

By the Committees on General Government Appropriations;
Community Affairs; 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; requiring the division, or its
10 agent, to notify firesafety officials of certain readily
11 observable violations of the Florida Fire Prevention Code
12 rules; revising state preemption authority; amending s.
13 509.039, F.S.; decreasing the amount of time in which a
14 food service manager is required to obtain certification
15 after employment; requiring public food service
16 establishments to provide proof of certification upon
17 request by the division; amending s. 509.101, F.S.;
18 deleting the requirement that a transient establishment
19 maintain a copy of ch. 509, F.S., on its premises;
20 amending s. 509.142, F.S.; requiring the operator of a
21 public lodging establishment or public food service
22 establishment to accommodate any person using a child
23 conveyance; amending s. 509.211, F.S.; deleting a
24 requirement for division notification of local firesafety
25 officials or the State Fire Marshal of violations of rules
26 under ch. 633, F.S.; amending s. 509.221, F.S.; providing
27 that certain sanitary regulations for a public lodging
28 establishment for its guests and employees and for a
29 public food service establishment for its employees be in

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30 compliance with the Florida Building Code as approved by
31 the local building authority; providing for wastewater
32 disposal procedures for public food service
33 establishments; requiring public lodging establishment and
34 public food service establishment public restroom
35 requirements to be in accordance with the Florida Building
36 Code as approved by the local building authority; amending
37 s. 509.242, F.S.; clarifying public lodging establishment
38 classifications; amending s. 509.261, F.S.; authorizing
39 the division to levy sanctions for failing to comply with
40 final orders of the division; authorizing the division to
41 require payment of outstanding fines before renewing or
42 issuing a license; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Subsections (4) and (12) of section 509.013,
47 Florida Statutes, are amended, and subsections (14) through (16)
48 are added to that section, to read:

49 509.013 Definitions.--As used in this chapter, the term:

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

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59 1. "Transient public lodging establishment" means any unit,
60 group of units, dwelling, building, or group of buildings within
61 a single complex of buildings which is rented to guests more than
62 three times in a calendar year for periods of less than 30 days
63 or 1 calendar month, whichever is less, or which is advertised or
64 held out to the public as a place regularly rented to guests.

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

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

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

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

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

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

87 4. Any unit or group of units in a condominium,

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

96 5. Any migrant labor camp or residential migrant housing
97 permitted by the Department of Health; under ss. 381.008-
98 381.00895; and

99 6. Any establishment inspected by the Department of Health
100 and regulated by chapter 513.

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

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

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

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117 (16) "Nontransient" means a guest in nontransient
118 occupancy.

119 Section 2. Paragraph (d) of subsection (2) and subsection
120 (7) of section 509.032, Florida Statutes, are amended to read:

121 509.032 Duties.--

122 (2) INSPECTION OF PREMISES.--

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

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146 Further, the division shall enforce the provisions of the Florida
147 Building Code ~~and the Florida Fire Prevention Code~~ which apply to
148 public lodging and public food service establishments in
149 conducting any inspections authorized by this part. The division,
150 or its agent, shall notify the local firesafety authority or the
151 State Fire Marshal of any readily observable violation of a rule
152 adopted under chapter 633 which relates to public lodging
153 establishments or public food establishments, and the
154 identification of such violation does not require any firesafety
155 inspection certification.

156 (7) PREEMPTION AUTHORITY.--The regulation of public lodging
157 establishments and public food service establishments, including,
158 but not limited to, the inspection of public lodging
159 establishments and public food service establishments for
160 compliance with the sanitation standards adopted under this
161 section, and the regulation of food safety protection standards
162 for required training and testing of food service establishment
163 personnel are preempted to the state. This subsection does not
164 preempt the authority of a local government or local enforcement
165 district to conduct inspections of public lodging and public food
166 service establishments for compliance with the Florida Building
167 Code and the Florida Fire Prevention Code, pursuant to ss. 553.80
168 and 633.022.

169 Section 3. Section 509.039, Florida Statutes, is amended to
170 read:

171 509.039 Food service manager certification.--It is the duty
172 of the division to adopt, by rule, food safety protection
173 standards for the training and certification of all food service
174 managers who are responsible for the storage, preparation,

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175 display, or serving of foods to the public in establishments
176 regulated under this chapter. The standards adopted by the
177 division shall be consistent with the Standards for Accreditation
178 of Food Protection Manager Certification Programs adopted by the
179 Conference for Food Protection. These standards are to be adopted
180 by the division to ensure that, upon successfully passing a test,
181 approved by the Conference for Food Protection, a manager of a
182 food service establishment shall have demonstrated a knowledge of
183 basic food protection practices. The division may contract with
184 an organization offering a training and certification program
185 that complies with division standards and results in a
186 certification recognized by the Conference for Food Protection to
187 conduct an approved test and certify all test results to the
188 division. Other organizations offering programs that meet the
189 same requirements may also conduct approved tests and certify all
190 test results to the division. The division may charge the
191 organization it contracts with a fee of not more than \$5 per
192 certified test to cover the administrative costs of the division
193 for the food service manager training and certification program.
194 All managers employed by a food service establishment must have
195 passed an approved test and received a certificate attesting
196 thereto. Managers have a period of 30 ~~90~~ days after employment to
197 pass the required test. All public food service establishments
198 must provide the division with proof of food service manager
199 certification upon request, including, but not limited to, at the
200 time of any division inspection of the establishment. The ranking
201 of food service establishments is also preempted to the state;
202 provided, however, that any local ordinances establishing a
203 ranking system in existence prior to October 1, 1988, may remain

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204 | in effect.

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

207 | 509.101 Establishment rules; posting of notice; food
208 | service inspection report; maintenance of guest register; mobile
209 | food dispensing vehicle registry.--

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

230 | (2) It is the duty of each operator of a transient
231 | establishment to maintain at all times a register, signed by or
232 | for guests who occupy rental units within the establishment,

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233 showing the dates upon which the rental units were occupied by
234 such guests and the rates charged for their occupancy. This
235 register shall be maintained in chronological order and available
236 for inspection by the division at any time. Operators need not
237 make available registers which are more than 2 years old. ~~Each~~
238 ~~operator shall maintain at all times a current copy of this~~
239 ~~chapter in the office of the licensed establishment which shall~~
240 ~~be made available to the public upon request.~~

241 Section 5. Section 509.142, Florida Statutes, is amended to
242 read:

243 509.142 Conduct on premises; refusal of service.--The
244 operator of a public lodging establishment or public food service
245 establishment:

246 (1) May refuse accommodations or service to any person
247 whose conduct on the premises of the establishment displays
248 intoxication, profanity, lewdness, or brawling; who indulges in
249 language or conduct such as to disturb the peace or comfort of
250 other guests; who engages in illegal or disorderly conduct; who
251 illegally possesses or deals in controlled substances as defined
252 in chapter 893; or whose conduct constitutes a nuisance. Such
253 refusal may not be based upon race, creed, color, sex, physical
254 disability, or national origin.

255 (2) Shall accommodate any person using a child conveyance
256 in a reasonable manner that does not pose a hazard to the safety
257 or health of employees or other patrons.

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

260 509.211 Safety regulations.--

261 ~~(2) The division, or its agent, shall immediately notify~~

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262 | ~~the local firesafety authority or the State Fire Marshal of any~~
263 | ~~major violation of a rule adopted under chapter 633 which relates~~
264 | ~~to public lodging establishments or public food service~~
265 | ~~establishments. The division may impose administrative sanctions~~
266 | ~~for violations of these rules pursuant to s. 509.261 or may refer~~
267 | ~~such violations to the local firesafety authorities for~~
268 | ~~enforcement.~~

269 | ~~(2)~~(3)(a) It is unlawful for any person to use within any
270 | public lodging establishment or public food service establishment
271 | any fuel-burning wick-type equipment for space heating unless
272 | such equipment is vented so as to prevent the accumulation of
273 | toxic or injurious gases or liquids.

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

277 | ~~(3)~~(4) Each public lodging establishment that is three or
278 | more stories in height must have safe and secure railings on all
279 | balconies, platforms, and stairways, and all such railings must
280 | be properly maintained and repaired. The division may impose
281 | administrative sanctions for violations of this subsection
282 | pursuant to s. 509.261.

283 | ~~(4)~~(5) Every enclosed space or room that contains a boiler
284 | regulated under chapter 554 which is fired by the direct
285 | application of energy from the combustion of fuels and that is
286 | located in any portion of a public lodging establishment that
287 | also contains sleeping rooms shall be equipped with one or more
288 | carbon monoxide sensor devices that bear the label of a
289 | nationally recognized testing laboratory and have been tested and
290 | listed as complying with the most recent Underwriters

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291 Laboratories, Inc., Standard 2034, or its equivalent, unless it
292 is determined that carbon monoxide hazards have otherwise been
293 adequately mitigated as determined by the division. Such devices
294 shall be integrated with the public lodging establishment's fire
295 detection system. Any such installation or determination shall be
296 made in accordance with rules adopted by the division.

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

300 509.221 Sanitary regulations.--

301 (1) (a) Each public lodging establishment ~~and each public~~
302 ~~food service establishment~~ shall be supplied with potable water
303 and shall provide adequate sanitary facilities for the
304 accommodation of its employees and guests. Such facilities may
305 include, but are not limited to, showers, handwash basins,
306 toilets, and bidets. Such sanitary facilities shall be connected
307 to approved plumbing. Such plumbing shall be sized, installed,
308 and maintained in accordance with the Florida Building Code as
309 approved by the local building authority. Wastewater or sewage
310 shall be properly treated onsite or discharged into an approved
311 sewage collection and treatment system.

312 (b) Each public food service establishment shall be
313 supplied with potable water and shall provide adequate sanitary
314 facilities for the accommodation of its employees. Such
315 facilities may include, but are not limited to, showers, handwash
316 basins, toilets, and bidets. Such sanitary facilities shall be
317 connected to approved plumbing. Such plumbing shall be sized,
318 installed, and maintained in accordance with the Florida Building
319 Code as approved by the local building authority. Wastewater or

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320 sewage shall be properly treated onsite or discharged into an
321 approved sewage collection and treatment system.

322 (2) (a) Each public lodging establishment and each public
323 food service establishment shall maintain ~~not less than one~~
324 public bathroom facilities in accordance with the Florida
325 Building Code as approved by the local building authority ~~for~~
326 ~~each sex, properly designated, unless otherwise provided by rule.~~
327 The division shall establish by rule categories of establishments
328 not subject to the bathroom requirement of this paragraph. Such
329 rules may not alter the exemption provided for theme parks in
330 paragraph (b).

331 (5) Each transient public lodging establishment ~~and each~~
332 ~~public food service establishment~~ shall provide in the main
333 public bathroom soap and clean towels or other approved hand-
334 drying devices and each public lodging establishment shall
335 furnish each guest with two clean individual towels so that two
336 guests will not be required to use the same towel unless it has
337 first been laundered. Each public food service establishment
338 shall provide in the employee bathroom and any public bathroom
339 soap and clean towels or other approved hand-drying devices.

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

342 509.242 Public lodging establishments; classifications.--

343 (1) A public lodging establishment shall be classified as a
344 hotel, motel, resort condominium, nontransient apartment,
345 transient apartment, roominghouse, bed and breakfast inn, or
346 resort dwelling if the establishment satisfies the following
347 criteria:

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

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

352 (e) Transient apartment or roominghouse.--A transient
353 apartment or roominghouse is a ~~any apartment~~ building or complex
354 of buildings in which more than 25 percent of the units are
355 advertised or held out to the public as available for transient
356 occupancy.

357 Section 9. Subsections (8) and (9) are added to section
358 509.261, Florida Statutes, to read:

359 509.261 Revocation or suspension of licenses; fines;
360 procedure.--

361 (8) The division may fine, suspend, or revoke the license
362 of any public lodging establishment or public food service
363 establishment when the establishment is not in compliance with
364 the requirements of a final order or other administrative action
365 issued against the licensee by the division.

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

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