon request.

218 (2) It is the duty of each operator of a transient
219 establishment to maintain at all times a register, signed by or
220 for guests who occupy rental units within the establishment,
221 showing the dates upon which the rental units were occupied by
222 such guests and the rates charged for their occupancy. This
223 register shall be maintained in chronological order and
224 available for inspection by the division at any time. Operators

225 need not make available registers which are more than 2 years
 226 old. ~~Each operator shall maintain at all times a current copy of~~
 227 ~~this chapter in the office of the licensed establishment which~~
 228 ~~shall be made available to the public upon request.~~

229 Section 5. Section 509.201, Florida Statutes, is repealed.

230 Section 6. Subsections (2) through (5) of section 509.211,
 231 Florida Statutes, are amended to read:

232 509.211 Safety regulations.--

233 ~~(2) The division, or its agent, shall immediately notify~~
 234 ~~the local firesafety authority or the State Fire Marshal of any~~
 235 ~~major violation of a rule adopted under chapter 633 which~~
 236 ~~relates to public lodging establishments or public food service~~
 237 ~~establishments. The division may impose administrative sanctions~~
 238 ~~for violations of these rules pursuant to s. 509.261 or may~~
 239 ~~refer such violations to the local firesafety authorities for~~
 240 ~~enforcement.~~

241 (2)(3)(a) It is unlawful for any person to use within any
 242 public lodging establishment or public food service
 243 establishment any fuel-burning wick-type equipment for space
 244 heating unless such equipment is vented so as to prevent the
 245 accumulation of toxic or injurious gases or liquids.

246 (b) Any person who violates the provisions of paragraph
 247 (a) commits ~~is guilty of~~ a misdemeanor of the second degree,
 248 punishable as provided in s. 775.082 or s. 775.083.

249 (3)(4) Each public lodging establishment that is three or
 250 more stories in height must have safe and secure railings on all
 251 balconies, platforms, and stairways, and all such railings must
 252 be properly maintained and repaired. The division may impose

253 administrative sanctions for violations of this subsection
 254 pursuant to s. 509.261.

255 (4)~~(5)~~ Every enclosed space or room that contains a boiler
 256 regulated under chapter 554 which is fired by the direct
 257 application of energy from the combustion of fuels and that is
 258 located in any portion of a public lodging establishment that
 259 also contains sleeping rooms shall be equipped with one or more
 260 carbon monoxide sensor devices that bear the label of a
 261 nationally recognized testing laboratory and have been tested
 262 and listed as complying with the most recent Underwriters
 263 Laboratories, Inc., Standard 2034, or its equivalent, unless it
 264 is determined that carbon monoxide hazards have otherwise been
 265 adequately mitigated as determined by the division. Such devices
 266 shall be integrated with the public lodging establishment's fire
 267 detection system. Any such installation or determination shall
 268 be made in accordance with rules adopted by the division.

269 Section 7. Subsections (1) and (5) and paragraph (a) of
 270 subsection (2) of section 509.221, Florida Statutes, are amended
 271 to read:

272 509.221 Sanitary regulations.--

273 (1) (a) Each public lodging establishment ~~and each public~~
 274 ~~food service establishment~~ shall be supplied with potable water
 275 and shall provide adequate sanitary facilities for the
 276 accommodation of its employees and guests. Such facilities may
 277 include, but are not limited to, showers, handwash basins,
 278 toilets, and bidets. Such sanitary facilities shall be connected
 279 to approved plumbing. Such plumbing shall be sized, installed,
 280 and maintained in accordance with the Florida Building Code as

281 approved by the local plumbing authority or other local
 282 authority having jurisdiction. Wastewater or sewage shall be
 283 properly treated onsite or discharged into an approved sewage
 284 collection and treatment system.

285 (b) Each public food service establishment shall be
 286 supplied with potable water and shall provide adequate sanitary
 287 facilities for the accommodation of its employees. Such
 288 facilities may include, but are not limited to, showers,
 289 handwash basins, toilets, and bidets. Such sanitary facilities
 290 shall be connected to approved plumbing. Such plumbing shall be
 291 sized, installed, and maintained in accordance with the Florida
 292 Building Code as approved by the local plumbing authority or
 293 other local authority having jurisdiction. Wastewater or sewage
 294 shall be properly treated onsite or discharged into an approved
 295 sewage collection and treatment system.

296 (2) (a) Each public lodging establishment and each public
 297 food service establishment shall maintain ~~not less than one~~
 298 public bathroom facilities in accordance with the Florida
 299 Building Code as approved by the local plumbing authority or
 300 other local authority having jurisdiction ~~for each sex, properly~~
 301 ~~designated, unless otherwise provided by rule.~~ The division
 302 shall establish by rule categories of establishments not subject
 303 to the bathroom requirement of this paragraph. Such rules may
 304 not alter the exemption provided for theme parks in paragraph
 305 (b).

306 (5) Each transient public lodging establishment ~~and each~~
 307 ~~public food service establishment~~ shall provide in the main
 308 public bathroom soap and clean towels or other approved hand-

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309 drying devices and each public lodging establishment shall
310 furnish each guest with two clean individual towels so that two
311 guests will not be required to use the same towel unless it has
312 first been laundered. Each public food service establishment
313 shall provide in the employee bathroom and any public bathroom
314 soap and clean towels or other approved hand-drying devices.

315 Section 8. Paragraphs (d) and (e) of subsection (1) of
316 section 509.242, Florida Statutes, are amended to read:

317 509.242 Public lodging establishments; classifications.--

318 (1) A public lodging establishment shall be classified as
319 a hotel, motel, resort condominium, nontransient apartment,
320 transient apartment, roominghouse, bed and breakfast inn, or
321 resort dwelling if the establishment satisfies the following
322 criteria:

323 (d) Nontransient apartment or roominghouse.--A
324 nontransient apartment or roominghouse is a ~~any apartment~~
325 building or complex of buildings in which 75 percent or more of
326 the units are available for rent to nontransient tenants.

327 (e) Transient apartment or roominghouse.--A transient
328 apartment or roominghouse is a ~~any apartment~~ building or complex
329 of buildings in which more than 25 percent of the units are
330 advertised or held out to the public as available for transient
331 occupancy.

332 Section 9. Subsections (8) and (9) are added to section
333 509.261, Florida Statutes, to read:

334 509.261 Revocation or suspension of licenses; fines;
335 procedure.--

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336 (8) The division may fine, suspend, or revoke the license
337 of any public lodging establishment or public food service
338 establishment when the establishment is not in compliance with
339 the requirements of a final order or other administrative action
340 issued against the licensee by the division.

341 (9) The division may refuse to issue or renew the license
342 of any public lodging establishment or public food service
343 establishment until all outstanding fines are paid in full to
344 the division as required by all final orders or other
345 administrative action issued against the licensee by the
346 division.

347 Section 10. This act shall take effect July 1, 2008.