

Committee Substitute for Committee Substitute for
Committee Substitute for Senate Bill No. 2016

An act relating to public lodging and public food service establishments; amending s. 509.013, F.S.; revising and adding definitions; amending s. 509.032, F.S.; eliminating the requirement for the Division of Hotels and Restaurants to assist the State Fire Marshal in updating the Florida Fire Prevention Code; eliminating the requirement for the division to enforce the Florida Fire Prevention Code in conducting its inspections; requiring the division, or its agent, to notify firesafety officials of certain readily observable violations of the Florida Fire Prevention Code rules; revising state preemption authority; amending s. 509.039, F.S.; decreasing the amount of time in which a food service manager is required to obtain certification after employment; requiring public food service establishments to provide proof of certification upon request by the division; amending s. 509.101, F.S.; deleting the requirement that a transient establishment maintain a copy of ch. 509, F.S., on its premises; amending s. 509.211, F.S.; deleting a requirement for division notification of local firesafety officials or the State Fire Marshal of violations of rules under ch. 633, F.S.; amending s. 509.221, F.S.; providing that certain sanitary regulations for a public lodging establishment for its guests and employees and for a public food service establishment for its employees be in compliance with the Florida Building Code as approved by the local building authority; providing for wastewater disposal procedures for public food service establishments; requiring public lodging establishment and public food service establishment public restroom requirements to be in accordance with the Florida Building Code as approved by the local building authority; amending s. 509.242, F.S.; clarifying public lodging establishment classifications; amending s. 509.261, F.S.; authorizing the division to levy sanctions for failing to comply with final orders of the division; authorizing the division to require payment of outstanding fines before renewing or issuing a license; providing an effective date.

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

Section 1. Subsections (4) and (12) of section 509.013, Florida Statutes, are amended, and subsections (14) through (16) are added to that section, to read:

509.013 Definitions.—As used in this chapter, the term:

(4)(a) “Public lodging establishment” includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2. ~~means 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.

1. “Transient public lodging establishment” means 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.

2. “Nontransient public lodging establishment” means 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.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions ~~definition~~ 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 hospital, nursing home, sanitarium, assisted living facility, or other similar place;

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.

(12) “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 the sole residence of the guest, the occupancy is nontransient. There is a rebuttable presumption

that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(14) “Nontransient establishment” means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(15) “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.

(16) “Nontransient” means a guest in nontransient occupancy.

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

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(d) The division shall adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness in those establishments licensed under this chapter. These rules shall provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting necessary public food service establishment inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the division. The division may not establish by rule any regulation governing the design, construction, erection, alteration, modification, repair, or demolition of any public lodging or public food service establishment. It is the intent of the Legislature to preempt that function to the Florida Building Commission and the State Fire Marshal through adoption and maintenance of the Florida Building Code and the Florida Fire Prevention Code. The division shall provide technical assistance to the commission ~~and the State Fire Marshal~~ in updating the construction standards of the Florida Building Code ~~and the Florida Fire Prevention Code~~ which govern public lodging and public food service establishments. Further, the division shall enforce the provisions of the Florida Building Code ~~and the Florida Fire Prevention Code~~ which apply to public lodging and public food service establishments in conducting any inspections authorized by this part. The division, or its agent, shall notify the local firesafety authority or the State Fire Marshal of any readily observable violation of a rule adopted under chapter 633 which relates to public lodging establishments or public food establishments, and the identification of such violation does not require any firesafety inspection certification.

(7) PREEMPTION AUTHORITY.—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 adopted

under this section, and the regulation of food safety protection standards for required training and testing of food service establishment personnel are preempted to the state. This 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.

Section 3. Section 509.039, Florida Statutes, is amended to read:

509.039 Food service manager certification.—It is the duty of the division to adopt, by rule, food safety protection standards for the training and certification of all food service managers who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. The standards adopted by the division shall be consistent with the Standards for Accreditation of Food Protection Manager Certification Programs adopted by the Conference for Food Protection. These standards are to be adopted by the division to ensure that, upon successfully passing a test, approved by the Conference for Food Protection, a manager of a food service establishment shall have demonstrated a knowledge of basic food protection practices. The division may contract with an organization offering a training and certification program that complies with division standards and results in a certification recognized by the Conference for Food Protection to conduct an approved test and certify all test results to the division. Other organizations offering programs that meet the same requirements may also conduct approved tests and certify all test results to the division. The division may charge the organization it contracts with a fee of not more than \$5 per certified test to cover the administrative costs of the division for the food service manager training and certification program. All managers employed by a food service establishment must have passed an approved test and received a certificate attesting thereto. Managers have a period of 30 90 days after employment to pass the required test. All public food service establishments must provide the division with proof of food service manager certification upon request, including, but not limited to, at the time of any division inspection of the establishment. The ranking of food service establishments is also preempted to the state; provided, however, that any local ordinances establishing a ranking system in existence prior to October 1, 1988, may remain in effect.

Section 4. Subsections (1) and (2) of section 509.101, Florida Statutes, are amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying, sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as the guest or employee remains in or at the establishment. Such rules and regulations

shall be deemed to be a special contract between the operator and each guest or employee using the services or facilities of the operator. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted in a prominent place within such public lodging establishment or public food service establishment. ~~Such posting shall also include notice that a current copy of this chapter is available in the office for public review.~~ In addition, any operator of a public food service establishment shall maintain the latest food service inspection report or a duplicate copy on premises and shall make it available to the public upon request.

(2) It is the duty of each operator of a transient establishment to maintain at all times a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register shall be maintained in chronological order and available for inspection by the division at any time. Operators need not make available registers which are more than 2 years old. ~~Each operator shall maintain at all times a current copy of this chapter in the office of the licensed establishment which shall be made available to the public upon request.~~

Section 5. Subsections (2) through (5) of section 509.211, Florida Statutes, are amended to read:

509.211 Safety regulations.—

~~(2) The division, or its agent, shall immediately notify the local firesafety authority or the State Fire Marshal of any major violation of a rule adopted under chapter 633 which relates to public lodging establishments or public food service establishments. The division may impose administrative sanctions for violations of these rules pursuant to s. 509.261 or may refer such violations to the local firesafety authorities for enforcement.~~

~~(2)(3)(a)~~ It is unlawful for any person to use within any public lodging establishment or public food service establishment any fuel-burning wick-type equipment for space heating unless such equipment is vented so as to prevent the accumulation of toxic or injurious gases or liquids.

(b) Any person who violates the provisions of paragraph (a) commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(3)(4)~~ Each public lodging establishment that is three or more stories in height must have safe and secure railings on all balconies, platforms, and stairways, and all such railings must be properly maintained and repaired. The division may impose administrative sanctions for violations of this subsection pursuant to s. 509.261.

~~(4)(5)~~ Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one

or more carbon monoxide sensor devices that bear the label of a nationally recognized testing laboratory and have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the division. Such devices shall be integrated with the public lodging establishment's fire detection system. Any such installation or determination shall be made in accordance with rules adopted by the division.

Section 6. Subsections (1) and (5) and paragraph (a) of subsection (2) of section 509.221, Florida Statutes, are amended to read:

509.221 Sanitary regulations.—

(1)(a) ~~Each public lodging establishment and each public food service establishment~~ shall be supplied with potable water and shall provide adequate sanitary facilities for the accommodation of its employees and guests. Such facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets. Such sanitary facilities shall be connected to approved plumbing. Such plumbing shall be sized, installed, and maintained in accordance with the Florida Building Code as approved by the local building authority. Wastewater or sewage shall be properly treated onsite or discharged into an approved sewage collection and treatment system.

~~(b) Each public food service establishment shall be supplied with potable water and shall provide adequate sanitary facilities for the accommodation of its employees. Such facilities may include, but are not limited to, showers, handwash basins, toilets, and bidets. Such sanitary facilities shall be connected to approved plumbing. Such plumbing shall be sized, installed, and maintained in accordance with the Florida Building Code as approved by the local building authority. Wastewater or sewage shall be properly treated onsite or discharged into an approved sewage collection and treatment system.~~

(2)(a) Each public lodging establishment and each public food service establishment shall maintain ~~not less than one~~ public bathroom facilities in accordance with the Florida Building Code as approved by the local building authority for each sex, properly designated, unless otherwise provided by rule. The division shall establish by rule categories of establishments not subject to the bathroom requirement of this paragraph. Such rules may not alter the exemption provided for theme parks in paragraph (b).

(5) Each transient public lodging establishment ~~and each public food service establishment~~ shall provide in the main public bathroom soap and clean towels or other approved hand-drying devices and each public lodging establishment shall furnish each guest with two clean individual towels so that two guests will not be required to use the same towel unless it has first been laundered. Each public food service establishment shall provide in the employee bathroom and any public bathroom soap and clean towels or other approved hand-drying devices.

Section 7. Paragraphs (d) and (e) of subsection (1) of section 509.242, Florida Statutes, are 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 resort dwelling if the establishment satisfies the following criteria:

(d) Nontransient apartment or roominghouse.—A nontransient apartment or roominghouse is a any apartment 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 any apartment 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.

Section 8. Subsections (8) and (9) are added to section 509.261, Florida Statutes, to read:

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

(8) The division may fine, suspend, or revoke the license of any public lodging establishment or public food service establishment when the establishment is not in compliance with the requirements of a final order or other administrative action issued against the licensee by the division.

(9) The division may refuse to issue or renew the license of any public lodging establishment or public food service establishment until all outstanding fines are paid in full to the division as required by all final orders or other administrative action issued against the licensee by the division.

Section 9. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.