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

45
46 Be It Enacted by the Legislature of the State of Florida:

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

51 509.013 Definitions.--As used in this chapter, the term:

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

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59 ~~month, whichever is less, or which is advertised or held out to~~
60 ~~the public as a place regularly rented to guests.~~

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

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

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

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

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

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

86 3. Any place renting four rental units or less, unless the
87 rental units are advertised or held out to the public to be

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88 places that are regularly rented to transients;

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

98 5. Any migrant labor camp or residential migrant housing
99 permitted by the Department of Health; under ss. 381.008-
100 381.00895; and

101 6. Any establishment inspected by the Department of Health
102 and regulated by chapter 513.

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

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

114 (15) "Nontransient occupancy" means occupancy when it is
115 the intention of the parties that the occupancy will not be
116 temporary. There is a rebuttable presumption that when the

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117 dwelling unit occupied is the sole residence of the guest, the
118 occupancy is nontransient.

119 (16) "Nontransient" means a guest in nontransient
120 occupancy.

121 Section 2. Paragraph (d) of subsection (2) and subsection
122 (7) of section 509.032, Florida Statutes, are amended to read:
123 509.032 Duties.--

124 (2) INSPECTION OF PREMISES.--

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

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

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

171 Section 3. Section 509.039, Florida Statutes, is amended to
172 read:

173 509.039 Food service manager certification.--It is the duty
174 of the division to adopt, by rule, food safety protection

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

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204 provided, however, that any local ordinances establishing a
205 ranking system in existence prior to October 1, 1988, may remain
206 in effect.

207 Section 4. Subsections (1) and (2) of section 509.101,
208 Florida Statutes, are amended to read:

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

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

232 (2) It is the duty of each operator of a transient

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

243 Section 5. Section 509.142, Florida Statutes, is amended to
244 read:

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

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

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

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

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262 509.211 Safety regulations.--

263 ~~(2) The division, or its agent, shall immediately notify~~
264 ~~the local firesafety authority or the State Fire Marshal of any~~
265 ~~major violation of a rule adopted under chapter 633 which relates~~
266 ~~to public lodging establishments or public food service~~
267 ~~establishments. The division may impose administrative sanctions~~
268 ~~for violations of these rules pursuant to s. 509.261 or may refer~~
269 ~~such violations to the local firesafety authorities for~~
270 ~~enforcement.~~

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

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

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

285 (4)~~(5)~~ Every enclosed space or room that contains a boiler
286 regulated under chapter 554 which is fired by the direct
287 application of energy from the combustion of fuels and that is
288 located in any portion of a public lodging establishment that
289 also contains sleeping rooms shall be equipped with one or more
290 carbon monoxide sensor devices that bear the label of a

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

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

302 509.221 Sanitary regulations.--

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

314 (b) Each public food service establishment shall be
315 supplied with potable water and shall provide adequate sanitary
316 facilities for the accommodation of its employees. Such
317 facilities may include, but are not limited to, showers, handwash
318 basins, toilets, and bidets. Such sanitary facilities shall be
319 connected to approved plumbing. Such plumbing shall be sized,

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320 installed, and maintained in accordance with the Florida Building
321 Code as approved by the local building authority. Wastewater or
322 sewage shall be properly treated onsite or discharged into an
323 approved sewage collection and treatment system.

324 (c) Each toilet facility located on the premises of the
325 public food service establishment must be completely enclosed and
326 provided with a tight-fitting, self-closing door or have
327 entrances and exits constructed in such a manner as to ensure the
328 privacy of occupants. Such door may not be left open except
329 during cleaning or maintenance.

330 (d) Toilet facilities that are used by patrons must be
331 situated so that a patron does not pass through food-preparation
332 or utensil-washing areas.

333 (e) Toilet fixtures must be cleanable.

334 (f) Toilet facilities, including rooms and fixtures, must
335 be kept clean and in good repair.

336 (g) The floors must be made of a nonabsorbent material and
337 be kept clean.

338 (h) Receptacles must be provided for waste material and
339 such receptacles must contain a trash-can liner and must be
340 covered. Receptacles must be emptied as necessary to prevent
341 excessive accumulation of waste material.

342 (i) A supply of hand-cleansing, antibacterial soap or
343 detergent must be available in each toilet facility, and running
344 water must be available at each hand-washing sink within a toilet
345 facility. A supply of sanitary towels or a hand-drying device
346 providing heated air must be located in each toilet facility.
347 Running water must be available at each hand-washing sink within
348 a toilet facility, and hand-washing sinks that have an automatic

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349 shut-off must run for a minimum of 15 seconds. Hand-washing
350 sinks, soap dispensers, hand-drying devices, and all related
351 fixtures must be kept clean and in good repair.

352 (j) A supply of toilet tissue must be provided in each
353 toilet stall.

354 (k) Each toilet facility must be lighted and ventilated.

355 (l) A sign or poster that notifies food service employees
356 to wash their hands must be provided at each hand-washing sink
357 used by public food service employees and must be clearly visible
358 to the food service employees.

359 (2) (a) Each public lodging establishment and each public
360 food service establishment shall maintain ~~not less than one~~
361 public bathroom facilities in accordance with the Florida
362 Building Code as approved by the local building authority ~~for~~
363 ~~each sex, properly designated, unless otherwise provided by rule.~~
364 The division shall establish by rule categories of establishments
365 not subject to the bathroom requirement of this paragraph. Such
366 rules may not alter the exemption provided for theme parks in
367 paragraph (b).

368 (5) Each transient public lodging establishment ~~and each~~
369 ~~public food service establishment~~ shall provide in the main
370 public bathroom soap and clean towels or other approved hand-
371 drying devices and each public lodging establishment shall
372 furnish each guest with two clean individual towels so that two
373 guests will not be required to use the same towel unless it has
374 first been laundered. Each public food service establishment
375 shall provide in the employee bathroom and any public bathroom
376 soap and clean towels or other approved hand-drying devices.

377 Section 8. Paragraphs (d) and (e) of subsection (1) of

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378 section 509.242, Florida Statutes, are amended to read:

379 509.242 Public lodging establishments; classifications.--

380 (1) A public lodging establishment shall be classified as a
381 hotel, motel, resort condominium, nontransient apartment,
382 transient apartment, roominghouse, bed and breakfast inn, or
383 resort dwelling if the establishment satisfies the following
384 criteria:

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

389 (e) Transient apartment or roominghouse.--A transient
390 apartment or roominghouse is a ~~any apartment~~ building or complex
391 of buildings in which more than 25 percent of the units are
392 advertised or held out to the public as available for transient
393 occupancy.

394 Section 9. Subsections (8) and (9) are added to section
395 509.261, Florida Statutes, to read:

396 509.261 Revocation or suspension of licenses; fines;
397 procedure.--

398 (8) The division may fine, suspend, or revoke the license
399 of any public lodging establishment or public food service
400 establishment when the establishment is not in compliance with
401 the requirements of a final order or other administrative action
402 issued against the licensee by the division.

403 (9) The division may refuse to issue or renew the license
404 of any public lodging establishment or public food service
405 establishment until all outstanding fines are paid in full to the
406 division as required by all final orders or other administrative

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407 action issued against the licensee by the division.

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