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CS/CS/CS/HB 883, Engrossed 2

2011 Legislature

1 A bill to be entitled
2 An act relating to public lodging establishments and
3 public food service establishments; amending s. 509.013,
4 F.S.; excluding nonprofit organizations providing certain
5 housing from the definition of "public lodging
6 establishment"; amending s. 509.032, F.S.; conforming
7 provisions to changes made by the act; prohibiting local
8 governments from regulating, restricting, or prohibiting
9 vacation rentals based solely on their classification,
10 use, or occupancy; providing exceptions; revising
11 authority preempted to the state with regard to regulation
12 of public lodging establishments and public food service
13 establishments; amending ss. 509.221 and 509.241, F.S.;
14 conforming provisions to changes made by the act; amending
15 s. 509.242, F.S.; providing that public lodging
16 establishments formerly classified as resort condominiums
17 and resort dwellings are classified as vacation rentals;
18 defining the term "vacation rental"; amending s. 509.251,
19 F.S.; conforming provisions to changes made by the act;
20 amending s. 509.261, F.S.; revising penalties for public
21 lodging establishments and public food service
22 establishments operating without a valid license; amending
23 s. 509.291, F.S.; revising membership of the advisory
24 council of the Division of Hotels and Restaurants of the
25 Department of Business and Professional Regulation;
26 requiring the Florida Vacation Rental Managers Association
27 to designate a member to serve on the advisory council;
28 amending ss. 381.008 and 386.203, F.S.; conforming

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29 provisions to changes made by the act; providing a short
 30 title; amending s. 509.144, F.S.; revising definitions;
 31 providing additional penalties for the offense of
 32 unlawfully distributing handbills in a public lodging
 33 establishment; specifying that certain items used in
 34 committing such offense are subject to seizure and
 35 forfeiture under the Florida Contraband Forfeiture Act;
 36 creating s. 901.1503, F.S.; authorizing a law enforcement
 37 officer to give a notice to appear to a person without a
 38 warrant when there is probable cause to believe the person
 39 violated s. 509.144, F.S., and the owner or manager of the
 40 public lodging establishment and one additional affiant
 41 sign an affidavit containing information supporting the
 42 determination of probable cause; amending s. 932.701,
 43 F.S.; revising the definition of the term "contraband
 44 article"; providing that specified portions of the act do
 45 not affect or impede specified statutory provisions or any
 46 protection or right guaranteed by the Second Amendment to
 47 the United States Constitution; providing an effective
 48 date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Paragraph (b) of subsection (4) of section
 53 509.013, Florida Statutes, is amended to read:

54 (4)

55 (b) The following are excluded from the definitions in
 56 paragraph (a):

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- 57 | 1. Any dormitory or other living or sleeping facility
58 | maintained by a public or private school, college, or university
59 | for the use of students, faculty, or visitors;
- 60 | 2. Any facility certified or licensed and regulated by the
61 | Agency for Health Care Administration or the Department of
62 | Children and Family Services or other similar place regulated
63 | under s. 381.0072;
- 64 | 3. Any place renting four rental units or less, unless the
65 | rental units are advertised or held out to the public to be
66 | places that are regularly rented to transients;
- 67 | 4. Any unit or group of units in a condominium,
68 | cooperative, or timeshare plan and any individually or
69 | collectively owned one-family, two-family, three-family, or
70 | four-family dwelling house or dwelling unit that is rented for
71 | periods of at least 30 days or 1 calendar month, whichever is
72 | less, and that is not advertised or held out to the public as a
73 | place regularly rented for periods of less than 1 calendar
74 | month, provided that no more than four rental units within a
75 | single complex of buildings are available for rent;
- 76 | 5. Any migrant labor camp or residential migrant housing
77 | permitted by the Department of Health; under ss. 381.008-
78 | 381.00895; ~~and~~
- 79 | 6. Any establishment inspected by the Department of Health
80 | and regulated by chapter 513; and
- 81 | 7. Any nonprofit organization that operates a facility
82 | providing housing only to patients, patients' families, and
83 | patients' caregivers and not to the general public.
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85 Section 2. Paragraph (a) of subsection (2) and subsection
 86 (7) of section 509.032, Florida Statutes, are amended to read:
 87 509.032 Duties.—
 88 (2) INSPECTION OF PREMISES.—
 89 (a) The division has responsibility and jurisdiction for
 90 all inspections required by this chapter. The division has
 91 responsibility for quality assurance. Each licensed
 92 establishment shall be inspected at least biannually, except for
 93 transient and nontransient apartments, which shall be inspected
 94 at least annually, and shall be inspected at such other times as
 95 the division determines is necessary to ensure the public's
 96 health, safety, and welfare. The division shall establish a
 97 system to determine inspection frequency. Public lodging units
 98 classified as vacation rentals ~~resort condominiums or resort~~
 99 ~~dwellings~~ are not subject to this requirement, but shall be made
 100 available to the division upon request. If, during the
 101 inspection of a public lodging establishment classified for
 102 renting to transient or nontransient tenants, an inspector
 103 identifies vulnerable adults who appear to be victims of
 104 neglect, as defined in s. 415.102, or, in the case of a building
 105 that is not equipped with automatic sprinkler systems, tenants
 106 or clients who may be unable to self-preserve in an emergency,
 107 the division shall convene meetings with the following agencies
 108 as appropriate to the individual situation: the Department of
 109 Health, the Department of Elderly Affairs, the area agency on
 110 aging, the local fire marshal, the landlord and affected tenants
 111 and clients, and other relevant organizations, to develop a plan
 112 which improves the prospects for safety of affected residents

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113 and, if necessary, identifies alternative living arrangements
 114 such as facilities licensed under part II of chapter 400 or
 115 under chapter 429.

116 (7) PREEMPTION AUTHORITY.—

117 (a) The regulation of public lodging establishments and
 118 public food service establishments, including, but not limited
 119 to, ~~the inspection of public lodging establishments and public~~
 120 ~~food service establishments for compliance with the~~ sanitation
 121 standards, ~~inspections, adopted under this section, and the~~
 122 regulation of food safety protection standards for required
 123 training and testing of ~~food service establishment~~ personnel,
 124 and matters related to the nutritional content and marketing of
 125 foods offered in such establishments, is ~~are~~ preempted to the
 126 state. This ~~paragraph subsection~~ does not preempt the authority
 127 of a local government or local enforcement district to conduct
 128 inspections of public lodging and public food service
 129 establishments for compliance with the Florida Building Code and
 130 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
 131 633.022.

132 (b) A local law, ordinance, or regulation may not restrict
 133 the use of vacation rentals, prohibit vacation rentals, or
 134 regulate vacation rentals based solely on their classification,
 135 use, or occupancy. This paragraph does not apply to any local
 136 law, ordinance, or regulation adopted on or before June 1, 2011.

137 (c) Paragraph (b) does not apply to any local law,
 138 ordinance, or regulation exclusively relating to property
 139 valuation as a criterion for vacation rental if the local law,
 140 ordinance, or regulation is required to be approved by the

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141 Department of Community Affairs pursuant to an area of critical
 142 state concern designation.

143 Section 3. Subsection (9) of section 509.221, Florida
 144 Statutes, is amended to read:

145 509.221 Sanitary regulations.—

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

150 Section 4. Subsection (2) of section 509.241, Florida
 151 Statutes, is amended to read:

152 509.241 Licenses required; exceptions.—

153 (2) APPLICATION FOR LICENSE.—Each person who plans to open
 154 a public lodging establishment or a public food service
 155 establishment shall apply for and receive a license from the
 156 division prior to the commencement of operation. A condominium
 157 association, as defined in s. 718.103, which does not own any
 158 units classified as vacation rentals ~~resort condominiums~~ under
 159 s. 509.242(1)(c) is ~~shall~~ not ~~be~~ required to apply for or
 160 receive a public lodging establishment license.

161 Section 5. Subsection (1) of section 509.242, Florida
 162 Statutes, is amended to read:

163 509.242 Public lodging establishments; classifications.—

164 (1) A public lodging establishment shall be classified as
 165 a hotel, motel, ~~resort condominium~~, nontransient apartment,
 166 transient apartment, roominghouse, bed and breakfast inn, or
 167 vacation rental ~~resort dwelling~~ if the establishment satisfies
 168 the following criteria:

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169 (a) Hotel.—A hotel is any public lodging establishment
 170 containing sleeping room accommodations for 25 or more guests
 171 and providing the services generally provided by a hotel and
 172 recognized as a hotel in the community in which it is situated
 173 or by the industry.

174 (b) Motel.—A motel is any public lodging establishment
 175 which offers rental units with an exit to the outside of each
 176 rental unit, daily or weekly rates, offstreet parking for each
 177 unit, a central office on the property with specified hours of
 178 operation, a bathroom or connecting bathroom for each rental
 179 unit, and at least six rental units, and which is recognized as
 180 a motel in the community in which it is situated or by the
 181 industry.

182 (c) Vacation rental ~~Resort condominium~~.—A vacation rental
 183 ~~resort condominium~~ is any unit or group of units in a
 184 condominium, cooperative, or timeshare plan or any individually
 185 or collectively owned single-family, two-family, or four-family
 186 house or dwelling unit that is also a transient public lodging
 187 establishment ~~which is rented more than three times in a~~
 188 ~~calendar year for periods of less than 30 days or 1 calendar~~
 189 ~~month, whichever is less, or which is advertised or held out to~~
 190 ~~the public as a place regularly rented for periods of less than~~
 191 ~~30 days or 1 calendar month, whichever is less.~~

192 (d) Nontransient apartment or roominghouse.—A nontransient
 193 apartment or roominghouse is a building or complex of buildings
 194 in which 75 percent or more of the units are available for rent
 195 to nontransient tenants.

196 (e) Transient apartment or roominghouse.—A transient

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197 apartment or roominghouse is a building or complex of buildings
 198 in which more than 25 percent of the units are advertised or
 199 held out to the public as available for transient occupancy.

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

205 ~~(g) Resort dwelling.—A resort dwelling is any individually~~
 206 ~~or collectively owned one family, two family, three family, or~~
 207 ~~four family dwelling house or dwelling unit which is rented more~~
 208 ~~than three times in a calendar year for periods of less than 30~~
 209 ~~days or 1 calendar month, whichever is less, or which is~~
 210 ~~advertised or held out to the public as a place regularly rented~~
 211 ~~for periods of less than 30 days or 1 calendar month, whichever~~
 212 ~~is less.~~

213 (g) ~~(h)~~ Bed and breakfast inn.—A bed and breakfast inn is a
 214 family home structure, with no more than 15 sleeping rooms,
 215 which has been modified to serve as a transient public lodging
 216 establishment, which provides the accommodation and meal
 217 services generally offered by a bed and breakfast inn, and which
 218 is recognized as a bed and breakfast inn in the community in
 219 which it is situated or by the hospitality industry.

220 Section 6. Subsection (1) of section 509.251, Florida
 221 Statutes, is amended to read:

222 509.251 License fees.—

223 (1) The division shall adopt, by rule, a schedule of fees
 224 to be paid by each public lodging establishment as a

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225 prerequisite to issuance or renewal of a license. Such fees
 226 shall be based on the number of rental units in the
 227 establishment. The aggregate fee per establishment charged any
 228 public lodging establishment shall not exceed \$1,000; however,
 229 the fees described in paragraphs (a) and (b) may not be included
 230 as part of the aggregate fee subject to this cap. Vacation
 231 rental ~~Resort condominium~~ units within separate buildings or at
 232 separate locations but managed by one licensed agent may be
 233 combined in a single license application, and the division shall
 234 charge a license fee as if all units in the application are in a
 235 single licensed establishment. ~~Resort dwelling units may be~~
 236 ~~licensed in the same manner as condominium units.~~ The fee
 237 schedule shall require an establishment which applies for an
 238 initial license to pay the full license fee if application is
 239 made during the annual renewal period or more than 6 months
 240 prior to the next such renewal period and one-half of the fee if
 241 application is made 6 months or less prior to such period. The
 242 fee schedule shall include fees collected for the purpose of
 243 funding the Hospitality Education Program, pursuant to s.
 244 509.302, which are payable in full for each application
 245 regardless of when the application is submitted.

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

251 (b) A license renewal filed with the division within 30
 252 days after the expiration date shall be accompanied by a

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253 delinquent fee as prescribed by rule, not to exceed \$50, in
 254 addition to the renewal fee and any other fees required by law.
 255 A license renewal filed with the division more than 30 but not
 256 more than 60 days after the expiration date shall be accompanied
 257 by a delinquent fee as prescribed by rule, not to exceed \$100,
 258 in addition to the renewal fee and any other fees required by
 259 law.

260 Section 7. Subsection (1) of section 509.261, Florida
 261 Statutes, is amended to read:

262 509.261 Revocation or suspension of licenses; fines;
 263 procedure.—

264 (1) Any public lodging establishment or public food
 265 service establishment that has operated or is operating in
 266 violation of this chapter or the rules of the division,
 267 operating without a license, or operating with a suspended or
 268 revoked license may be subject by the division to:

- 269 (a) Fines not to exceed \$1,000 per offense;
- 270 (b) Mandatory completion attendance, at personal expense,
 271 of a remedial at an educational program administered sponsored
 272 by a food safety training program provider approved by the
 273 division, as provided in s. 509.049 the Hospitality Education
 274 Program; and

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

277 Section 8. Subsection (1) of section 509.291, Florida
 278 Statutes, is amended to read:

279 509.291 Advisory council.—

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

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281 (a) The Secretary of Business and Professional Regulation
 282 shall appoint six ~~seven~~ voting members to the advisory council.
 283 Each member appointed by the secretary must be an operator of an
 284 establishment licensed under this chapter and shall represent
 285 the industries regulated by the division, except that one member
 286 appointed by the secretary must be a layperson representing the
 287 general public and one member must be a hospitality education
 288 administrator from an institution of higher education of this
 289 state. Such members of the council shall serve staggered terms
 290 of 4 years.

291 (b) The Florida Restaurant and Lodging Association shall
 292 designate one representative to serve as a voting member of the
 293 council. The Florida Vacation Rental Managers Association shall
 294 designate one representative to serve as a voting member of the
 295 council. The Florida Apartment Association and the Florida
 296 Association of Realtors shall each designate one representative
 297 to serve as a voting member of the council.

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

301 Section 9. Paragraph (c) of subsection (8) of section
 302 381.008, Florida Statutes, is amended to read:

303 381.008 Definitions of terms used in ss. 381.008-
 304 381.00897.—As used in ss. 381.008-381.00897, the following words
 305 and phrases mean:

306 (8) "Residential migrant housing"—A building, structure,
 307 mobile home, barracks, or dormitory, and any combination thereof
 308 on adjacent property which is under the same ownership,

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309 management, or control, and the land appertaining thereto, that
 310 is rented or reserved for occupancy by five or more seasonal or
 311 migrant farmworkers, except:

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

315 Section 10. Subsection (4) of section 386.203, Florida
 316 Statutes, is amended to read:

317 386.203 Definitions.—As used in this part:

318 (4) "Designated smoking guest rooms at public lodging
 319 establishments" means the sleeping rooms and directly associated
 320 private areas, such as bathrooms, living rooms, and kitchen
 321 areas, if any, rented to guests for their exclusive transient
 322 occupancy in public lodging establishments, including hotels,
 323 motels, vacation rentals ~~resort condominiums,~~ transient
 324 apartments, transient lodging establishments, rooming houses,
 325 boarding houses, ~~resort dwellings,~~ bed and breakfast inns, and
 326 the like; and designated by the person or persons having
 327 management authority over such public lodging establishment as
 328 rooms in which smoking may be permitted.

329 Section 11. Sections 11 through 14 of this act may be
 330 cited as the "Tourist Safety Act of 2011."

331 Section 12. Section 509.144, Florida Statutes, is amended
 332 to read:

333 509.144 Prohibited handbill distribution in a public
 334 lodging establishment; penalties.—

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

336 (a) "Handbill" means a flier, leaflet, pamphlet, or other

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337 written material that advertises, promotes, or informs persons
 338 about a person ~~an individual~~, business, company, or food service
 339 establishment, but does ~~shall~~ not include employee
 340 communications permissible under the National Labor Relations
 341 Act, other communications protected by the First Amendment to
 342 the United States Constitution, or communications about public
 343 health, safety, or welfare distributed by a federal, state, or
 344 local governmental entity or a public or private utility.

345 (b) "Without permission" means without the expressed
 346 written ~~or oral~~ permission of the owner, manager, or agent of
 347 the owner or manager of the public lodging establishment where a
 348 sign is posted prohibiting advertising or solicitation in the
 349 manner provided in subsection (5) ~~(4)~~.

350 (c) "At or in a public lodging establishment" means any
 351 property under the sole ownership or control of a public lodging
 352 establishment.

353 (2) Any person ~~individual~~, agent, contractor, or volunteer
 354 who is acting on behalf of a person ~~an individual~~, business,
 355 company, or food service establishment and who, without
 356 permission, delivers, distributes, or places, or attempts to
 357 deliver, distribute, or place, a handbill at or in a public
 358 lodging establishment commits a misdemeanor of the first degree,
 359 punishable as provided in s. 775.082 or s. 775.083.

360 (3) Any person who, without permission, directs another
 361 person to deliver, distribute, or place, or attempts to deliver,
 362 distribute, or place, a handbill at or in a public lodging
 363 establishment commits a misdemeanor of the first degree,
 364 punishable as provided in s. 775.082 or s. 775.083. Any person

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365 sentenced under this subsection shall be ordered to pay a
 366 minimum fine of \$500 in addition to any other penalty imposed by
 367 the court.

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

370 (a) Shall pay a minimum fine of \$2,000 for a second
 371 violation.

372 (b) Shall pay a minimum fine of \$3,000 for a third or
 373 subsequent violation.

374 ~~(4)~~ For purposes of this section, a public lodging
 375 establishment that intends to prohibit advertising or
 376 solicitation, as described in this section, at or in such
 377 establishment must comply with the following requirements when
 378 posting a sign prohibiting such solicitation or advertising:

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

383 (b) The sign must be posted conspicuously.

384 (c) If the main office of the public lodging establishment
 385 is immediately accessible by entering the office through a door
 386 from a street, parking lot, grounds, or other area outside such
 387 establishment, the sign must be placed on a part of the main
 388 office, such as a door or window, and the sign must face the
 389 street, parking lot, grounds, or other area outside such
 390 establishment.

391 (d) If the main office of the public lodging establishment
 392 is not immediately accessible by entering the office through a

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393 door from a street, parking lot, grounds, or other area outside
 394 such establishment, the sign must be placed in the immediate
 395 vicinity of the main entrance to such establishment, and the
 396 sign must face the street, parking lot, grounds, or other area
 397 outside such establishment.

398 (6) Any personal property, including, but not limited to,
 399 any vehicle, item, object, tool, device, weapon, machine, money,
 400 security, book, or record, that is used or attempted to be used
 401 as an instrumentality in the commission of, or in aiding and
 402 abetting in the commission of, a person's third or subsequent
 403 violation of this section, whether or not comprising an element
 404 of the offense, is subject to seizure and forfeiture under the
 405 Florida Contraband Forfeiture Act.

406 Section 13. Section 901.1503, Florida Statutes, is created
 407 to read:

408 901.1503 When notice to appear by officer without warrant
 409 is lawful.—A law enforcement officer may give a notice to appear
 410 to a person without a warrant when the officer has determined
 411 that he or she has probable cause to believe that a violation of
 412 s. 509.144 has been committed and the owner or manager of the
 413 public lodging establishment in which the violation occurred and
 414 one additional affiant sign an affidavit containing information
 415 that supports the officer's determination of probable cause.

416 Section 14. Paragraph (a) of subsection (2) of section
 417 932.701, Florida Statutes, is amended to read:

418 932.701 Short title; definitions.—

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

420 (a) "Contraband article" means:

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421 1. Any controlled substance as defined in chapter 893 or
422 any substance, device, paraphernalia, or currency or other means
423 of exchange that was used, was attempted to be used, or was
424 intended to be used in violation of any provision of chapter
425 893, if the totality of the facts presented by the state is
426 clearly sufficient to meet the state's burden of establishing
427 probable cause to believe that a nexus exists between the
428 article seized and the narcotics activity, whether or not the
429 use of the contraband article can be traced to a specific
430 narcotics transaction.

431 2. Any gambling paraphernalia, lottery tickets, money,
432 currency, or other means of exchange which was used, was
433 attempted, or intended to be used in violation of the gambling
434 laws of the state.

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

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

440 5. Any personal property, including, but not limited to,
441 any vessel, aircraft, item, object, tool, substance, device,
442 weapon, machine, vehicle of any kind, money, securities, books,
443 records, research, negotiable instruments, or currency, which
444 was used or was attempted to be used as an instrumentality in
445 the commission of, or in aiding or abetting in the commission
446 of, any felony, whether or not comprising an element of the
447 felony, or which is acquired by proceeds obtained as a result of
448 a violation of the Florida Contraband Forfeiture Act.

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449 6. Any real property, including any right, title,
 450 leasehold, or other interest in the whole of any lot or tract of
 451 land, which was used, is being used, or was attempted to be used
 452 as an instrumentality in the commission of, or in aiding or
 453 abetting in the commission of, any felony, or which is acquired
 454 by proceeds obtained as a result of a violation of the Florida
 455 Contraband Forfeiture Act.

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

462 8. Any motor vehicle offered for sale in violation of s.
 463 320.28.

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

466 10. Any photograph, film, or other recorded image,
 467 including an image recorded on videotape, a compact disc,
 468 digital tape, or fixed disk, that is recorded in violation of s.
 469 810.145 and is possessed for the purpose of amusement,
 470 entertainment, sexual arousal, gratification, or profit, or for
 471 the purpose of degrading or abusing another person.

472 11. Any real property, including any right, title,
 473 leasehold, or other interest in the whole of any lot or tract of
 474 land, which is acquired by proceeds obtained as a result of
 475 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 476 property, including, but not limited to, equipment, money,

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477 securities, books, records, research, negotiable instruments, or
 478 currency; or any vessel, aircraft, item, object, tool,
 479 substance, device, weapon, machine, or vehicle of any kind in
 480 the possession of or belonging to any person which is acquired
 481 by proceeds obtained as a result of Medicaid fraud under s.
 482 409.920 or s. 409.9201.

483 12. Any personal property, including, but not limited to,
 484 any vehicle, item, object, tool, device, weapon, machine, money,
 485 security, book, or record, that is used or attempted to be used
 486 as an instrumentality in the commission of, or in aiding and
 487 abetting in the commission of, a person's third or subsequent
 488 violation of s. 509.144, whether or not comprising an element of
 489 the offense.

490 Section 15. The amendments made to ss. 509.144 and
 491 932.701, Florida Statutes, and the creation of s. 901.1503,
 492 Florida Statutes, by this act do not affect or impede the
 493 provisions of s. 790.251, Florida Statutes, or any other
 494 protection or right guaranteed by the Second Amendment to the
 495 United States Constitution.

496 Section 16. This act shall take effect upon becoming a
 497 law.