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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. 509.211, F.S.; deleting a requirement for
21 division notification of local firesafety officials or the
22 State Fire Marshal of violations of rules under ch. 633,
23 F.S.; amending s. 509.221, F.S.; providing that certain
24 sanitary regulations for a public lodging establishment
25 for its guests and employees and for a public food service
26 establishment for its employees be in compliance with the
27 Florida Building Code as approved by the local building
28 authority; providing for wastewater disposal procedures
29 for public food service establishments; requiring public

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

40
41 Be It Enacted by the Legislature of the State of Florida:

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

46 509.013 Definitions.--As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

84 4. Any unit or group of units in a condominium,
85 cooperative, or timeshare plan and any individually or
86 collectively owned one-family, two-family, three-family, or four-
87 family dwelling house or dwelling unit that is rented for periods

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88 of at least 30 days or 1 calendar month, whichever is less, and
89 that is not advertised or held out to the public as a place
90 regularly rented for periods of less than 1 calendar month,
91 provided that no more than four rental units within a single
92 complex of buildings are available for rent;

93 5. Any migrant labor camp or residential migrant housing
94 permitted by the Department of Health; under ss. 381.008-
95 381.00895; and

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

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

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

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

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

116 Section 2. Paragraph (d) of subsection (2) and subsection

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117 (7) of section 509.032, Florida Statutes, are amended to read:
118 509.032 Duties.--
119 (2) INSPECTION OF PREMISES.--
120 (d) The division shall adopt and enforce sanitation rules
121 consistent with law to ensure the protection of the public from
122 food-borne illness in those establishments licensed under this
123 chapter. These rules shall provide the standards and requirements
124 for obtaining, storing, preparing, processing, serving, or
125 displaying food in public food service establishments, approving
126 public food service establishment facility plans, conducting
127 necessary public food service establishment inspections for
128 compliance with sanitation regulations, cooperating and
129 coordinating with the Department of Health in epidemiological
130 investigations, and initiating enforcement actions, and for other
131 such responsibilities deemed necessary by the division. The
132 division may not establish by rule any regulation governing the
133 design, construction, erection, alteration, modification, repair,
134 or demolition of any public lodging or public food service
135 establishment. It is the intent of the Legislature to preempt
136 that function to the Florida Building Commission and the State
137 Fire Marshal through adoption and maintenance of the Florida
138 Building Code and the Florida Fire Prevention Code. The division
139 shall provide technical assistance to the commission ~~and the~~
140 ~~State Fire Marshal~~ in updating the construction standards of the
141 Florida Building Code ~~and the Florida Fire Prevention Code~~ which
142 govern public lodging and public food service establishments.
143 Further, the division shall enforce the provisions of the Florida
144 Building Code ~~and the Florida Fire Prevention Code~~ which apply to
145 public lodging and public food service establishments in

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146 conducting any inspections authorized by this part. The division,
147 or its agent, shall notify the local firesafety authority or the
148 State Fire Marshal of any readily observable violation of a rule
149 adopted under chapter 633 which relates to public lodging
150 establishments or public food establishments, and the
151 identification of such violation does not require any firesafety
152 inspection certification.

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

166 Section 3. Section 509.039, Florida Statutes, is amended to
167 read:

168 509.039 Food service manager certification.--It is the duty
169 of the division to adopt, by rule, food safety protection
170 standards for the training and certification of all food service
171 managers who are responsible for the storage, preparation,
172 display, or serving of foods to the public in establishments
173 regulated under this chapter. The standards adopted by the
174 division shall be consistent with the Standards for Accreditation

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

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

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204 509.101 Establishment rules; posting of notice; food
205 service inspection report; maintenance of guest register; mobile
206 food dispensing vehicle registry.--

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

227 (2) It is the duty of each operator of a transient
228 establishment to maintain at all times a register, signed by or
229 for guests who occupy rental units within the establishment,
230 showing the dates upon which the rental units were occupied by
231 such guests and the rates charged for their occupancy. This
232 register shall be maintained in chronological order and available

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233 for inspection by the division at any time. Operators need not
234 make available registers which are more than 2 years old. ~~Each~~
235 ~~operator shall maintain at all times a current copy of this~~
236 ~~chapter in the office of the licensed establishment which shall~~
237 ~~be made available to the public upon request.~~

238 Section 5. Subsections (2) through (5) of section 509.211,
239 Florida Statutes, are amended to read:

240 509.211 Safety regulations.--

241 ~~(2) The division, or its agent, shall immediately notify~~
242 ~~the local firesafety authority or the State Fire Marshal of any~~
243 ~~major violation of a rule adopted under chapter 633 which relates~~
244 ~~to public lodging establishments or public food service~~
245 ~~establishments. The division may impose administrative sanctions~~
246 ~~for violations of these rules pursuant to s. 509.261 or may refer~~
247 ~~such violations to the local firesafety authorities for~~
248 ~~enforcement.~~

249 (2)~~(3)~~(a) It is unlawful for any person to use within any
250 public lodging establishment or public food service establishment
251 any fuel-burning wick-type equipment for space heating unless
252 such equipment is vented so as to prevent the accumulation of
253 toxic or injurious gases or liquids.

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

257 (3)~~(4)~~ Each public lodging establishment that is three or
258 more stories in height must have safe and secure railings on all
259 balconies, platforms, and stairways, and all such railings must
260 be properly maintained and repaired. The division may impose
261 administrative sanctions for violations of this subsection

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262 pursuant to s. 509.261.

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

277 Section 6. Subsections (1) and (5) and paragraph (a) of
278 subsection (2) of section 509.221, Florida Statutes, are amended
279 to read:

280 509.221 Sanitary regulations.--

281 (1)(a) Each public lodging establishment ~~and each public~~
282 ~~food service establishment~~ shall be supplied with potable water
283 and shall provide adequate sanitary facilities for the
284 accommodation of its employees and guests. Such facilities may
285 include, but are not limited to, showers, handwash basins,
286 toilets, and bidets. Such sanitary facilities shall be connected
287 to approved plumbing. Such plumbing shall be sized, installed,
288 and maintained in accordance with the Florida Building Code as
289 approved by the local building authority. Wastewater or sewage
290 shall be properly treated onsite or discharged into an approved

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291 sewage collection and treatment system.

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

302 (2) (a) Each public lodging establishment and each public
303 food service establishment shall maintain ~~not less than one~~
304 public bathroom facilities in accordance with the Florida
305 Building Code as approved by the local building authority ~~for~~
306 ~~each sex, properly designated, unless otherwise provided by rule.~~
307 The division shall establish by rule categories of establishments
308 not subject to the bathroom requirement of this paragraph. Such
309 rules may not alter the exemption provided for theme parks in
310 paragraph (b).

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

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320 Section 7. Paragraphs (d) and (e) of subsection (1) of
321 section 509.242, Florida Statutes, are amended to read:

322 509.242 Public lodging establishments; classifications.--

323 (1) A public lodging establishment shall be classified as a
324 hotel, motel, resort condominium, nontransient apartment,
325 transient apartment, roominghouse, bed and breakfast inn, or
326 resort dwelling if the establishment satisfies the following
327 criteria:

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

332 (e) Transient apartment or roominghouse.--A transient
333 apartment or roominghouse is a ~~any apartment~~ building or complex
334 of buildings in which more than 25 percent of the units are
335 advertised or held out to the public as available for transient
336 occupancy.

337 Section 8. Subsections (8) and (9) are added to section
338 509.261, Florida Statutes, to read:

339 509.261 Revocation or suspension of licenses; fines;
340 procedure.--

341 (8) The division may fine, suspend, or revoke the license
342 of any public lodging establishment or public food service
343 establishment when the establishment is not in compliance with
344 the requirements of a final order or other administrative action
345 issued against the licensee by the division.

346 (9) The division may refuse to issue or renew the license
347 of any public lodging establishment or public food service
348 establishment until all outstanding fines are paid in full to the

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349 division as required by all final orders or other administrative
350 action issued against the licensee by the division.

351 Section 9. This act shall take effect July 1, 2008.