

FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 883

FINAL HOUSE FLOOR ACTION:

94 Y's 19 N's

SPONSOR: Rep. Horner

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 476

SUMMARY ANALYSIS

CS/CS/CS/HB 883 passed the House on May 2, 2011, and subsequently passed the Senate on May 6, 2011. The substance of the bill also passed as CS/HB 63. The bill was approved by the Governor on June 2, 2011, chapter 2011-119, Laws of Florida, and took effect June 2, 2011.

The bill amends laws relating to public lodging establishments and public food service establishments, regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation (DBPR).

Generally, the bill preempts local regulation of matters relating to nutritional content and marketing and provides that the DBPR can impose mandatory remedial training for food safety violations. It also excludes housing offered by nonprofit organizations exclusively for patients, patients' families and caregivers from regulation as public lodging establishments.

As to vacation rentals, the bill:

- Reclassifies resort condominiums and resort dwellings as 'vacation rentals,' a newly defined class combining the two previous classes.
- Revises the membership of the advisory council for the division.
- Preempts new local regulations of vacation rentals based solely on classification, use or occupancy. Regulations adopted by June 1, 2011, and regulations affecting areas of critical state concern that exclusively relate to property valuation as a criterion for vacation rentals is exempt from the preemption.

As to handbill distribution, the bill creates the "Tourist Safety Act of 2011," which amends current law to:

- Require written permission for the distribution of handbills in public lodging and food service establishments.
- Provide that certain protected communications are not subject to the restrictions.
- Provide for fines and forfeiture for violations.
- Permit a law enforcement officer to issue a notice to appear on probable cause of a violation.

The bill is not anticipated to have a significant fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

The Division of Hotels and Restaurants within the Department of Business and Professional Regulation oversees the regulation of Public Lodging and Food Service Establishments. Chapter 509, F.S., divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e. Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e. Motel 6).
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Resort dwelling:	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 1 month or which is advertised as such.
Resort condominium:	Any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times a year for periods of less than 1 month or is advertised as such.

All public lodging establishments are licensed, but the degree of inspections and the relevant fees differ based on the type of establishment.

The following types of lodging are excluded from the definition of public lodging establishment, and, therefore, are not subject to the regulations:

- Dormitories or other facilities maintained by schools, colleges, or universities for housing students, faculty, or visitors.
- Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services.
- Migrant labor camps or residential migrant housing permitted by the Department of Health.
- Mobile home and recreational vehicle parks inspected by the Department of Health.
- 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.
- 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.

Vacation Rentals

Vacation rentals are properties generally designed for residential purposes, such as single- and multi-family homes which are rented out to tourists on vacation. In Florida, they are divided into two main categories: resort condominiums and resort dwellings and are regulated as transient public lodging establishments.

The Division inspects resort condominiums and resort dwellings on receiving complaints only. The Division receives about three complaints of unlicensed resort condominiums or resort dwellings each year.

For resort dwellings and resort condominiums, licenses are issued under three categories:

1. Single – Individual owner, may include multiple units
2. Group – Licensed agent for all units rented
3. Collective – Licensed agent for up to 75 units separately located throughout a district

Operators of resort dwellings and resort condominiums pay a base fee of \$150, a Hospitality Education Program fee of \$10 and a unit fee. Unit fees on single and group licensees are incremental based on the total number of rental units. Collective licensees pay \$10 per unit.

The total fees licensees pay range from \$170-\$350 for single and group licensees, and are capped for collective licensees at \$910.

The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida

Building Code and the Florida Fire Prevention Code. However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance.¹

Section 509.291, F.S., establishes an advisory council currently consisting of 10 members. The Secretary of the DBPR appoints seven members, with the remaining three being statutory members representing the Florida Restaurant and Lodging Association, the Florida Apartment Association, and the Florida Association of Realtors.

The advisory council does not currently have a representative specifically from the resort condominium or resort dwelling industry. However, the Division reports that the council does have appointed members who work for licensees that own resort condominium properties, in addition to other types of public lodging or public food service establishments.

Food Establishments

The DBPR may take disciplinary action against licensees for violations of ch. 509, F.S., including requiring remedial training. This training used to be provided by the Hospitality Education Program, which is funded by a \$10 annual fee on all public food service and public lodging licenses.² Until 2009, the Hospitality Education Program provided training programs, including continuing education and remedial training, for no additional charge to the licensee.

The DBPR also selects private nonprofit providers to administer the food safety training certificate program for food service employees.³ The DBPR has approved approximately 130 such food service employee training programs.

Handbill Distribution

Section 509.144(2), F.S., prohibits persons acting on behalf of another to, without permission, deliver, distribute, or place a handbill at or in a public lodging establishment. Subsection (3) of the statute also prohibits persons to, without permission, direct another person to deliver, distribute, or place a handbill in a public lodging establishment. Both crimes are punishable as 1st degree misdemeanors. In addition to the 1st degree misdemeanor penalty, persons who violate subsection (3) of the statute are required to pay a minimum fine of \$500.

Currently, s. 509.144, F.S., defines the term “without permission” as “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 (4).”⁴ The term “handbill” is defined as “a flier, leaflet, pamphlet, or other written material that advertises, promotes, or informs persons about an individual, business, company, or food service establishment, but shall not include employee communications permissible under the National Labor Relations Act.”

¹ See, e.g., Kim Hackett, “Property owners fight with Venice again on rental ban,” Sarasota Herald Tribune (February 8, 2011), available at <http://www.heraldtribune.com/article/20110208/ARTICLE/102081021>; Scott Wyman, “Possible Fort Lauderdale Restrictions On Short-Term Rentals Draw Opposition,” Sun-Sentinel (February 24, 2011), available at http://weblogs.sun-sentinel.com/news/politics/broward/blog/2011/02/possible_fort_lauderdale_restr.html.

² Fla. Stat. s. 509.302(2)(a).

³ Fla. Stat. s. 509.049.

⁴ Section 509.144(4), F.S., sets forth the manner in which public lodging establishments who intend to prohibit advertising or solicitation must post signs prohibiting such behavior.

The Florida Contraband Forfeiture Act (Act) provides that any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Act. Currently, violations of the prohibitions on distributing handbills without permission are not subject to the Act.

Effect of the Bill:

Vacation Rentals

The bill reclassifies resort condominiums and resort dwellings as ‘vacation rentals,’ a new classification combining the two previous classes. ‘Vacation Rental’ is defined as “any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment.”

The bill prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals. This restriction will not apply to any local law, ordinance or rule adopted on or before June 1, 2011.

The bill revises the membership of the advisory council for the Division of Hotels and Restaurants by reducing the number of members appointed by the Secretary of DBPR from seven to six and adding one representative from the Florida Vacation Rental Managers Association.

Food Establishments

The bill also revises the penalties for public food service establishments operating in violation of ch. 509, F.S. The bill provides that the Division of Hotels and Restaurants may impose mandatory completion of a remedial educational program administered by a food safety program provider whose program has been approved by the division.

Current law provides a preemption of authority to the state for the regulation of public lodging and food establishments related to inspections, training and sanitation standards. The bill expands the state’s preemption to include, “matters related to nutritional content and marketing of foods in such establishments.”

Handbill Distribution

The bill creates the Tourist Safety Act of 2011, making changes to the current prohibition on distributing handbills at public lodging establishments. The bill requires written permission, rather than oral permission, of the public lodging establishment’s owner or manager.

The bill also amends the definition of the term “handbill” to specify that the term does not include communications protected by the First Amendment to the United States Constitution. Further, the bill specifies that it does not affect or impede the provisions of s. 790.251, F.S.,⁵ or

⁵ Section 790.251, F.S., relates to the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.

any other protection or right guaranteed by the 2nd Amendment to the United States Constitution.⁶

The bill increases penalties to provide a minimum fine of \$2,000 for a second offense of distributing handbills without permission or soliciting another to do so. For third or subsequent violations, the minimum fine would be \$3,000.

The bill allows a law enforcement officer to issue a notice to appear without the issuance of a warrant, if there is probable cause to believe the prohibition has been violated. The officer may only issue such a notice if the owner or manager of the establishment, and an additional affiant, sign an affidavit supporting the probable cause determination.

The bill applies the Florida Contraband Forfeiture Act to property used as an instrument in the commission of a violation of the prohibition on unauthorized handbill distribution.

The bill provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such, local governments may see increased revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the fine for first, second, and subsequent violations of s. 509.144, F.S. The bill also provides a civil forfeiture provision relating to violations of the handbill distribution statute. As such, violators will be required to pay fines as required by the bill. Third time offenders may also have their property seized.

⁶ The 2nd Amendment to the United States Constitution sets forth the right of the people to keep and bear arms.

D. FISCAL COMMENTS:

None.