

1 A bill to be entitled
2 An act relating to public lodging and food service
3 establishments; providing a short title; amending s.
4 509.144, F.S.; revising definitions; providing additional
5 penalties for the offense of unlawfully distributing
6 handbills in a public lodging establishment; specifying
7 that certain items used in committing such offense are
8 subject to seizure and forfeiture under the Florida
9 Contraband Forfeiture Act; creating s. 901.1503, F.S.;
10 authorizing a law enforcement officer to give a notice to
11 appear to a person without a warrant when there is
12 probable cause to believe the person violated s. 509.144,
13 F.S., and the owner or manager of the public lodging
14 establishment signs an affidavit containing information
15 supporting the determination of probable cause; amending
16 s. 932.701, F.S.; revising the definition of the term
17 "contraband article"; amending s. 509.032, F.S.; revising
18 provisions relating to the preemption to the state of the
19 regulation of public lodging establishments and public
20 food service establishments; amending s. 509.261, F.S.;
21 revising penalties for operating a public lodging
22 establishment or public food service establishment without
23 a valid license; providing that specified portions of this
24 act do not affect or impede specified statutory provisions
25 or any protection or right guaranteed by the Second
26 Amendment to the United States Constitution; providing an
27 effective date.
28

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. This act may be cited as the "Tourist Safety
 32 | Act of 2011."

33 | Section 2. Section 509.144, Florida Statutes, is amended
 34 | to read:

35 | 509.144 Prohibited handbill distribution in a public
 36 | lodging establishment; penalties.—

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

38 | (a) "Handbill" means a flier, leaflet, pamphlet, or other
 39 | written material that advertises, promotes, or informs persons
 40 | about a person ~~an individual~~, business, company, or food service
 41 | establishment, ~~but does shall~~ not include employee
 42 | communications permissible under the National Labor Relations
 43 | Act, other communications protected by the First Amendment to
 44 | the United States Constitution, or communications that relate to
 45 | the public health, safety, or welfare that are distributed by a
 46 | federal, state, or local governmental entity or a public or
 47 | private utility.

48 | (b) "Without permission" means without the expressed
 49 | written ~~or oral~~ permission of the owner, manager, or agent of
 50 | the owner or manager of the public lodging establishment where a
 51 | sign is posted prohibiting advertising or solicitation in the
 52 | manner provided in subsection (5) ~~(4)~~.

53 | (c) "At or in a public lodging establishment" means any
 54 | property under the sole ownership or control of a public lodging
 55 | establishment.

56 | (2) Any person ~~individual~~, agent, contractor, or volunteer

57 | who is acting on behalf of a person ~~an individual~~, business,
 58 | company, or food service establishment and who, without
 59 | permission, delivers, distributes, or places, or attempts to
 60 | deliver, distribute, or place, a handbill at or in a public
 61 | lodging establishment commits a misdemeanor of the first degree,
 62 | punishable as provided in s. 775.082 or s. 775.083.

63 | (3) Any person who, without permission, directs another
 64 | person to deliver, distribute, or place, or attempts to deliver,
 65 | distribute, or place, a handbill at or in a public lodging
 66 | establishment commits a misdemeanor of the first degree,
 67 | punishable as provided in s. 775.082 or s. 775.083. Any person
 68 | sentenced under this subsection shall be ordered to pay a
 69 | minimum fine of \$500 in addition to any other penalty imposed by
 70 | the court.

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

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

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

77 | (5) ~~(4)~~ For purposes of this section, a public lodging
 78 | establishment that intends to prohibit advertising or
 79 | solicitation, as described in this section, at or in such
 80 | establishment must comply with the following requirements when
 81 | posting a sign prohibiting such solicitation or advertising:

82 | (a) There must appear prominently on any sign referred to
 83 | in this subsection, in letters of not less than 2 inches in
 84 | height, the terms "no advertising" or "no solicitation" or terms

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85 that indicate the same meaning.

86 (b) The sign must be posted conspicuously.

87 (c) If the main office of the public lodging establishment
88 is immediately accessible by entering the office through a door
89 from a street, parking lot, grounds, or other area outside such
90 establishment, the sign must be placed on a part of the main
91 office, such as a door or window, and the sign must face the
92 street, parking lot, grounds, or other area outside such
93 establishment.

94 (d) If the main office of the public lodging establishment
95 is not immediately accessible by entering the office through a
96 door from a street, parking lot, grounds, or other area outside
97 such establishment, the sign must be placed in the immediate
98 vicinity of the main entrance to such establishment, and the
99 sign must face the street, parking lot, grounds, or other area
100 outside such establishment.

101 (6) Any personal property, including, but not limited to,
102 any vehicle of any kind, item, object, tool, device, weapon,
103 machine, money, security, book, or record, that is used or
104 attempted to be used as an instrumentality in the commission of,
105 or in aiding and abetting in the commission of, a person's third
106 or subsequent violation of this section, whether or not
107 comprising an element of the offense, is subject to seizure and
108 forfeiture under the Florida Contraband Forfeiture Act.

109 Section 3. Section 901.1503, Florida Statutes, is created
110 to read:

111 901.1503 When notice to appear by officer without warrant
112 is lawful.—A law enforcement officer may give a notice to appear

113 to a person without a warrant when the officer has determined
114 that he or she has probable cause to believe that a violation of
115 s. 509.144 has been committed and the owner or manager of the
116 public lodging establishment in which the violation occurred
117 signs an affidavit containing information that supports the
118 officer's determination of probable cause.

119 Section 4. Paragraph (a) of subsection (2) of section
120 932.701, Florida Statutes, is amended to read:

121 932.701 Short title; definitions.—

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

123 (a) "Contraband article" means:

124 1. Any controlled substance as defined in chapter 893 or
125 any substance, device, paraphernalia, or currency or other means
126 of exchange that was used, was attempted to be used, or was
127 intended to be used in violation of any provision of chapter
128 893, if the totality of the facts presented by the state is
129 clearly sufficient to meet the state's burden of establishing
130 probable cause to believe that a nexus exists between the
131 article seized and the narcotics activity, whether or not the
132 use of the contraband article can be traced to a specific
133 narcotics transaction.

134 2. Any gambling paraphernalia, lottery tickets, money,
135 currency, or other means of exchange which was used, was
136 attempted, or intended to be used in violation of the gambling
137 laws of the state.

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

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

143 5. Any personal property, including, but not limited to,
 144 any vessel, aircraft, item, object, tool, substance, device,
 145 weapon, machine, vehicle of any kind, money, securities, books,
 146 records, research, negotiable instruments, or currency, which
 147 was used or was attempted to be used as an instrumentality in
 148 the commission of, or in aiding or abetting in the commission
 149 of, any felony, whether or not comprising an element of the
 150 felony, or which is acquired by proceeds obtained as a result of
 151 a violation of the Florida Contraband Forfeiture Act.

152 6. Any real property, including any right, title,
 153 leasehold, or other interest in the whole of any lot or tract of
 154 land, which was used, is being used, or was attempted to be used
 155 as an instrumentality in the commission of, or in aiding or
 156 abetting in the commission of, any felony, or which is acquired
 157 by proceeds obtained as a result of a violation of the Florida
 158 Contraband Forfeiture Act.

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

165 8. Any motor vehicle offered for sale in violation of s.
 166 320.28.

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

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169 10. Any photograph, film, or other recorded image,
170 including an image recorded on videotape, a compact disc,
171 digital tape, or fixed disk, that is recorded in violation of s.
172 810.145 and is possessed for the purpose of amusement,
173 entertainment, sexual arousal, gratification, or profit, or for
174 the purpose of degrading or abusing another person.

175 11. Any real property, including any right, title,
176 leasehold, or other interest in the whole of any lot or tract of
177 land, which is acquired by proceeds obtained as a result of
178 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
179 property, including, but not limited to, equipment, money,
180 securities, books, records, research, negotiable instruments, or
181 currency; or any vessel, aircraft, item, object, tool,
182 substance, device, weapon, machine, or vehicle of any kind in
183 the possession of or belonging to any person which is acquired
184 by proceeds obtained as a result of Medicaid fraud under s.
185 409.920 or s. 409.9201.

186 12. Any personal property, including, but not limited to,
187 any vehicle of any kind, item, object, tool, device, weapon,
188 machine, money, security, book, or record, that is used or
189 attempted to be used as an instrumentality in the commission of,
190 or in aiding and abetting in the commission of, a person's third
191 or subsequent violation of s. 509.144, whether or not comprising
192 an element of the offense.

193 Section 5. Subsection (7) of section 509.032, Florida
194 Statutes, is amended to read:

195 509.032 Duties.—

196 (7) PREEMPTION AUTHORITY.—The regulation of public lodging

197 establishments and public food service establishments,
 198 including, but not limited to, ~~the inspection of public lodging~~
 199 ~~establishments and public food service establishments for~~
 200 ~~compliance with the sanitation standards, inspections, adopted~~
 201 ~~under this section, and the regulation of food safety protection~~
 202 ~~standards for required training and testing of food service~~
 203 ~~establishment personnel, and matters related to the nutritional~~
 204 ~~content and marketing of foods offered in such establishments,~~
 205 is ~~are~~ preempted to the state. This subsection does not preempt
 206 the authority of a local government or local enforcement
 207 district to conduct inspections of public lodging and public
 208 food service establishments for compliance with the Florida
 209 Building Code and the Florida Fire Prevention Code, pursuant to
 210 ss. 553.80 and 633.022.

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

213 509.261 Revocation or suspension of licenses; fines;
 214 procedure.—

215 (1) Any public lodging establishment or public food
 216 service establishment that has operated or is operating in
 217 violation of this chapter or the rules of the division,
 218 operating without a license, or operating with a suspended or
 219 revoked license may be subject by the division to:

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

221 (b) Mandatory completion attendance, at personal expense,
 222 of a remedial at an educational program administered sponsored
 223 by a food safety training program provider whose program has
 224 been approved by the division, as provided in s. 509.049 the

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225 ~~Hospitality Education Program;~~ and

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

228 Section 7. The amendments to ss. 509.144 and 932.701,
 229 Florida Statutes, and the creation of s. 901.1503, Florida
 230 Statutes, by this act do not affect or impede the provisions of
 231 s. 790.251, Florida Statutes, or any other protection or right
 232 guaranteed by the Second Amendment to the United States
 233 Constitution.

234 Section 8. This act shall take effect October 1, 2011.