

By the Committee on Regulated Industries; and Senator Aronberg

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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 a 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

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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:

40
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 unit,
55 group of units, dwelling, building, or group of buildings within
56 a single complex of buildings which is rented to guests more than
57 three times in a calendar year for periods of less than 30 days
58 or 1 calendar month, whichever is less, or which is advertised or

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59 held out to the public as a place regularly rented to guests.

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

67
68 License classifications of public lodging establishments, and the
69 definitions therefor, are set out in s. 509.242. For the purpose
70 of licensure, the term does not include condominium common
71 elements as defined in s. 718.103.

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

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

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

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

82 4. Any unit or group of units in a condominium,
83 cooperative, or timeshare plan and any individually or
84 collectively owned one-family, two-family, three-family, or four-
85 family dwelling house or dwelling unit that is rented for periods
86 of at least 30 days or 1 calendar month, whichever is less, and
87 that is not advertised or held out to the public as a place

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88 regularly rented for periods of less than 1 calendar month,
89 provided that no more than four rental units within a single
90 complex of buildings are available for rent;

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

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

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

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

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

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

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

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117 (2) INSPECTION OF PREMISES.--

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

145 (7) PREEMPTION AUTHORITY.--The regulation of public lodging

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

158 Section 3. Section 509.039, Florida Statutes, is amended to
159 read:

160 509.039 Food service manager certification.--It is the duty
161 of the division to adopt, by rule, food safety protection
162 standards for the training and certification of all food service
163 managers who are responsible for the storage, preparation,
164 display, or serving of foods to the public in establishments
165 regulated under this chapter. The standards adopted by the
166 division shall be consistent with the Standards for Accreditation
167 of Food Protection Manager Certification Programs adopted by the
168 Conference for Food Protection. These standards are to be adopted
169 by the division to ensure that, upon successfully passing a test,
170 approved by the Conference for Food Protection, a manager of a
171 food service establishment shall have demonstrated a knowledge of
172 basic food protection practices. The division may contract with
173 an organization offering a training and certification program
174 that complies with division standards and results in a

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175 certification recognized by the Conference for Food Protection to
176 conduct an approved test and certify all test results to the
177 division. Other organizations offering programs that meet the
178 same requirements may also conduct approved tests and certify all
179 test results to the division. The division may charge the
180 organization it contracts with a fee of not more than \$5 per
181 certified test to cover the administrative costs of the division
182 for the food service manager training and certification program.
183 All managers employed by a food service establishment must have
184 passed an approved test and received a certificate attesting
185 thereto. ~~Managers have a period of 90 days after employment to~~
186 ~~pass the required test.~~ The ranking of food service
187 establishments is also preempted to the state; provided, however,
188 that any local ordinances establishing a ranking system in
189 existence prior to October 1, 1988, may remain in effect.

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

192 509.101 Establishment rules; posting of notice; food
193 service inspection report; maintenance of guest register; mobile
194 food dispensing vehicle registry.--

195 (1) Any operator of a public lodging establishment or a
196 public food service establishment may establish reasonable rules
197 and regulations for the management of the establishment and its
198 guests and employees; and each guest or employee staying,
199 sojourning, eating, or employed in the establishment shall
200 conform to and abide by such rules and regulations so long as the
201 guest or employee remains in or at the establishment. Such rules
202 and regulations shall be deemed to be a special contract between
203 the operator and each guest or employee using the services or

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204 facilities of the operator. Such rules and regulations shall
205 control the liabilities, responsibilities, and obligations of all
206 parties. Any rules or regulations established pursuant to this
207 section shall be printed in the English language and posted in a
208 prominent place within such public lodging establishment or
209 public food service establishment. ~~Such posting shall also~~
210 ~~include notice that a current copy of this chapter is available~~
211 ~~in the office for public review.~~ In addition, any operator of a
212 public food service establishment shall maintain the latest food
213 service inspection report or a duplicate copy on premises and
214 shall make it available to the public upon request.

215 (2) It is the duty of each operator of a transient
216 establishment to maintain at all times a register, signed by or
217 for guests who occupy rental units within the establishment,
218 showing the dates upon which the rental units were occupied by
219 such guests and the rates charged for their occupancy. This
220 register shall be maintained in chronological order and available
221 for inspection by the division at any time. Operators need not
222 make available registers which are more than 2 years old. ~~Each~~
223 ~~operator shall maintain at all times a current copy of this~~
224 ~~chapter in the office of the licensed establishment which shall~~
225 ~~be made available to the public upon request.~~

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

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

229 509.211 Safety regulations.--

230 ~~(2) The division, or its agent, shall immediately notify~~
231 ~~the local firesafety authority or the State Fire Marshal of any~~
232 ~~major violation of a rule adopted under chapter 633 which relates~~

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233 ~~to public lodging establishments or public food service~~
234 ~~establishments. The division may impose administrative sanctions~~
235 ~~for violations of these rules pursuant to s. 509.261 or may refer~~
236 ~~such violations to the local firesafety authorities for~~
237 ~~enforcement.~~

238 (2)~~(3)~~(a) It is unlawful for any person to use within any
239 public lodging establishment or public food service establishment
240 any fuel-burning wick-type equipment for space heating unless
241 such equipment is vented so as to prevent the accumulation of
242 toxic or injurious gases or liquids.

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

246 (3)~~(4)~~ Each public lodging establishment that is three or
247 more stories in height must have safe and secure railings on all
248 balconies, platforms, and stairways, and all such railings must
249 be properly maintained and repaired. The division may impose
250 administrative sanctions for violations of this subsection
251 pursuant to s. 509.261.

252 (4)~~(5)~~ Every enclosed space or room that contains a boiler
253 regulated under chapter 554 which is fired by the direct
254 application of energy from the combustion of fuels and that is
255 located in any portion of a public lodging establishment that
256 also contains sleeping rooms shall be equipped with one or more
257 carbon monoxide sensor devices that bear the label of a
258 nationally recognized testing laboratory and have been tested and
259 listed as complying with the most recent Underwriters
260 Laboratories, Inc., Standard 2034, or its equivalent, unless it
261 is determined that carbon monoxide hazards have otherwise been

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262 adequately mitigated as determined by the division. Such devices
263 shall be integrated with the public lodging establishment's fire
264 detection system. Any such installation or determination shall be
265 made in accordance with rules adopted by the division.

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

269 509.221 Sanitary regulations.--

270 (1) (a) Each public lodging establishment ~~and each public~~
271 ~~food service establishment~~ shall be supplied with potable water
272 and shall provide adequate sanitary facilities for the
273 accommodation of its employees and guests. Such facilities may
274 include, but are not limited to, showers, handwash basins,
275 toilets, and bidets. Such sanitary facilities shall be connected
276 to approved plumbing. Such plumbing shall be sized, installed,
277 and maintained in accordance with the Florida Building Code as
278 approved by the local plumbing authority or other local authority
279 having jurisdiction. Wastewater or sewage shall be properly
280 treated onsite or discharged into an approved sewage collection
281 and treatment system.

282 (b) Each public food service establishment shall be
283 supplied with potable water and shall provide adequate sanitary
284 facilities for the accommodation of its employees. Such
285 facilities may include, but are not limited to, showers, handwash
286 basins, toilets, and bidets. Such sanitary facilities shall be
287 connected to approved plumbing. Such plumbing shall be sized,
288 installed, and maintained in accordance with the Florida Building
289 Code as approved by the local plumbing authority or other local
290 authority having jurisdiction. Wastewater or sewage shall be

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291 properly treated onsite or discharged into an approved sewage
292 collection and treatment system.

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

302 (5) Each transient public lodging establishment ~~and each~~
303 ~~public food service establishment~~ shall provide in the main
304 public bathroom soap and clean towels or other approved hand-
305 drying devices and each public lodging establishment shall
306 furnish each guest with two clean individual towels so that two
307 guests will not be required to use the same towel unless it has
308 first been laundered. Each public food service establishment
309 shall provide in the employee bathroom and any public bathroom
310 soap and clean towels or other approved hand-drying devices.

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

313 509.242 Public lodging establishments; classifications.--

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

319 (d) Nontransient apartment or roominghouse.--A nontransient

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320 apartment or roominghouse is a ~~any apartment~~ building or complex
321 of buildings in which 75 percent or more of the units are
322 available for rent to nontransient tenants.

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

328 Section 9. Subsections (8) and (9) are added to section
329 509.261, Florida Statutes, to read:

330 509.261 Revocation or suspension of licenses; fines;
331 procedure.--

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

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

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