

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Horner offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 56-234 and insert:

5 (2) Any person ~~individual~~, agent, contractor, or volunteer
6 who is acting on behalf of a person ~~an individual~~, business,
7 company, or food service establishment and who, without
8 permission, delivers, distributes, or places, or attempts to
9 deliver, distribute, or place, a handbill at or in a public
10 lodging establishment commits a misdemeanor of the first degree,
11 punishable as provided in s. 775.082 or s. 775.083.

12 (3) Any person who, without permission, directs another
13 person to deliver, distribute, or place, or attempts to deliver,
14 distribute, or place, a handbill at or in a public lodging
15 establishment commits a misdemeanor of the first degree,
16 punishable as provided in s. 775.082 or s. 775.083. Any person
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17 sentenced under this subsection shall be ordered to pay a
18 minimum fine of \$500 in addition to any other penalty imposed by
19 the court.

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

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

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

26 (5)-(4) For purposes of this section, a public lodging
27 establishment that intends to prohibit advertising or
28 solicitation, as described in this section, at or in such
29 establishment must comply with the following requirements when
30 posting a sign prohibiting such solicitation or advertising:

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

35 (b) The sign must be posted conspicuously.

36 (c) If the main office of the public lodging establishment
37 is immediately accessible by entering the office through a door
38 from a street, parking lot, grounds, or other area outside such
39 establishment, the sign must be placed on a part of the main
40 office, such as a door or window, and the sign must face the
41 street, parking lot, grounds, or other area outside such
42 establishment.

43 (d) If the main office of the public lodging establishment
44 is not immediately accessible by entering the office through a
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45 door from a street, parking lot, grounds, or other area outside
46 such establishment, the sign must be placed in the immediate
47 vicinity of the main entrance to such establishment, and the
48 sign must face the street, parking lot, grounds, or other area
49 outside such establishment.

50 (6) Any personal property, including, but not limited to,
51 any vehicle of any kind, item, object, tool, device, weapon,
52 machine, money, security, book, or record, that is used or
53 attempted to be used as an instrumentality in the commission of,
54 or in aiding and abetting in the commission of, a person's third
55 or subsequent violation of this section, whether or not
56 comprising an element of the offense, is subject to seizure and
57 forfeiture under the Florida Contraband Forfeiture Act.

58 Section 3. Section 901.1503, Florida Statutes, is created
59 to read:

60 901.1503 When notice to appear by officer without warrant
61 is lawful.—A law enforcement officer may give a notice to appear
62 to a person without a warrant when the officer has determined
63 that he or she has probable cause to believe that a violation of
64 s. 509.144 has been committed and the owner or manager of the
65 public lodging establishment in which the violation occurred and
66 one additional affiant sign an affidavit containing information
67 that supports the officer's determination of probable cause.

68 Section 4. Paragraph (a) of subsection (2) of section
69 932.701, Florida Statutes, is amended to read:

70 932.701 Short title; definitions.—

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

72 (a) "Contraband article" means:

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73 1. Any controlled substance as defined in chapter 893 or
74 any substance, device, paraphernalia, or currency or other means
75 of exchange that was used, was attempted to be used, or was
76 intended to be used in violation of any provision of chapter
77 893, if the totality of the facts presented by the state is
78 clearly sufficient to meet the state's burden of establishing
79 probable cause to believe that a nexus exists between the
80 article seized and the narcotics activity, whether or not the
81 use of the contraband article can be traced to a specific
82 narcotics transaction.

83 2. Any gambling paraphernalia, lottery tickets, money,
84 currency, or other means of exchange which was used, was
85 attempted, or intended to be used in violation of the gambling
86 laws of the state.

87 3. Any equipment, liquid or solid, which was being used,
88 is being used, was attempted to be used, or intended to be used
89 in violation of the beverage or tobacco laws of the state.

90 4. Any motor fuel upon which the motor fuel tax has not
91 been paid as required by law.

92 5. Any personal property, including, but not limited to,
93 any vessel, aircraft, item, object, tool, substance, device,
94 weapon, machine, vehicle of any kind, money, securities, books,
95 records, research, negotiable instruments, or currency, which
96 was used or was attempted to be used as an instrumentality in
97 the commission of, or in aiding or abetting in the commission
98 of, any felony, whether or not comprising an element of the
99 felony, or which is acquired by proceeds obtained as a result of
100 a violation of the Florida Contraband Forfeiture Act.

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101 6. Any real property, including any right, title,
102 leasehold, or other interest in the whole of any lot or tract of
103 land, which was used, is being used, or was attempted to be used
104 as an instrumentality in the commission of, or in aiding or
105 abetting in the commission of, any felony, or which is acquired
106 by proceeds obtained as a result of a violation of the Florida
107 Contraband Forfeiture Act.

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

114 8. Any motor vehicle offered for sale in violation of s.
115 320.28.

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

118 10. Any photograph, film, or other recorded image,
119 including an image recorded on videotape, a compact disc,
120 digital tape, or fixed disk, that is recorded in violation of s.
121 810.145 and is possessed for the purpose of amusement,
122 entertainment, sexual arousal, gratification, or profit, or for
123 the purpose of degrading or abusing another person.

124 11. Any real property, including any right, title,
125 leasehold, or other interest in the whole of any lot or tract of
126 land, which is acquired by proceeds obtained as a result of
127 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
128 property, including, but not limited to, equipment, money,
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129 securities, books, records, research, negotiable instruments, or
130 currency; or any vessel, aircraft, item, object, tool,
131 substance, device, weapon, machine, or vehicle of any kind in
132 the possession of or belonging to any person which is acquired
133 by proceeds obtained as a result of Medicaid fraud under s.
134 409.920 or s. 409.9201.

135 12. Any personal property, including, but not limited to,
136 any vehicle of any kind, item, object, tool, device, weapon,
137 machine, money, security, book, or record, that is used or
138 attempted to be used as an instrumentality in the commission of,
139 or in aiding and abetting in the commission of, a person's third
140 or subsequent violation of s. 509.144, whether or not comprising
141 an element of the offense.

142 Section 5. Paragraph (b) of subsection (4) of section
143 509.013, Florida Statutes, is amended to read:

144 509.013 Definitions.—As used in this chapter, the term:
145 (4)

146 (b) The following are excluded from the definitions in
147 paragraph (a):

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

151 2. Any facility certified or licensed and regulated by the
152 Agency for Health Care Administration or the Department of
153 Children and Family Services or other similar place regulated
154 under s. 381.0072;

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

158 4. Any unit or group of units in a condominium,
159 cooperative, or timeshare plan and any individually or
160 collectively owned one-family, two-family, three-family, or
161 four-family dwelling house or dwelling unit that is rented for
162 periods of at least 30 days or 1 calendar month, whichever is
163 less, and that is not advertised or held out to the public as a
164 place regularly rented for periods of less than 1 calendar
165 month, provided that no more than four rental units within a
166 single complex of buildings are available for rent;

167 5. Any migrant labor camp or residential migrant housing
168 permitted by the Department of Health; under ss. 381.008-
169 381.00895; ~~and~~

170 6. Any establishment inspected by the Department of Health
171 and regulated by chapter 513; and

172 7. Any nonprofit organization that operates a facility
173 providing housing only to patients, patients' families, and
174 patients' caregivers and not to the general public.

175 Section 6. Effective upon this act becoming a law,
176 paragraph (a) of subsection (2) and subsection (7) of section
177 509.032, Florida Statutes, are amended to read:

178 509.032 Duties.—

179 (2) INSPECTION OF PREMISES.—

180 (a) The division has responsibility and jurisdiction for
181 all inspections required by this chapter. The division has
182 responsibility for quality assurance. Each licensed
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183 establishment shall be inspected at least biannually, except for
184 transient and nontransient apartments, which shall be inspected
185 at least annually, and shall be inspected at such other times as
186 the division determines is necessary to ensure the public's
187 health, safety, and welfare. The division shall establish a
188 system to determine inspection frequency. Public lodging units
189 classified as vacation rentals ~~resort condominiums or resort~~
190 ~~dwellings~~ are not subject to this requirement, but shall be made
191 available to the division upon request. If, during the
192 inspection of a public lodging establishment classified for
193 renting to transient or nontransient tenants, an inspector
194 identifies vulnerable adults who appear to be victims of
195 neglect, as defined in s. 415.102, or, in the case of a building
196 that is not equipped with automatic sprinkler systems, tenants
197 or clients who may be unable to self-preserve in an emergency,
198 the division shall convene meetings with the following agencies
199 as appropriate to the individual situation: the Department of
200 Health, the Department of Elderly Affairs, the area agency on
201 aging, the local fire marshal, the landlord and affected tenants
202 and clients, and other relevant organizations, to develop a plan
203 which improves the prospects for safety of affected residents
204 and, if necessary, identifies alternative living arrangements
205 such as facilities licensed under part II of chapter 400 or
206 under chapter 429.

207 (7) PREEMPTION AUTHORITY.—

208 (a) The regulation of public lodging establishments and
209 public food service establishments, including, but not limited
210 to, ~~the inspection of public lodging establishments and public~~
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211 ~~food service establishments for compliance with the sanitation~~
212 ~~standards, inspections, adopted under this section, and the~~
213 ~~regulation of food safety protection standards for required~~
214 ~~training and testing of food service establishment personnel,~~
215 ~~and matters related to the nutritional content and marketing of~~
216 ~~foods offered in such establishments, is~~ are preempted to the
217 state. This paragraph ~~subsection~~ does not preempt the authority
218 of a local government or local enforcement district to conduct
219 inspections of public lodging and public food service
220 establishments for compliance with the Florida Building Code and
221 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
222 633.022.

223 (b) A local law, ordinance, or regulation may not restrict
224 the use of vacation rentals, prohibit vacation rentals, or
225 regulate vacation rentals based solely on their classification,
226 use, or occupancy. This paragraph does not apply to any local
227 law, ordinance, or regulation adopted on or before June 1, 2011,
228 or to any amendment to such local law, ordinance, or regulation
229 exclusively relating to property valuation as a criteria for
230 vacation rental if the existing local law, ordinance, or
231 regulation was approved by the Department of Community Affairs
232 pursuant to an area of critical state concern designation.

233 Section 7. Effective upon this act becoming a law,
234 subsection (9) of section 509.221, Florida Statutes, is amended
235 to read:

236 509.221 Sanitary regulations.—

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

241 Section 8. Effective upon this act becoming a law,
242 subsection (2) of section 509.241, Florida Statutes, is amended
243 to read:

244 509.241 Licenses required; exceptions.—

245 (2) APPLICATION FOR LICENSE.—Each person who plans to open
246 a public lodging establishment or a public food service
247 establishment shall apply for and receive a license from the
248 division prior to the commencement of operation. A condominium
249 association, as defined in s. 718.103, which does not own any
250 units classified as vacation rentals ~~resort condominiums~~ under
251 s. 509.242(1)(c) is ~~shall~~ not be required to apply for or
252 receive a public lodging establishment license.

253 Section 9. Effective upon this act becoming a law,
254 subsection (1) of section 509.242, Florida Statutes, is amended
255 to read:

256 509.242 Public lodging establishments; classifications.—

257 (1) A public lodging establishment shall be classified as
258 a hotel, motel, ~~resort condominium,~~ nontransient apartment,
259 transient apartment, roominghouse, bed and breakfast inn, or
260 vacation rental ~~resort dwelling~~ if the establishment satisfies
261 the following criteria:

262 (a) Hotel.—A hotel is any public lodging establishment
263 containing sleeping room accommodations for 25 or more guests
264 and providing the services generally provided by a hotel and
265 recognized as a hotel in the community in which it is situated
266 or by the industry.

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267 (b) Motel.—A motel is any public lodging establishment
268 which offers rental units with an exit to the outside of each
269 rental unit, daily or weekly rates, offstreet parking for each
270 unit, a central office on the property with specified hours of
271 operation, a bathroom or connecting bathroom for each rental
272 unit, and at least six rental units, and which is recognized as
273 a motel in the community in which it is situated or by the
274 industry.

275 (c) Vacation rental ~~Resort condominium~~.—A vacation rental
276 ~~resort condominium~~ is any unit or group of units in a
277 condominium, cooperative, or timeshare plan or any individually
278 or collectively owned single-family, two-family, or four-family
279 house or dwelling unit that is also a transient public lodging
280 establishment ~~which is rented more than three times in a~~
281 ~~calendar year for periods of less than 30 days or 1 calendar~~
282 ~~month, whichever is less, or which is advertised or held out to~~
283 ~~the public as a place regularly rented for periods of less than~~
284 ~~30 days or 1 calendar month, whichever is less.~~

285 (d) Nontransient apartment or roominghouse.—A nontransient
286 apartment or roominghouse is a building or complex of buildings
287 in which 75 percent or more of the units are available for rent
288 to nontransient tenants.

289 (e) Transient apartment or roominghouse.—A transient
290 apartment or roominghouse is a building or complex of buildings
291 in which more than 25 percent of the units are advertised or
292 held out to the public as available for transient occupancy.

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

298 ~~(g) Resort dwelling. A resort dwelling is any individually~~
299 ~~or collectively owned one family, two family, three family, or~~
300 ~~four family dwelling house or dwelling unit which is rented more~~
301 ~~than three times in a calendar year for periods of less than 30~~
302 ~~days or 1 calendar month, whichever is less, or which is~~
303 ~~advertised or held out to the public as a place regularly rented~~
304 ~~for periods of less than 30 days or 1 calendar month, whichever~~
305 ~~is less.~~

306 (g)(h) Bed and breakfast inn.—A bed and breakfast inn is a
307 family home structure, with no more than 15 sleeping rooms,
308 which has been modified to serve as a transient public lodging
309 establishment, which provides the accommodation and meal
310 services generally offered by a bed and breakfast inn, and which
311 is recognized as a bed and breakfast inn in the community in
312 which it is situated or by the hospitality industry.

313 Section 10. Effective upon this act becoming a law,
314 subsection (1) of section 509.251, Florida Statutes, is amended
315 to read:

316 509.251 License fees.—

317 (1) The division shall adopt, by rule, a schedule of fees
318 to be paid by each public lodging establishment as a
319 prerequisite to issuance or renewal of a license. Such fees
320 shall be based on the number of rental units in the
321 establishment. The aggregate fee per establishment charged any
322 public lodging establishment shall not exceed \$1,000; however,
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323 the fees described in paragraphs (a) and (b) may not be included
324 as part of the aggregate fee subject to this cap. Vacation
325 rental ~~Resort condominium~~ units within separate buildings or at
326 separate locations but managed by one licensed agent may be
327 combined in a single license application, and the division shall
328 charge a license fee as if all units in the application are in a
329 single licensed establishment. ~~Resort dwelling units may be~~
330 ~~licensed in the same manner as condominium units.~~ The fee
331 schedule shall require an establishment which applies for an
332 initial license to pay the full license fee if application is
333 made during the annual renewal period or more than 6 months
334 prior to the next such renewal period and one-half of the fee if
335 application is made 6 months or less prior to such period. The
336 fee schedule shall include fees collected for the purpose of
337 funding the Hospitality Education Program, pursuant to s.
338 509.302, which are payable in full for each application
339 regardless of when the application is submitted.

340 (a) Upon making initial application or an application for
341 change of ownership, the applicant shall pay to the division a
342 fee as prescribed by rule, not to exceed \$50, in addition to any
343 other fees required by law, which shall cover all costs
344 associated with initiating regulation of the establishment.

345 (b) A license renewal filed with the division within 30
346 days after the expiration date shall be accompanied by a
347 delinquent fee as prescribed by rule, not to exceed \$50, in
348 addition to the renewal fee and any other fees required by law.
349 A license renewal filed with the division more than 30 but not
350 more than 60 days after the expiration date shall be accompanied

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351 by a delinquent fee as prescribed by rule, not to exceed \$100,
352 in addition to the renewal fee and any other fees required by
353 law.

354 Section 11. Effective upon this act becoming a law,
355 subsection (1) of section 509.261, Florida Statutes, is amended
356 to read:

357 509.261 Revocation or suspension of licenses; fines;
358 procedure.—

359 (1) Any public lodging establishment or public food
360 service establishment that has operated or is operating in
361 violation of this chapter or the rules of the division,
362 operating without a license, or operating with a suspended or
363 revoked license may be subject by the division to:

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

365 (b) Mandatory completion attendance, at personal expense,
366 of a remedial at an educational program administered sponsored
367 by a food safety training program provider whose program has
368 been approved by the division, as provided in s. 509.049 the
369 Hospitality Education Program; and

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

372 Section 12. Effective upon this act becoming a law,
373 subsection (1) of section 509.291, Florida Statutes, is amended
374 to read:

375 509.291 Advisory council.—

376 (1) There is created a 10-member advisory council.

377 (a) The Secretary of Business and Professional Regulation
378 shall appoint six ~~seven~~ voting members to the advisory council.

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379 Each member appointed by the secretary must be an operator of an
380 establishment licensed under this chapter and shall represent
381 the industries regulated by the division, except that one member
382 appointed by the secretary must be a layperson representing the
383 general public and one member must be a hospitality education
384 administrator from an institution of higher education of this
385 state. Such members of the council shall serve staggered terms
386 of 4 years.

387 (b) The Florida Restaurant and Lodging Association shall
388 designate one representative to serve as a voting member of the
389 council. The Florida Vacation Rental Managers Association shall
390 designate one representative to serve as a voting member of the
391 council. The Florida Apartment Association and the Florida
392 Association of Realtors shall each designate one representative
393 to serve as a voting member of the council.

394 (c) Any member who fails to attend three consecutive
395 council meetings without good cause may be removed from the
396 council by the secretary.

397 Section 13. Effective upon this act becoming a law,
398 paragraph (c) of subsection (8) of section 381.008, Florida
399 Statutes, is amended to read:

400 381.008 Definitions of terms used in ss. 381.008-
401 381.00897.—As used in ss. 381.008-381.00897, the following words
402 and phrases mean:

403 (8) "Residential migrant housing"—A building, structure,
404 mobile home, barracks, or dormitory, and any combination thereof
405 on adjacent property which is under the same ownership,
406 management, or control, and the land appertaining thereto, that
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407 is rented or reserved for occupancy by five or more seasonal or
408 migrant farmworkers, except:

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

412 Section 14. Effective upon this act becoming a law,
413 subsection (4) of section 386.203, Florida Statutes, is amended
414 to read:

415 386.203 Definitions.—As used in this part:

416 (4) "Designated smoking guest rooms at public lodging
417 establishments" means the sleeping rooms and directly associated
418 private areas, such as bathrooms, living rooms, and kitchen
419 areas, if any, rented to guests for their exclusive transient
420 occupancy in public lodging establishments, including hotels,
421 motels, vacation rentals ~~resort condominiums~~, transient
422 apartments, transient lodging establishments, rooming houses,
423 boarding houses, ~~resort dwellings~~, bed and breakfast inns, and
424 the like; and designated by the person or persons having
425 management authority over such public lodging establishment as
426 rooms in which smoking may be permitted.

427 Section 15. The amendments to ss. 509.144 and 932.701,
428 Florida Statutes, and the creation of s. 901.1503, Florida
429 Statutes, by this act do not affect or impede the provisions of
430 s. 790.251, Florida Statutes, or any other protection or right
431 guaranteed by the Second Amendment to the United States
432 Constitution.

433 Section 16. Except as otherwise expressly provided in this
434 act and except for this section, which shall take effect upon
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435 this act becoming a law, this act shall take effect October 1,
436 2011.

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T I T L E A M E N D M E N T

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Remove lines 14-27 and insert:

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establishment and one additional affiant sign an affidavit

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containing information supporting the determination of

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probable cause; amending s. 932.701, F.S.; revising the

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definition of the term "contraband article"; amending s.

446

509.013, F.S.; excluding nonprofit organizations operating

447

facilities providing certain housing from the definition

448

of the term "public lodging establishment"; amending s.

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509.032, F.S.; conforming provisions to changes made by

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the act; revising authority preempted to the state with

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regard to regulation of public lodging establishments and

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public food service establishments; prohibiting local

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governments from regulating, restricting, or prohibiting

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vacation rentals based solely on their classification or

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use; providing an exception; amending ss. 509.221 and

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509.241, F.S.; conforming provisions to changes made by

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the act; amending s. 509.242, F.S.; providing that public

458

lodging establishments formerly classified as resort

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condominiums and resort dwellings are classified as

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vacation rentals; defining the term "vacation rental";

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amending s. 509.251, F.S.; conforming provisions to

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changes made by the act; amending s. 509.261, F.S.;

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463 revising penalties for operating a public lodging
464 establishment or public food service establishment without
465 a valid license; amending s. 509.291, F.S.; revising
466 membership of the advisory council of the Division of
467 Hotels and Restaurants of the Department of Business and
468 Professional Regulation; requiring the Florida Vacation
469 Rental Managers Association to designate a member to serve
470 on the advisory council; amending ss. 381.008 and 386.203,
471 F.S.; conforming provisions to changes made by the act;
472 providing that specified portions of this act do not
473 affect or impede specified statutory provisions or any
474 protection or right guaranteed by the Second Amendment to
475 the United States Constitution; providing effective dates.

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