

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.

BILL #: [CS/HB 535](#)

TITLE: Public Lodging and Public Food Service Establishments

SPONSOR(S): Johnson

COMPANION BILL: [SB 606](#) (Leek)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Industries & Professional
Activities](#)

14 Y, 3 N, As CS



[Criminal Justice](#)

11 Y, 6 N



[Commerce](#)

SUMMARY

Effect of the Bill:

The bill redefines “transient occupancy” and “nontransient occupancy” in the context of public lodging establishments. The bill removes the intention of the parties and the rebuttable presumptions, and defines “transient occupancy” as an occupancy that is temporary and “nontransient occupancy” as an occupancy that is not temporary. The bill redefines “transient establishment” and “nontransient establishment” by removing the intention of the operator.

The bill provides that:

- An operator of a public lodging establishment may remove a guest for failing to make payment or check out before the time specified by the establishment instead of the time agreed upon by both parties.
- A public lodging or public food establishment’s written or oral notice to a guest to leave is effective upon delivery whether delivery is in person, telephone, email, or delivered to the guest’s unit.

The bill removes the requirement for a law enforcement officer to arrest a guest who refuses to leave an establishment in the officer’s presence and instead requires the officer to remove the guest from the establishment.

The bill prohibits public food service establishments from including automatic gratuity or service charges as part of the price for food or beverages for certain parties. The bill requires public food service establishments to provide specific notices with specific requirements when including automatic gratuity or service charges.

Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact on the private sector.

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

[BILL HISTORY](#)

ANALYSIS

EFFECT OF THE BILL:

[Transient and Nontransient Occupancy](#)

The bill redefines “transient occupancy” and “nontransient occupancy” in the context of [public lodging establishments](#). The bill removes the [intention of the parties](#) and the [rebuttable presumptions](#) from the definitions. “Transient occupancy” is defined as an occupancy that is temporary, and “nontransient occupancy” as an occupancy that is not temporary. (Section [1](#))

The bill provides that transient and nontransient occupancies include hotels, motels, vacation rentals, bed and breakfast inns, or timeshare projects. However, hotels, motels, vacation rentals, bed and breakfast inns, or timeshare projects may **only** be considered nontransient occupancies **if** there is a written rental or lease agreement stating the unit is the sole residence of the guest. (Section [1](#))

STORAGE NAME: h0535c.CRM

DATE: 4/1/2025

The bill redefines “transient establishment” and “nontransient establishment” by removing the intention of the operator. The bill also amends the rental time period to determine whether an establishment is transient or nontransient from “30 days or one calendar month” to “**30 consecutive days.**” (Section [1](#))

[Refusal of Admission and Ejection of Undesirable Guests](#)

The bill provides that:

- An operator of a public lodging establishment may remove a guest for failing to make payment or check out at or before the **time specified in writing by the public lodging establishment** instead of the time agreed upon by both parties.
- A public lodging or public food service establishment’s written or oral notice to a guest to leave is effective upon delivery whether notice is provided in person, telephone, email, or delivered to the guest’s unit if the establishment is a public lodging establishment.
 - If a public lodging establishment notifies a guest to leave because they failed to checkout or pay for their unit by the check-out time, the **notice must be in writing** which may be via text, email, or printed paper. (Section [2](#))

The bill removes the requirement for a law enforcement officer to [arrest](#) a guest who refuses to leave an establishment in the presence of the officer. Instead, an officer is only required to remove the guest from the establishment. The law enforcement officer may still arrest the guest, but is not required to do so unless a warrant has been issued. (Section [2](#))

[Automatic Gratuity or Service Charges](#)

The bill **prohibits** [public food service establishments](#) from including automatic gratuity or service charges in the price of food or beverages for parties of less than six (6) guests. (Section [3](#))

The bill defines “gratuity” and “service charge” as any type of charge or required payment other than the price of the food or beverages. (Section [3](#))

Under the bill, public food service establishments **may include** automatic gratuity or service charges in the price of food or beverages for parties of six (6) or more guests. (Section [3](#))

If a public food service establishment includes an automatic gratuity or service charge, notice of the automatic charge must be on the face of every item and receipt required to be signed by a guest, in addition to being on the food menu which is required by current law. The notice must list the person or business entity receiving the gratuity or service charge and the percentage they are receiving. (Section [3](#))

A public food service establishment **may not** require a guest to pay an automatic gratuity or service charge if the guest requests not to pay such gratuity or service charge. (Section [3](#))

The bill also provides that if a public food establishment bases an automatic or suggested gratuity or service charge on the price of food or beverages, the gratuity or service charge must be based on the price of the food or beverages before taxes. (Section [3](#))

The bill provides an effective date of July 1, 2025. (Section [4](#))

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

The bill may have a positive fiscal impact on transient public lodging establishments by reducing the need to remove guests through the landlord eviction process.

The bill may also have an indeterminate negative fiscal impact on public food service establishments by prohibiting such establishments from including automatic gratuity or service charges on bills for parties of fewer than six guests. Additionally, the bill may have an indeterminate negative fiscal impact on such establishments to the extent that costs are incurred to comply with the expanded notice requirements of the bill related to automatic gratuity and service charges.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Public Lodging Establishments](#)

The Division of Hotels and Restaurants within the Department of Business and Professional Regulation is the state agency with regulatory authority of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.¹

The term “public lodging establishment” includes transient and non-transient public lodging establishments.² The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A public lodging establishment is classified as a hotel, motel, vacation rental, non-transient apartment, transient apartment, bed and breakfast inn, or timeshare project if the establishment satisfies specified criteria.³

[Transient and Nontransient Occupancy](#)

A “transient public lodging establishment” is defined in s. [509.013\(4\)\(a\)1., F.S.](#), as:

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.

A “non-transient public lodging establishment” is defined in s. [509.013\(4\)\(a\)2., F.S.](#), as:

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.

Under current law, occupancy status considers the [intent of the parties](#); however, how this intent is determined, is not specified:⁴

“Transient occupancy” means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a [rebuttable presumption](#) that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

“Nontransient occupancy” means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a **rebuttable presumption** that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

¹ S. [509.032\(1\), F.S.](#)

² S. [509.013\(4\)\(a\), F.S.](#)

³ S. [509.242\(1\), F.S.](#)

⁴ S. [509.013, F.S.](#)

[Refusal of Admission and Ejection of Undesirable Guests](#)

An operator of a public lodging or public food establishment may remove a guest or have a guest removed while on the premises of the establishment for:⁵

- illegally possessing or dealing in controlled substances;
- being intoxicated, profane, lewd, or brawling;
- indulging in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
- failing to pay rent at the **agreed-upon** rental rate by the **agreed-upon** checkout time;
- failing to check out by the time **agreed upon in writing by the guest and public lodging establishment** at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
- failing to make payment for food, beverages, or services; or
- being, in the opinion of the operator, detrimental to the establishment.

Section [509.141, F.S.](#), provides that an operator of a public lodging or public food establishment may remove a guest by notifying the guest that the establishment no longer desires to entertain him or her and the guest must depart immediately. Notice may be given orally or in writing. If the notice is in writing it must state:⁶

“You are hereby notified that this establishment no longer desires to entertain you as its guest, and you are requested to leave at once. To remain after receipt of this notice is a misdemeanor under the laws of this state.”

Current law does not state when notice is considered delivered.

[Requirement for Law Enforcement Officers to Make Arrests](#)

Any guest who remains or attempts to remain at an establishment after being noticed to leave is guilty of a second-degree misdemeanor. An operator may request law enforcement for assistance to remove a guest. At the request of an operator, a law enforcement officer **must arrest** any guest who refuses to depart in the presence of the officer.⁷

In 2015, HomeSuiteHome, an extended-stay public lodging establishment, brought a complaint against the Osceola County Sheriff’s Office for failing to arrest guests who refused to depart in the presence of the sheriff’s officers.

The court ruled in favor of the Sheriff because the Sheriff did not refuse to arrest guests who refused to leave. Instead, the Sheriff required his officers to determine if guests are transient before making an arrest.⁸

The Court ruled that ch. 509, F.S., does not set forth “concrete boundaries (such as length of stay or receipt of mail)” that can be used to determine whether a guest is ‘transient’ or ‘nontransient.’” The Court further stated that the rebuttable presumption that the occupancy is **transient** when the guest’s unit is not their sole residence, and the rebuttable presumption that a guest is **non-transient** when the unit is their sole residence, by their nature require a weighing of the evidence which defeats the argument that police officers do not have discretion to determine whether a guest is transient before making an arrest and removing a guest.⁹

The Court further ruled that HomeSuiteHome’s agreements requiring guests to promise not to use units as their permanent residence was not enough to rebut this presumption, and it would be improper for the Sheriff’s officers to make arrests solely by referring to the agreements.¹⁰

⁵ S. [509.141\(1\), F.S.](#)

⁶ S. [509.141\(2\), F.S.](#)

⁷ S. [509.141\(3\) and \(4\), F.S.](#)

⁸ *HSH Eastgate, LLC v. Sheriff of Osceola County, Florida*, 2015 WL 3465795 (M.D. Fla. 2015)

⁹ *Id.* at 3-4.

¹⁰ *Id.*

If a guest is considered “nontransient” instead of “transient” then the establishment will have to go through the Florida Residential Landlord and Tenant Act to remove the guest.¹¹

Florida Residential Landlord and Tenant Act

The Residential Landlord and Tenant Act (Act), codified in part II of ch. 83, F.S., governs the rental of a dwelling unit in Florida. In Florida, landlords can evict tenants for reasons such as non-payment of rent, lease violations, or illegal activities. The eviction process involves providing written notice, filing a lawsuit, and obtaining a writ of possession. The process includes the following processes:¹²

- Notice:
 - Landlords must provide written notice to the tenant.
 - The notice must specify the reason for eviction and the timeframe for compliance.
 - The notice time period depends on the reason for eviction.
- Eviction lawsuit:
 - If the tenant does not comply with the notice, the landlord can file an eviction lawsuit in court.¹³
 - The court will schedule a trial where both parties can present evidence and testimony.¹⁴
 - If the landlord prevails, the clerk of court will issue a writ of possession.¹⁵
- Writ of possession:
 - The writ of possession orders the sheriff to remove the tenant from the property.
 - The tenant has 24 hours to vacate before the sheriff returns to remove them.¹⁶

Public Food Service Establishments

In addition to regulating public lodging establishments, the Division is also responsible for enforcing laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety and welfare.¹⁷

A “public food service establishment” is any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.¹⁸

Current law provides that if a public food service establishment assesses an automatic gratuity or service charge, they must include notice of the gratuity or charge on their food menu and on the face of the bill provided to the customer.¹⁹

OTHER RESOURCES:

[Florida Bar Journal, What Are You: A Hotel Guest, Tenant, or Transient Occupant?](#)

¹¹ Miguel J. Chamorro, *What Are You: A Hotel Guest, Tenant, or Transient Occupant?*, The Florida Bar (October 2018) <https://www.floridabar.org/the-florida-bar-journal/what-are-you-a-hotel-guest-tenant-or-transient-occupant/> (last visited March 27, 2025).

¹² S. [83.56, F.S.](#)

¹³ S. [83.59, F.S.](#)

¹⁴ S. [51.011, F.S.](#)

¹⁵ S. [83.62, F.S.](#)

¹⁶ *Id.*

¹⁷ S. [509.032\(1\), F.S.](#)

¹⁸ S. [509.013\(5\)\(a\), F.S.](#)

¹⁹ S. [509.214, F.S.](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Industries & Professional Activities Subcommittee	14 Y, 3 N, As CS	3/12/2025	Anstead	Brackett
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> • Clarified that a hotel, motel, vacation rental, bed & breakfast, or timeshare project is not considered a nontransient occupancy unless there is a written agreement indicating such. • Provided that a public lodging establishment's specified checkout time for a guest must be in writing. • Provided that a public lodging's notice to a guest to immediately depart must be in writing if it's because the guest failed to timely checkout or pay for their unit. • Provided that public food service establishments may charge automatic gratuities or service charges to parties of six or more guests. The automatic gratuities or service charges must: <ul style="list-style-type: none"> ○ Be provided on every bill given to a guest and on every item or receipt required to be signed by a guest. ○ List who is receiving the gratuity or service charge and the percentage they are receiving. ○ Be based on the price of food or beverages before taxes if the charge is based on the price of the food or beverages. • Provided that a guest may not be required to pay an automatic gratuity or service charge if he or she requests not to. • Prohibited public food service establishments from charging automatic gratuities or service charges to parties of less than six guests. 			
Criminal Justice Subcommittee	11 Y, 6 N	4/1/2025	Hall	Leshko
Commerce Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
