

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Regulated Industries

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BILL: CS/SB 394

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Public Lodging Establishments

DATE: February 18, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>MS</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 394 requires that public lodging establishments waive age restriction policies for active duty members of the United States Armed Services, the United States Reserve Forces, the National Guard, and the Coast Guard. The policy must be waived and the person must not be denied an accommodation on the basis of age upon the presentation of a valid Common Access Card, which is the standard military identification card. The bill also prohibits public lodging establishments from duplicating Common Access Cards.

**II. Present Situation:**

**Public Lodging Establishments**

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. At the end of FY 2013-2014, there were 38,472 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.<sup>1</sup>

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<sup>1</sup> Annual Report, Fiscal Year 2013-2014, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr\\_annual\\_reports.html](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/hr_annual_reports.html) (last visited February 5, 2015).

The term “public lodging establishments” includes transient and nontransient public lodging establishments.<sup>2</sup> The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

Section 509.013(4)(a)1., F.S., defines a “transient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 509.013(4)(a)2., F.S., defines a “nontransient public lodging establishment” to mean:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.<sup>3</sup> A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.<sup>4</sup>

Section 509.013(4)(b), F.S., exempts dormitories, hospital and medical establishments, residential units, migrant labor camps, and establishments inspected by the Department of Health from the definition of “public lodging establishment.”

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, and timeshare project.<sup>5</sup>

The 38,472 public lodging establishments that were licensed by the division at the end of FY 2013-2014 were divided as follows:<sup>6</sup>

- Hotels - 1,720 licenses;
- Motels - 2,691 licenses;
- Nontransient apartments - 17,501 licenses;
- Transient apartments - 960 licenses;
- Bed and Breakfasts – 260 licenses;

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<sup>2</sup> Section 509.013(4)(a), F.S.

<sup>3</sup> Section 509.242(1)(d), F.S.

<sup>4</sup> Section 509.242(1)(e), F.S.

<sup>5</sup> Section 509.242(1), F.S.

<sup>6</sup> *Supra* note 1.

- Vacation Rentals, Condominiums – 3,904 licenses; and
- Vacation Rentals, Dwellings – 11,436 licenses.

### **Right to Refuse Accommodations**

Public lodging establishments are private enterprises and may refuse accommodations to any person who is objectionable or undesirable to the operator, so long as the refusal is not “based upon race, creed, color, sex, physical disability, or national origin.”<sup>7</sup> Violations are resolved as civil actions under s. 760.11, F.S.<sup>8</sup> Public lodging establishments are also allowed to “establish reasonable rules and regulations for the management of the establishment,” which become part of “a special contract between the operator and each guest or employee using the services or facilities of the operator.”<sup>9</sup>

According to published reports, some public lodging establishments have policies that restrict accommodations to persons over a certain age. While employed by the military, or when traveling for military and personal purposes, some persons have been denied accommodations at public lodging establishments because of their age.<sup>10</sup>

### **United States Armed Forces**

The United States Armed Forces consist of the Air Force, Army, Coast Guard, Marines, and Navy.<sup>11</sup>

Section 250.01(19), F.S., defines the term “servicemember” to mean “any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.”

The minimum enlistment requirements to join the Armed Forces require that a person must:

- Be a U.S. citizen or resident alien;
- Be at least 17 years old (17-year old applicants require parental consent);
- Have (with very few exceptions) a high school diploma; and

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<sup>7</sup> Section 509.092, F.S.

<sup>8</sup> Section 760.11, F.S., requires aggrieved parties to file a complaint with the Florida Commission on Human Relations within 365 days of the alleged violation. The commission, a commissioner, or the Attorney General may also file such a complaint. The commission would then conduct an investigation to determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992. Upon a finding of reasonable cause, the aggrieved person may file a civil action in a court of competent jurisdiction or request an administrative hearing under ss. 120.569 and 120.57, F.S. The court may an order to prohibit the discriminatory practice and provide affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. The court may also order the payment of reasonable attorney’s fees.

<sup>9</sup> Section 509.101, F.S.

<sup>10</sup> See McCarthy, Regan, “Bill to Bend Hotel Age Requirement for Military Members,” *WFSU* (Jan. 28, 2015). A copy of the article is available at: <http://news.wfsu.org/post/bill-bend-hotel-age-requirements-military-members> (last visited February 11, 2015).

<sup>11</sup> 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4) define the U.S. Armed Forces as the Army, Navy, Air Force, Marine Corps, and Coast Guard.

- Pass a physical medical exam.

Each branch also has addition slightly different enlistment requirements.<sup>12</sup> A person must also be at least 17 years of age to be a member of the National Guard.<sup>13</sup>

Members of the armed services are issues a Common Access Card by the U.S. Department of Defense. The Common Access Card is the standard identification for active duty uniformed service personnel, selected reserve, U.S. Department of Defense civilian employees, eligible contractor personnel, and other eligible personnel.<sup>14</sup>

### **III. Effect of Proposed Changes:**

This bill creates s. 509.095, F.S., to require that public lodging establishments waive any policy they may have which restricts accommodations to individuals older than a certain age when the person is an active duty member of the United States Armed Services, the United States Reserve Forces, the National Guard, and the Coast Guard. The policy must be waived and the person must not be denied an accommodation on the basis of age upon the presentation of a valid Common Access Card.

The bill prohibits public lodging establishment from duplicating Common Access Cards that are presented pursuant to s. 509.095, F.S.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>12</sup> See <http://www.military.com/join-armed-forces/join-the-military-basic-eligibility.html?comp=7000023458428&rank=1> (last visited February 9, 2015).

<sup>13</sup> See <http://www.nationalguard.com/eligibility> (last visited February 13, 2015).

<sup>14</sup> See <http://www.cac.mil/common-access-card/> (last visited February 16, 2015).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Division of Hotels and restaurants anticipates an indeterminate increase in complaints received and inspections required to investigate such complaints.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 509.095 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on February 18, 2015:**

The committee substitute (CS) requires the presentation of a “common access card” instead of a “military identification card.” The CS refers to active duty members of the United States Armed Services, the United States Reserve Forces, the National Guard, and the Coast Guard. The CS prohibits duplication of Common Access Cards that are presented pursuant to s. 509.095, F.S.

**B. Amendments:**

None.