

CHAPTER 2011-119

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 883

An act relating to public lodging establishments and public food service establishments; amending s. 509.013, F.S.; excluding nonprofit organizations providing certain housing from the definition of "public lodging establishment"; amending s. 509.032, F.S.; conforming provisions to changes made by the act; prohibiting local governments from regulating, restricting, or prohibiting vacation rentals based solely on their classification, use, or occupancy; providing exceptions; revising authority preempted to the state with regard to regulation of public lodging establishments and public food service establishments; amending ss. 509.221 and 509.241, F.S.; conforming provisions to changes made by the act; amending s. 509.242, F.S.; providing that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals; defining the term "vacation rental"; amending s. 509.251, F.S.; conforming provisions to changes made by the act; amending s. 509.261, F.S.; revising penalties for public lodging establishments and public food service establishments operating without a valid license; amending s. 509.291, F.S.; revising membership of the advisory council of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; requiring the Florida Vacation Rental Managers Association to designate a member to serve on the advisory council; amending ss. 381.008 and 386.203, F.S.; conforming provisions to changes made by the act; providing a short title; amending s. 509.144, F.S.; revising definitions; providing additional penalties for the offense of unlawfully distributing handbills in a public lodging establishment; specifying that certain items used in committing such offense are subject to seizure and forfeiture under the Florida Contraband Forfeiture Act; creating s. 901.1503, F.S.; authorizing a law enforcement officer to give a notice to appear to a person without a warrant when there is probable cause to believe the person violated s. 509.144, F.S., and the owner or manager of the public lodging establishment and one additional affiant sign an affidavit containing information supporting the determination of probable cause; amending s. 932.701, F.S.; revising the definition of the term "contraband article"; providing that specified portions of the act do not affect or impede specified statutory provisions or any protection or right guaranteed by the Second Amendment to the United States Constitution; providing an effective date.

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

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

(4)

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

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072;

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and

6. Any establishment inspected by the Department of Health and regulated by chapter 513; and

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

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

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals ~~resort condominiums or resort dwellings~~ are not subject to this requirement, but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be

victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or under chapter 429.

(7) PREEMPTION AUTHORITY.—

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

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

(c) Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the Department of Community Affairs pursuant to an area of critical state concern designation.

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

509.221 Sanitary regulations.—

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

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

509.241 Licenses required; exceptions.—

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

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

509.242 Public lodging establishments; classifications.—

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

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

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

(c) Vacation rental ~~Resort condominium~~.—A vacation rental ~~resort condominium~~ is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, or four-family house or dwelling unit that is also a transient public lodging establishment which is rented 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 for periods of less than 30 days or 1 calendar month, whichever is less.

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

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

(f) Roominghouse.—A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, ~~resort condominium~~, nontransient apartment, bed and breakfast inn, vacation rental, or transient

apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.

~~(g) Resort dwelling.—A resort dwelling is any individually or collectively owned one family, two family, three family, or four family dwelling house or dwelling unit which is rented 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 for periods of less than 30 days or 1 calendar month, whichever is less.~~

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

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

509.251 License fees.—

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

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

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed \$50, in addition to the renewal fee and any other fees

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

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

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

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

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

(b) Mandatory completion attendance, at personal expense, of a remedial at an educational program administered sponsored by a food safety training program provider approved by the division, as provided in s. 509.049 the Hospitality Education Program; and

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

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

509.291 Advisory council.—

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

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

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

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

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

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

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

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

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

386.203 Definitions.—As used in this part:

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

Section 11. Sections 11 through 14 of this act may be cited as the “Tourist Safety Act of 2011.”

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

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

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

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

(b) “Without permission” means without the expressed written ~~or oral~~ permission of the owner, manager, or agent of the owner or manager of the

public lodging establishment where a sign is posted prohibiting advertising or solicitation in the manner provided in subsection (5) (4).

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

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

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

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

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

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

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

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

(b) The sign must be posted conspicuously.

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

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

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

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

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

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

932.701 Short title; definitions.—

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

(a) "Contraband article" means:

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

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

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

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

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality

in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

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

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

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

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

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

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

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

Section 15. The amendments made to ss. 509.144 and 932.701, Florida Statutes, and the creation of s. 901.1503, Florida Statutes, by this act do not affect or impede the provisions of s. 790.251, Florida Statutes, or any other

protection or right guaranteed by the Second Amendment to the United States Constitution.

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

Approved by the Governor June 2, 2011.

Filed in Office Secretary of State June 2, 2011.