

1 A bill to be entitled
2 An act relating to public lodging establishments and
3 public food service establishments; amending s. 509.032,
4 F.S.; conforming provisions to changes made by the act;
5 prohibiting local governments from regulating,
6 restricting, or prohibiting vacation rentals based solely
7 on their classification or use; providing an exception;
8 revising authority preempted to the state with regard to
9 regulation of public lodging establishments and public
10 food service establishments; amending ss. 509.221 and
11 509.241, F.S.; conforming provisions to changes made by
12 the act; amending s. 509.242, F.S.; providing that public
13 lodging establishments formerly classified as resort
14 condominiums and resort dwellings are classified as
15 vacation rentals; defining the term "vacation rental";
16 amending s. 509.251, F.S.; conforming provisions to
17 changes made by the act; amending s. 509.261, F.S.;
18 revising penalties for public lodging establishments and
19 public food service establishments operating without a
20 valid license; amending s. 509.291, F.S.; revising
21 membership of the advisory council of the Division of
22 Hotels and Restaurants of the Department of Business and
23 Professional Regulation; requiring the Florida Vacation
24 Rental Managers Association to designate a member to serve
25 on the advisory council; amending ss. 381.008 and 386.203,
26 F.S.; conforming provisions to changes made by the act;
27 providing a short title; amending s. 509.144, F.S.;
28 revising definitions; providing additional penalties for

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

46 |
47 | Be It Enacted by the Legislature of the State of Florida:

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

51 | 509.032 Duties.—

52 | (2) INSPECTION OF PREMISES.—

53 | (a) The division has responsibility and jurisdiction for
54 | all inspections required by this chapter. The division has
55 | responsibility for quality assurance. Each licensed
56 | establishment shall be inspected at least biannually, except for

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

80 (7) PREEMPTION AUTHORITY.—

81 (a) The regulation of public lodging establishments and
82 public food service establishments, including, but not limited
83 to, ~~the inspection of public lodging establishments and public~~
84 ~~food service establishments for compliance with the sanitation~~

85 standards, inspections, ~~adopted under this section,~~ and the
 86 ~~regulation of food safety protection standards for required~~
 87 ~~training and testing of food service establishment personnel,~~
 88 and matters related to the nutritional content and marketing of
 89 foods offered in such establishments, ~~is~~ ~~are~~ preempted to the
 90 state. This paragraph ~~subsection~~ does not preempt the authority
 91 of a local government or local enforcement district to conduct
 92 inspections of public lodging and public food service
 93 establishments for compliance with the Florida Building Code and
 94 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
 95 633.022.

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

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

103 509.221 Sanitary regulations.—

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

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

110 509.241 Licenses required; exceptions.—

111 (2) APPLICATION FOR LICENSE.—Each person who plans to open
 112 a public lodging establishment or a public food service

113 establishment shall apply for and receive a license from the
 114 division prior to the commencement of operation. A condominium
 115 association, as defined in s. 718.103, which does not own any
 116 units classified as vacation rentals ~~resort condominiums~~ under
 117 s. 509.242(1)(c) is ~~shall not be~~ required to apply for or
 118 receive a public lodging establishment license.

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

121 509.242 Public lodging establishments; classifications.—

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

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

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

140 (c) Vacation rental ~~Resort condominium~~.—A vacation rental

141 ~~resort condominium~~ is any unit or group of units in a
 142 condominium, cooperative, or timeshare plan or any individually
 143 or collectively owned single-family, two-family, or four-family
 144 house or dwelling unit that is also a transient public lodging
 145 establishment ~~which is rented more than three times in a~~
 146 ~~calendar year for periods of less than 30 days or 1 calendar~~
 147 ~~month, whichever is less, or which is advertised or held out to~~
 148 ~~the public as a place regularly rented for periods of less than~~
 149 ~~30 days or 1 calendar month, whichever is less.~~

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

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

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

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

169 ~~for periods of less than 30 days or 1 calendar month, whichever~~
 170 ~~is less.~~

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

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

180 509.251 License fees.—

181 (1) The division shall adopt, by rule, a schedule of fees
 182 to be paid by each public lodging establishment as a
 183 prerequisite to issuance or renewal of a license. Such fees
 184 shall be based on the number of rental units in the
 185 establishment. The aggregate fee per establishment charged any
 186 public lodging establishment shall not exceed \$1,000; however,
 187 the fees described in paragraphs (a) and (b) may not be included
 188 as part of the aggregate fee subject to this cap. Vacation
 189 rental ~~Resort condominium~~ units within separate buildings or at
 190 separate locations but managed by one licensed agent may be
 191 combined in a single license application, and the division shall
 192 charge a license fee as if all units in the application are in a
 193 single licensed establishment. ~~Resort dwelling units may be~~
 194 ~~licensed in the same manner as condominium units.~~ The fee
 195 schedule shall require an establishment which applies for an
 196 initial license to pay the full license fee if application is

197 made during the annual renewal period or more than 6 months
 198 prior to the next such renewal period and one-half of the fee if
 199 application is made 6 months or less prior to such period. The
 200 fee schedule shall include fees collected for the purpose of
 201 funding the Hospitality Education Program, pursuant to s.
 202 509.302, which are payable in full for each application
 203 regardless of when the application is submitted.

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

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

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

220 509.261 Revocation or suspension of licenses; fines;
 221 procedure.—

222 (1) Any public lodging establishment or public food
 223 service establishment that has operated or is operating in
 224 violation of this chapter or the rules of the division,

225 | operating without a license, or operating with a suspended or
 226 | revoked license may be subject by the division to:

- 227 | (a) Fines not to exceed \$1,000 per offense;
- 228 | (b) Mandatory completion ~~attendance~~, at personal expense,
 229 | of a remedial at an educational program administered ~~sponsored~~
 230 | by a food safety training program provider approved by the
 231 | division, as provided in s. 509.049 ~~the Hospitality Education~~
 232 | ~~Program~~; and

233 | (c) The suspension, revocation, or refusal of a license
 234 | issued pursuant to this chapter.

235 | Section 7. Subsection (1) of section 509.291, Florida
 236 | Statutes, is amended to read:

237 | 509.291 Advisory council.—

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

239 | (a) The Secretary of Business and Professional Regulation
 240 | shall appoint six ~~seven~~ voting members to the advisory council.
 241 | Each member appointed by the secretary must be an operator of an
 242 | establishment licensed under this chapter and shall represent
 243 | the industries regulated by the division, except that one member
 244 | appointed by the secretary must be a layperson representing the
 245 | general public and one member must be a hospitality education
 246 | administrator from an institution of higher education of this
 247 | state. Such members of the council shall serve staggered terms
 248 | of 4 years.

249 | (b) The Florida Restaurant and Lodging Association shall
 250 | designate one representative to serve as a voting member of the
 251 | council. The Florida Vacation Rental Managers Association shall
 252 | designate one representative to serve as a voting member of the

253 | council. The Florida Apartment Association and the Florida
 254 | Association of Realtors shall each designate one representative
 255 | to serve as a voting member of the council.

256 | (c) Any member who fails to attend three consecutive
 257 | council meetings without good cause may be removed from the
 258 | council by the secretary.

259 | Section 8. Paragraph (c) of subsection (8) of section
 260 | 381.008, Florida Statutes, is amended to read:

261 | 381.008 Definitions of terms used in ss. 381.008-
 262 | 381.00897.—As used in ss. 381.008-381.00897, the following words
 263 | and phrases mean:

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

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

273 | Section 9. Subsection (4) of section 386.203, Florida
 274 | Statutes, is amended to read:

275 | 386.203 Definitions.—As used in this part:

276 | (4) "Designated smoking guest rooms at public lodging
 277 | establishments" means the sleeping rooms and directly associated
 278 | private areas, such as bathrooms, living rooms, and kitchen
 279 | areas, if any, rented to guests for their exclusive transient
 280 | occupancy in public lodging establishments, including hotels,

281 motels, vacation rentals ~~resort condominiums~~, transient
 282 apartments, transient lodging establishments, rooming houses,
 283 boarding houses, ~~resort dwellings~~, bed and breakfast inns, and
 284 the like; and designated by the person or persons having
 285 management authority over such public lodging establishment as
 286 rooms in which smoking may be permitted.

287 Section 10. Sections 11 through 14 of this act may be
 288 cited as the "Tourist Safety Act of 2011."

289 Section 11. Section 509.144, Florida Statutes, is amended
 290 to read:

291 509.144 Prohibited handbill distribution in a public
 292 lodging establishment; penalties.—

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

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

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

308 (c) "At or in a public lodging establishment" means any

309 | property under the sole ownership or control of a public lodging
 310 | establishment.

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

318 | (3) Any person who, without permission, directs another
 319 | person to deliver, distribute, or place, or attempts to deliver,
 320 | distribute, or place, a handbill at or in a public lodging
 321 | establishment commits a misdemeanor of the first degree,
 322 | punishable as provided in s. 775.082 or s. 775.083. Any person
 323 | sentenced under this subsection shall be ordered to pay a
 324 | minimum fine of \$500 in addition to any other penalty imposed by
 325 | the court.

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

328 | (a) Shall pay a minimum fine of \$2,000 for a second
 329 | violation.

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

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

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

341 (b) The sign must be posted conspicuously.

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

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

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

364 Section 12. Section 901.1503, Florida Statutes, is created

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365 to read:

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

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,
 394 is being used, was attempted to be used, or intended to be used
 395 in 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.

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
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, item, object, tool, device, weapon, machine, money,
443 security, book, or record, that is used or attempted to be used
444 as an instrumentality in the commission of, or in aiding and
445 abetting in the commission of, a person's third or subsequent
446 violation of s. 509.144, whether or not comprising an element of
447 the offense.

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448 Section 14. The amendments made to ss. 509.144 and
449 932.701, 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
455 law.