

By the Committees on Judiciary; and Regulated Industries; and Senator Evers

590-04946-11

2011476c2

1 A bill to be entitled
2 An act relating to public lodging establishments;
3 amending s. 509.032, F.S.; conforming provisions to
4 changes made by the act; prohibiting local governments
5 from regulating vacation rentals based solely on their
6 classification or use; providing an exception;
7 amending ss. 509.221 and 509.241, F.S.; conforming
8 provisions to changes made by the act; amending s.
9 509.242, F.S.; providing that public lodging
10 establishments formerly classified as resort
11 condominiums and resort dwellings are classified as
12 vacation rentals; defining the term "vacation rental";
13 amending s. 509.251, F.S.; conforming provisions to
14 changes made by the act; amending s. 509.261, F.S.;
15 revising mandatory education requirements for certain
16 violations; amending s. 509.291, F.S.; revising
17 membership of the advisory council of the Division of
18 Hotels and Restaurants of the Department of Business
19 and Professional Regulation; requiring the Florida
20 Vacation Rental Managers Association to designate a
21 member to serve on the advisory council; amending ss.
22 381.008 and 386.203, F.S.; conforming provisions to
23 changes made by the act; providing a short title;
24 amending s. 509.144, F.S.; revising the definition of
25 the term "handbill"; providing additional penalties
26 for the offense of unlawfully distributing handbills
27 in a public lodging establishment; specifying that
28 certain items used in committing such offense are
29 subject to seizure and forfeiture under the Florida

590-04946-11

2011476c2

30 Contraband Forfeiture Act; creating s. 901.1503, F.S.;
31 authorizing a law enforcement officer to give a notice
32 to appear to a person without a warrant when there is
33 probable cause to believe the person violated s.
34 509.144, F.S., and the owner or manager of the public
35 lodging establishment, and one additional affiant,
36 signs an affidavit containing information supporting
37 the determination of probable cause; amending s.
38 932.701, F.S.; revising the definition of the term
39 "contraband article"; providing that specified
40 portions of the act do not affect or impede specified
41 statutory provisions or any protection or right
42 guaranteed by the Second Amendment to the United
43 States Constitution; providing an effective date.
44

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

46

47 Section 1. Paragraph (a) of subsection (2) and subsection
48 (7) of section 509.032, Florida Statutes, are amended to read:

49 509.032 Duties.—

50 (2) INSPECTION OF PREMISES.—

51 (a) The division has responsibility and jurisdiction for
52 all inspections required by this chapter. The division has
53 responsibility for quality assurance. Each licensed
54 establishment shall be inspected at least biannually, except for
55 transient and nontransient apartments, which shall be inspected
56 at least annually, and shall be inspected at such other times as
57 the division determines is necessary to ensure the public's
58 health, safety, and welfare. The division shall establish a

590-04946-11

2011476c2

59 system to determine inspection frequency. Public lodging units
60 classified as vacation rentals ~~resort condominiums or resort~~
61 dwellings are not subject to this requirement, but shall be made
62 available to the division upon request. If, during the
63 inspection of a public lodging establishment classified for
64 renting to transient or nontransient tenants, an inspector
65 identifies vulnerable adults who appear to be victims of
66 neglect, as defined in s. 415.102, or, in the case of a building
67 that is not equipped with automatic sprinkler systems, tenants
68 or clients who may be unable to self-preserve in an emergency,
69 the division shall convene meetings with the following agencies
70 as appropriate to the individual situation: the Department of
71 Health, the Department of Elderly Affairs, the area agency on
72 aging, the local fire marshal, the landlord and affected tenants
73 and clients, and other relevant organizations, to develop a plan
74 which improves the prospects for safety of affected residents
75 and, if necessary, identifies alternative living arrangements
76 such as facilities licensed under part II of chapter 400 or
77 under chapter 429.

78 (7) PREEMPTION AUTHORITY.—

79 (a) The regulation of public lodging establishments and
80 public food service establishments, including, but not limited
81 to, ~~the inspection of public lodging establishments and public~~
82 ~~food service establishments for compliance with the sanitation~~
83 ~~standards, inspections, adopted under this section, and the~~
84 ~~regulation of food safety protection standards for required~~
85 ~~training and testing of food service establishment personnel,~~
86 ~~and matters related to the nutritional content and marketing of~~
87 ~~foods offered in such establishments, are preempted to the~~

590-04946-11

2011476c2

88 state. This paragraph subsection does not preempt the authority
89 of a local government or local enforcement district to conduct
90 inspections of public lodging and public food service
91 establishments for compliance with the Florida Building Code and
92 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
93 633.022.

94 (b) A local law, ordinance, or regulation may not restrict
95 the use of vacation rentals, prohibit vacation rentals, or
96 regulate vacation rentals based solely on their classification,
97 use, or occupancy. This paragraph does not apply to any local
98 law, ordinance, or rule adopted on or before June 1, 2011.

99 Section 2. Subsection (9) of section 509.221, Florida
100 Statutes, is amended to read:

101 509.221 Sanitary regulations.—

102 (9) Subsections (2), (5), and (6) do not apply to any
103 facility or unit classified as a vacation rental or resort
104 ~~condominium, nontransient apartment, or resort dwelling~~ as
105 described in s. 509.242(1)(c) and, (d), and (g).

106 Section 3. Subsection (2) of section 509.241, Florida
107 Statutes, is amended to read:

108 509.241 Licenses required; exceptions.—

109 (2) APPLICATION FOR LICENSE.—Each person who plans to open
110 a public lodging establishment or a public food service
111 establishment shall apply for and receive a license from the
112 division prior to the commencement of operation. A condominium
113 association, as defined in s. 718.103, which does not own any
114 units classified as vacation rentals ~~resort condominiums~~ under
115 s. 509.242(1)(c) is ~~shall~~ not be required to apply for or
116 receive a public lodging establishment license.

590-04946-11

2011476c2

117 Section 4. Subsection (1) of section 509.242, Florida
118 Statutes, is amended to read:

119 509.242 Public lodging establishments; classifications.—

120 (1) A public lodging establishment shall be classified as a
121 hotel, motel, ~~resort condominium~~, nontransient apartment,
122 transient apartment, roominghouse, bed and breakfast inn, or
123 vacation rental resort dwelling if the establishment satisfies
124 the following criteria:

125 (a) *Hotel.*—A hotel is any public lodging establishment
126 containing sleeping room accommodations for 25 or more guests
127 and providing the services generally provided by a hotel and
128 recognized as a hotel in the community in which it is situated
129 or by the industry.

130 (b) *Motel.*—A motel is any public lodging establishment
131 which offers rental units with an exit to the outside of each
132 rental unit, daily or weekly rates, offstreet parking for each
133 unit, a central office on the property with specified hours of
134 operation, a bathroom or connecting bathroom for each rental
135 unit, and at least six rental units, and which is recognized as
136 a motel in the community in which it is situated or by the
137 industry.

138 (c) Vacation rental Resort condominium.—A vacation rental
139 ~~resort condominium~~ is any unit or group of units in a
140 condominium, cooperative, or timeshare plan or any individually
141 or collectively owned single-family, two-family, or four-family
142 house or dwelling unit that is also a transient public lodging
143 establishment which is rented more than three times in a
144 calendar year for periods of less than 30 days or 1 calendar
145 month, whichever is less, or which is advertised or held out to

590-04946-11

2011476c2

146 ~~the public as a place regularly rented for periods of less than~~
147 ~~30 days or 1 calendar month, whichever is less.~~

148 (d) *Nontransient apartment or roominghouse.*—A nontransient
149 apartment or roominghouse is a building or complex of buildings
150 in which 75 percent or more of the units are available for rent
151 to nontransient tenants.

152 (e) *Transient apartment or roominghouse.*—A transient
153 apartment or roominghouse is a building or complex of buildings
154 in which more than 25 percent of the units are advertised or
155 held out to the public as available for transient occupancy.

156 (f) *Roominghouse.*—A roominghouse is any public lodging
157 establishment that may not be classified as a hotel, motel,
158 ~~resort condominium~~, nontransient apartment, bed and breakfast
159 inn, vacation rental, or transient apartment under this section.
160 A roominghouse includes, but is not limited to, a boardinghouse.

161 (g) *Resort dwelling.*—~~A resort dwelling is any individually~~
162 ~~or collectively owned one-family, two-family, three-family, or~~
163 ~~four-family dwelling house or dwelling unit which is rented more~~
164 ~~than three times in a calendar year for periods of less than 30~~
165 ~~days or 1 calendar month, whichever is less, or which is~~
166 ~~advertised or held out to the public as a place regularly rented~~
167 ~~for periods of less than 30 days or 1 calendar month, whichever~~
168 ~~is less.~~

169 (g)(h) *Bed and breakfast inn.*—A bed and breakfast inn is a
170 family home structure, with no more than 15 sleeping rooms,
171 which has been modified to serve as a transient public lodging
172 establishment, which provides the accommodation and meal
173 services generally offered by a bed and breakfast inn, and which
174 is recognized as a bed and breakfast inn in the community in

590-04946-11

2011476c2

175 which it is situated or by the hospitality industry.

176 Section 5. Subsection (1) of section 509.251, Florida
177 Statutes, is amended to read:

178 509.251 License fees.—

179 (1) The division shall adopt, by rule, a schedule of fees
180 to be paid by each public lodging establishment as a
181 prerequisite to issuance or renewal of a license. Such fees
182 shall be based on the number of rental units in the
183 establishment. The aggregate fee per establishment charged any
184 public lodging establishment shall not exceed \$1,000; however,
185 the fees described in paragraphs (a) and (b) may not be included
186 as part of the aggregate fee subject to this cap. Vacation
187 rental ~~Resort condominium~~ units within separate buildings or at
188 separate locations but managed by one licensed agent may be
189 combined in a single license application, and the division shall
190 charge a license fee as if all units in the application are in a
191 single licensed establishment. ~~Resort dwelling units may be~~
192 ~~licensed in the same manner as condominium units.~~ The fee
193 schedule shall require an establishment which applies for an
194 initial license to pay the full license fee if application is
195 made during the annual renewal period or more than 6 months
196 prior to the next such renewal period and one-half of the fee if
197 application is made 6 months or less prior to such period. The
198 fee schedule shall include fees collected for the purpose of
199 funding the Hospitality Education Program, pursuant to s.
200 509.302, which are payable in full for each application
201 regardless of when the application is submitted.

202 (a) Upon making initial application or an application for
203 change of ownership, the applicant shall pay to the division a

590-04946-11

2011476c2

204 fee as prescribed by rule, not to exceed \$50, in addition to any
205 other fees required by law, which shall cover all costs
206 associated with initiating regulation of the establishment.

207 (b) A license renewal filed with the division within 30
208 days after the expiration date shall be accompanied by a
209 delinquent fee as prescribed by rule, not to exceed \$50, in
210 addition to the renewal fee and any other fees required by law.
211 A license renewal filed with the division more than 30 but not
212 more than 60 days after the expiration date shall be accompanied
213 by a delinquent fee as prescribed by rule, not to exceed \$100,
214 in addition to the renewal fee and any other fees required by
215 law.

216 Section 6. Subsection (1) of section 509.261, Florida
217 Statutes, is amended to read:

218 509.261 Revocation or suspension of licenses; fines;
219 procedure.—

220 (1) Any public lodging establishment or public food service
221 establishment that has operated or is operating in violation of
222 this chapter or the rules of the division, operating without a
223 license, or operating with a suspended or revoked license may be
224 subject by the division to:

225 (a) Fines not to exceed \$1,000 per offense;

226 (b) Mandatory completion attendance, at personal expense,
227 of a remedial at-an educational program administered sponsored
228 by a food safety training program provider whose program has
229 been approved by the division, as provided in s. 509.049 the
230 Hospitality Education Program; and

231 (c) The suspension, revocation, or refusal of a license
232 issued pursuant to this chapter.

590-04946-11

2011476c2

233 Section 7. Subsection (1) of section 509.291, Florida
234 Statutes, is amended to read:
235 509.291 Advisory council.—
236 (1) There is created a 10-member advisory council.
237 (a) The Secretary of Business and Professional Regulation
238 shall appoint six seven voting members to the advisory council.
239 Each member appointed by the secretary must be an operator of an
240 establishment licensed under this chapter and shall represent
241 the industries regulated by the division, except that one member
242 appointed by the secretary must be a layperson representing the
243 general public and one member must be a hospitality education
244 administrator from an institution of higher education of this
245 state. Such members of the council shall serve staggered terms
246 of 4 years.
247 (b) The Florida Restaurant and Lodging Association shall
248 designate one representative to serve as a voting member of the
249 council. The Florida Vacation Rental Managers Association shall
250 designate one representative to serve as a voting member of the
251 council. The Florida Apartment Association and the Florida
252 Association of Realtors shall each designate one representative
253 to serve as a voting member of the council.
254 (c) Any member who fails to attend three consecutive
255 council meetings without good cause may be removed from the
256 council by the secretary.
257 Section 8. Paragraph (c) of subsection (8) of section
258 381.008, Florida Statutes, is amended to read:
259 381.008 Definitions of terms used in ss. 381.008–
260 381.00897.—As used in ss. 381.008–381.00897, the following words
261 and phrases mean:

590-04946-11

2011476c2

262 (8) "Residential migrant housing"—A building, structure,
263 mobile home, barracks, or dormitory, and any combination thereof
264 on adjacent property which is under the same ownership,
265 management, or control, and the land appertaining thereto, that
266 is rented or reserved for occupancy by five or more seasonal or
267 migrant farmworkers, except:

268 (c) A hotel or, motel, ~~or resort condominium~~, as described
269 ~~defined~~ in chapter 509, that is furnished for transient
270 occupancy.

271 Section 9. Subsection (4) of section 386.203, Florida
272 Statutes, is amended to read:

273 386.203 Definitions.—As used in this part:

274 (4) "Designated smoking guest rooms at public lodging
275 establishments" means the sleeping rooms and directly associated
276 private areas, such as bathrooms, living rooms, and kitchen
277 areas, if any, rented to guests for their exclusive transient
278 occupancy in public lodging establishments, including hotels,
279 motels, vacation rentals ~~resort condominiums~~, transient
280 apartments, transient lodging establishments, rooming houses,
281 boarding houses, ~~resort dwellings~~, bed and breakfast inns, and
282 the like; and designated by the person or persons having
283 management authority over such public lodging establishment as
284 rooms in which smoking may be permitted.

285 Section 10. Sections 11 through 14 of this act may be cited
286 as the "Tourist Safety Act."

287 Section 11. Section 509.144, Florida Statutes, is amended
288 to read:

289 509.144 Prohibited handbill distribution in a public
290 lodging establishment; penalties.—

590-04946-11

2011476c2

291 (1) As used in this section, the term:

292 (a) "Handbill" means a flier, leaflet, pamphlet, or other
293 written material that advertises, promotes, or informs persons
294 about a person ~~an individual~~, business, company, or food service
295 establishment, but does ~~shall~~ not include employee
296 communications permissible under the National Labor Relations
297 Act, other communications protected by the First Amendment to
298 the United States Constitution, or communications that relate to
299 the public health, safety, or welfare and that are distributed
300 by a federal, state, or local governmental entity or a public or
301 private utility.

302 (b) "Without permission" means without the expressed
303 written ~~or oral~~ permission of the owner, manager, or agent of
304 the owner or manager of the public lodging establishment where a
305 sign is posted prohibiting advertising or solicitation in the
306 manner provided in subsection (5) ~~(4)~~.

307 (c) "At or in a public lodging establishment" means any
308 property under the sole ownership or control of a public lodging
309 establishment.

310 (2) Any person ~~individual~~, agent, contractor, or volunteer
311 who is acting on behalf of a person ~~an individual~~, business,
312 company, or food service establishment and who, without
313 permission, delivers, distributes, or places, or attempts to
314 deliver, distribute, or place, a handbill at or in a public
315 lodging establishment commits a misdemeanor of the first degree,
316 punishable as provided in s. 775.082 or s. 775.083.

317 (3) Any person who, without permission, directs another
318 person to deliver, distribute, or place, or attempts to deliver,
319 distribute, or place, a handbill at or in a public lodging

590-04946-11

2011476c2

320 establishment commits a misdemeanor of the first degree,
321 punishable as provided in s. 775.082 or s. 775.083. Any person
322 sentenced under this subsection shall be ordered to pay a
323 minimum fine of \$500 in addition to any other penalty imposed by
324 the court.

325 (4) In addition to any other penalty imposed by the court,
326 a person who violates subsection (2) or subsection (3):

327 (a) A second time shall be ordered to pay a minimum fine of
328 \$2,000.

329 (b) A third or subsequent time shall be ordered to pay a
330 minimum fine of \$3,000.

331 (5) (4) For purposes of this section, a public lodging
332 establishment that intends to prohibit advertising or
333 solicitation, as described in this section, at or in such
334 establishment must comply with the following requirements when
335 posting a sign prohibiting such solicitation or advertising:

336 (a) There must appear prominently on any sign referred to
337 in this subsection, in letters of not less than 2 inches in
338 height, the terms "no advertising" or "no solicitation" or terms
339 that indicate the same meaning.

340 (b) The sign must be posted conspicuously.

341 (c) If the main office of the public lodging establishment
342 is immediately accessible by entering the office through a door
343 from a street, parking lot, grounds, or other area outside such
344 establishment, the sign must be placed on a part of the main
345 office, such as a door or window, and the sign must face the
346 street, parking lot, grounds, or other area outside such
347 establishment.

348 (d) If the main office of the public lodging establishment

590-04946-11

2011476c2

349 is not immediately accessible by entering the office through a
350 door from a street, parking lot, grounds, or other area outside
351 such establishment, the sign must be placed in the immediate
352 vicinity of the main entrance to such establishment, and the
353 sign must face the street, parking lot, grounds, or other area
354 outside such establishment.

355 (6) Any personal property, including, but not limited to,
356 any vehicle of any kind, item, object, tool, device, weapon,
357 machine, money, security, book, or record, which is used or
358 attempted to be used as an instrumentality in the commission of,
359 or in aiding and abetting in the commission of, a person's third
360 or subsequent violation of this section, whether or not
361 comprising an element of the offense, is subject to seizure and
362 forfeiture under the Florida Contraband Forfeiture Act.

363 Section 12. Section 901.1503, Florida Statutes, is created
364 to read:

365 901.1503 When notice to appear by officer without warrant
366 is lawful.—A law enforcement officer may give a notice to appear
367 to a person without a warrant when the officer has determined
368 that he or she has probable cause to believe that a violation of
369 s. 509.144 has been committed and the owner or manager of the
370 public lodging establishment in which the violation occurred,
371 and one additional affiant, signs an affidavit containing
372 information that supports the officer's determination of
373 probable cause.

374 Section 13. Paragraph (a) of subsection (2) of section
375 932.701, Florida Statutes, is amended to read:

376 932.701 Short title; definitions.—

377 (2) As used in the Florida Contraband Forfeiture Act:

590-04946-11

2011476c2

- 378 (a) "Contraband article" means:
- 379 1. Any controlled substance as defined in chapter 893 or
380 any substance, device, paraphernalia, or currency or other means
381 of exchange that was used, was attempted to be used, or was
382 intended to be used in violation of any provision of chapter
383 893, if the totality of the facts presented by the state is
384 clearly sufficient to meet the state's burden of establishing
385 probable cause to believe that a nexus exists between the
386 article seized and the narcotics activity, whether or not the
387 use of the contraband article can be traced to a specific
388 narcotics transaction.
- 389 2. Any gambling paraphernalia, lottery tickets, money,
390 currency, or other means of exchange which was used, was
391 attempted, or intended to be used in violation of the gambling
392 laws of the state.
- 393 3. Any equipment, liquid or solid, which was being used, is
394 being used, was attempted to be used, or intended to be used in
395 violation of the beverage or tobacco laws of the state.
- 396 4. Any motor fuel upon which the motor fuel tax has not
397 been paid as required by law.
- 398 5. Any personal property, including, but not limited to,
399 any vessel, aircraft, item, object, tool, substance, device,
400 weapon, machine, vehicle of any kind, money, securities, books,
401 records, research, negotiable instruments, or currency, which
402 was used or was attempted to be used as an instrumentality in
403 the commission of, or in aiding or abetting in the commission
404 of, any felony, whether or not comprising an element of the
405 felony, or which is acquired by proceeds obtained as a result of
406 a violation of the Florida Contraband Forfeiture Act.

590-04946-11

2011476c2

407 6. Any real property, including any right, title,
408 leasehold, or other interest in the whole of any lot or tract of
409 land, which was used, is being used, or was attempted to be used
410 as an instrumentality in the commission of, or in aiding or
411 abetting in the commission of, any felony, or which is acquired
412 by proceeds obtained as a result of a violation of the Florida
413 Contraband Forfeiture Act.

414 7. Any personal property, including, but not limited to,
415 equipment, money, securities, books, records, research,
416 negotiable instruments, currency, or any vessel, aircraft, item,
417 object, tool, substance, device, weapon, machine, or vehicle of
418 any kind in the possession of or belonging to any person who
419 takes aquaculture products in violation of s. 812.014(2)(c).

420 8. Any motor vehicle offered for sale in violation of s.
421 320.28.

422 9. Any motor vehicle used during the course of committing
423 an offense in violation of s. 322.34(9)(a).

424 10. Any photograph, film, or other recorded image,
425 including an image recorded on videotape, a compact disc,
426 digital tape, or fixed disk, that is recorded in violation of s.
427 810.145 and is possessed for the purpose of amusement,
428 entertainment, sexual arousal, gratification, or profit, or for
429 the purpose of degrading or abusing another person.

430 11. Any real property, including any right, title,
431 leasehold, or other interest in the whole of any lot or tract of
432 land, which is acquired by proceeds obtained as a result of
433 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
434 property, including, but not limited to, equipment, money,
435 securities, books, records, research, negotiable instruments, or

590-04946-11

2011476c2

436 currency; or any vessel, aircraft, item, object, tool,
437 substance, device, weapon, machine, or vehicle of any kind in
438 the possession of or belonging to any person which is acquired
439 by proceeds obtained as a result of Medicaid fraud under s.
440 409.920 or s. 409.9201.

441 12. Any personal property, including, but not limited to,
442 any vehicle of any kind, item, object, tool, device, weapon,
443 machine, money, security, book, or record, which is used or
444 attempted to be used as an instrumentality in the commission of,
445 or in aiding and abetting in the commission of, a person's third
446 or subsequent violation of s. 509.144, whether or not comprising
447 an element of the offense.

448 Section 14. The amendments made by this act to ss. 509.144
449 and 932.701, Florida Statutes, and the creation of s. 901.1503,
450 Florida Statutes, by this act do not affect or impede the
451 provisions of s. 790.251, Florida Statutes, or any other
452 protection or right guaranteed by the Second Amendment to the
453 United States Constitution.

454 Section 15. This act shall take effect upon becoming a law.