

PCS for HB 63

ORIGINAL

2011

1 A bill to be entitled
2 An act relating to public lodging establishments;
3 providing a short title; amending s. 509.144, F.S.;
4 revising definitions; providing additional penalties for
5 the offense of unlawfully distributing handbills in a
6 public lodging establishment; specifying that certain
7 items used in committing such offense are subject to
8 seizure and forfeiture under the Florida Contraband
9 Forfeiture Act; creating s. 901.1503, F.S.; authorizing a
10 law enforcement officer to give a notice to appear to a
11 person without a warrant when there is probable cause to
12 believe the person violated s. 509.144, F.S., and the
13 owner or manager of the public lodging establishment signs
14 an affidavit containing information supporting the
15 determination of probable cause; amending s. 932.701,
16 F.S.; revising the definition of the term "contraband";
17 amending s. 509.032, F.S.; clarifying provisions relating
18 to the preemption to the state of the regulation of public
19 lodging and public food service establishments; amending
20 s. 509.261, F.S.; providing for remedial training in
21 response to a violation of laws or rules governing public
22 lodging and public food service establishments; providing
23 that this act does not affect or impede the provisions of
24 a specified state statute or any protection or right
25 guaranteed by the Second Amendment to the United States
26 Constitution; providing an effective date.

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 30 Section 1. This act may be cited as the "Tourist Safety
 31 Act of 2011."

32 Section 2. Section 509.144, Florida Statutes, is amended
 33 to read:

34 509.144 Prohibited handbill distribution in a public
 35 lodging establishment; penalties.—

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

37 (a) "Handbill" means a flier, leaflet, pamphlet, or other
 38 written material that advertises, promotes, or informs persons
 39 about a person ~~an individual~~, business, company, or food service
 40 establishment, but does ~~shall~~ not include employee
 41 communications permissible under the National Labor Relations
 42 Act, other communications protected by the First Amendment to
 43 the United States Constitution, or communications that relate to
 44 the public health, safety, or welfare which are distributed by a
 45 federal, state, or local governmental entity or a public or
 46 private utility.

47 (b) "Without permission" means without the expressed
 48 written ~~or oral~~ permission of the owner, manager, or agent of
 49 the owner or manager of the public lodging establishment where a
 50 sign is posted prohibiting advertising or solicitation in the
 51 manner provided in subsection (5) ~~(4)~~.

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

55 (2) Any person ~~individual~~, agent, contractor, or volunteer
 56 who is acting on behalf of a person ~~an individual~~, business,

57 | company, or food service establishment and who, without
 58 | permission, delivers, distributes, or places, or attempts to
 59 | deliver, distribute, or place, a handbill at or in a public
 60 | lodging establishment commits a misdemeanor of the first degree,
 61 | punishable as provided in s. 775.082 or s. 775.083.

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

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

72 | (a) A second time shall be ordered to pay a minimum fine
 73 | of \$2,000.

74 | (b) A third or subsequent time shall be ordered to pay a
 75 | minimum fine of \$3,000.

76 | ~~(5)~~(4) For purposes of this section, a public lodging
 77 | establishment that intends to prohibit advertising or
 78 | solicitation, as described in this section, at or in such
 79 | establishment must comply with the following requirements when
 80 | posting a sign prohibiting such solicitation or advertising:

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

85 (b) The sign must be posted conspicuously.

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

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

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

108 Section 3. Section 901.1503, Florida Statutes, is created
 109 to read:

110 901.1503 When notice to appear by officer without warrant
 111 is lawful.—A law enforcement officer may give a notice to appear
 112 to a person without a warrant when the officer has determined

113 that he or she has probable cause to believe that a violation of
 114 s. 509.144 has been committed and the owner or manager of the
 115 public lodging establishment in which the violation occurred
 116 signs an affidavit containing information that supports the
 117 officer's determination of probable cause.

118 Section 4. Paragraph (a) of subsection (2) of section
 119 932.701, Florida Statutes, is amended to read:

120 932.701 Short title; definitions.—

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

122 (a) "Contraband article" means:

123 1. Any controlled substance as defined in chapter 893 or
 124 any substance, device, paraphernalia, or currency or other means
 125 of exchange that was used, was attempted to be used, or was
 126 intended to be used in violation of any provision of chapter
 127 893, if the totality of the facts presented by the state is
 128 clearly sufficient to meet the state's burden of establishing
 129 probable cause to believe that a nexus exists between the
 130 article seized and the narcotics activity, whether or not the
 131 use of the contraband article can be traced to a specific
 132 narcotics transaction.

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

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

140 4. Any motor fuel upon which the motor fuel tax has not

141 | been paid as required by law.

142 | 5. Any personal property, including, but not limited to,
 143 | any vessel, aircraft, item, object, tool, substance, device,
 144 | weapon, machine, vehicle of any kind, money, securities, books,
 145 | records, research, negotiable instruments, or currency, which
 146 | was used or was attempted to be used as an instrumentality in
 147 | the commission of, or in aiding or abetting in the commission
 148 | of, any felony, whether or not comprising an element of the
 149 | felony, or which is acquired by proceeds obtained as a result of
 150 | a violation of the Florida Contraband Forfeiture Act.

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

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

164 | 8. Any motor vehicle offered for sale in violation of s.
 165 | 320.28.

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

168 | 10. Any photograph, film, or other recorded image,

169 including an image recorded on videotape, a compact disc,
 170 digital tape, or fixed disk, that is recorded in violation of s.
 171 810.145 and is possessed for the purpose of amusement,
 172 entertainment, sexual arousal, gratification, or profit, or for
 173 the purpose of degrading or abusing another person.

174 11. Any real property, including any right, title,
 175 leasehold, or other interest in the whole of any lot or tract of
 176 land, which is acquired by proceeds obtained as a result of
 177 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 178 property, including, but not limited to, equipment, money,
 179 securities, books, records, research, negotiable instruments, or
 180 currency; or any vessel, aircraft, item, object, tool,
 181 substance, device, weapon, machine, or vehicle of any kind in
 182 the possession of or belonging to any person which is acquired
 183 by proceeds obtained as a result of Medicaid fraud under s.
 184 409.920 or s. 409.9201.

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

192 Section 5. Subsection (7) of section 509.032, Florida
 193 Statutes, is amended to read:

194 509.032 Duties.—

195 (7) PREEMPTION AUTHORITY.—The regulation of public lodging
 196 establishments and public food service establishments,

197 including, but not limited to, ~~the inspection of public lodging~~
 198 ~~establishments and public food service establishments for~~
 199 ~~compliance with the sanitation standards, inspections, adopted~~
 200 ~~under this section, and the regulation of food safety protection~~
 201 ~~standards for required training and testing of food service~~
 202 ~~establishment personnel, and matters related to the nutritional~~
 203 content and marketing of foods offered in such establishments,
 204 are preempted to the state. This subsection does not preempt the
 205 authority of a local government or local enforcement district to
 206 conduct inspections of public lodging and public food service
 207 establishments for compliance with the Florida Building Code and
 208 the Florida Fire Prevention Code, pursuant to ss. 553.80 and
 209 633.022.

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

212 509.261 Revocation or suspension of licenses; fines;
 213 procedure.—

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

- 219 (a) Fines not to exceed \$1,000 per offense;
- 220 (b) Mandatory completion attendance, at personal expense,
 221 of a remedial at an educational program administered sponsored
 222 by a food safety training program provider whose program has
 223 been approved by the division, as provided in s. 509.049 the
 224 Hospitality Education Program; and

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

227 Section 7. This act does not affect or impede the
 228 provisions of s. 790.251, Florida Statutes, or any other
 229 protection or right guaranteed by the Second Amendment to the
 230 United States Constitution.

231 Section 8. This act shall take effect October 1, 2011.